

Jammu and Kashmir Criminal Laws (Amendment) Act, 2013

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Act 11 of 2014

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Jammu and Kashmir Criminal Laws (Amendment) Act, 2013(Act No. 11 of 2014)Statement Of Objects And Reasons - There was countrywide protest and public outcry against incident of gang rape at New Delhi and a need was felt to have a re-look at the existing laws governing the sexual assault and use of brutal force against the women. It was decided by State Government also to have a review of the existing procedural and substantive laws on the subject so that such menace is curbed in the society and the guilty are dealt with firmly and speedily under very stringent and effective laws. Views/comments/suggestions were sought from all the stakeholders and cross section of society and thereafter a Committee was constituted to formulate the draft amendment on various laws (both procedural and substantive) and also invite suggestions/comments/response from general public by publication of notice on the website of the Department of Law, Justice and Parliamentary Affairs. The Committee submitted its Report to the Government. Accordingly, the Bill has been formulated on the issue. It seeks to amend the Ranbir Penal Code, Samvat 1989, Code of Criminal Procedure, Samvat 1989 and Evidence Act, Samvat 1977 to-(a) make specific provisions for punishment for the offences of causing grievous hurt by acid attack and also for an attempt thereof;(b) define and prescribe punishment for the offences of stalking, voyeurism and sexual harassment;(c) widen the definition of rape; broaden the ambit of aggravated rape; and enhance the punishment thereof;(d) prescribe for punishment extending to the sentence of death, for an offence where in the course of commission of an offence of rape, the offender inflicts any injury which causes the death of the victim or caused the victim to be in persistent vegetative state;(e) punish the repeat offender of rape with imprisonment for life (which shall mean the remainder of the person's natural life), or with death;(f) prescribe that those convicted for the offence of gang rape shall be punished with rigorous imprisonment for a minimum of twenty five years extendable to life (which shall mean the remainder of that person's natural life) and fine, to be paid to the victim to meet the medical expenses;(g) enhance punishment under section 294, 354, and 09 of Ranbir Penal Code;(h) insert section 304-B prescribing for punishment for dowry death;(i) amend sections 53-A, 154, 160, 161, 164, 198-B, 259-AA, 352 and 353 of the Code of Criminal Procedure, Samvat 1989 for providing for women friendly procedures; greater sensitivity to the requirement of physically and mentally

disabled persons, children and old persons in the course of investigation and trial including speed trial of rape cases and better recording of evidence;(j) provide that all hospitals shall immediately provide first aid and/or medical treatment, free of cost to the victims of acid attack or rape and provide for punishment for contravention thereof;(k) suspension and ultimately cancellation of driving licence of any person convicted of offences under section 294 and 376 of Ranbir Penal Code, Samvat 1989;(l) provide that the compensation payable by the State shall be in addition to the payment of fine to the victim;(m) amend the Indian Evidence Act, Samvat 1977 by way of inserting section 53 A, 114-B, substitution of section 119 and amendment of section 146 to protect the dignity of women;(n) amend Ranbir Penal Code, Samvat 1989 and Evidence Act, Samvat 1977 to make it compatible with the Information Technology Act, 2000." [Dated: 22-03-2014] An Act to amend the Ranbir Penal Code, Samvat 1989, the Code of Criminal Procedure, Samvat 1989 and the Evidence Act, Samvat 1977. Be it enacted by the State Legislature in Sixty-fourth year of Republic of India as follows:-

Chapter I

Preliminary

1. Short title and commencement.

(1) This Act may be called the Jammu and Kashmir Criminal Laws (Amendment) Act, 2013. (2) It shall come into force from the date of its publication in the Government Gazette. Chapter Amendments to the Ranbir Code

2. Amendment of section 29-A, Act No. XII of Samvat 1989.

- In the State Ranbir Penal Code (hereinafter in this Chapter referred to as the "Penal Code"), the full stop at the end of the said section shall be omitted and thereafter following shall be added, namely: - "and computer resources shall have the meaning assigned to them in clause (k) of sub-section (1) of section 2 of Information Technology Act, 2000."

3. Amendment of section 100, Act XII of 1989.

- In section 100 of the Penal Code, after clause Sixthly, the following clause shall be inserted, namely: - "Seventhly. - An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act."

4. Insertion of section 166A and 166B, Act XII of 1989.

- After section 166 of the Penal Code, the following sections shall be inserted, namely: - "166A. Public servant disobeying direction under law. - 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 any 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; or(c)fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, Samvat 1989 (1933AD) in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509;shall be punished with imprisonment for a term which may extend to one year and with fine.

166B. Punishment for non-treatment of victim. - Whoever, being incharge of a hospital, public or private, whether run by the Central Government, the State Government, Local Bodies or any other person, contravenes the provisions of section 545C of the Code of Criminal Procedure, Samvat 1989, shall be punished with imprisonment for a term which may extend to one year or with fine or with both."

5. Amendment of section 228A, Act XII of 1989.

- In section 228A of the Penal Code, for the words, figures and letters, "section 376, 376-A, 376-B, 376-C, 376-D" the words, figures and letters "section 376, 376A, 376B, 376C, 376D or 376E" shall be substituted.

6. Amendment of section 294.

- In section 294 of the Penal Code for the words, "shall be punished with imprisonment of either description for a term which may extend to three months or with fine or with both", the words, "shall be punished with imprisonment of either description for a term of six months which may extend of three years and shall also be liable to fine," shall be substituted.

7. Insertion of section 304-B, Act XII of 1989.

- After section 304-A of the Penal Code, the following section shall be inserted namely:"304-B. Dowry death. - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, and demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.Explanation 1:- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Restraint Act, 1960 A.D.Explanation 2:- For the purpose of this sub-section, "cruelty" shall have the same meaning as in section 498-A of this Code.(2)Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

8. Insertion of section 326A and 326B, Act XII of 1989.

- After section 326 of the Penal Code, the following sections shall be inserted, namely:- "326A. Voluntarily causing grievous hurt by use of acid, etc. - Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, 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 with fine which may extend to ten lakh rupees: Provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered.

326B. Voluntarily throwing or attempting to throw acid, etc. - Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1: For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability. Explanation 2: For the purpose of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible."

9. Amendment of section 354, Act XII of 1989.

- In section 354 of the Penal Code for the words "shall be punished with imprisonment or either description for a term which may extend to two years, or with fine, or with both", the words "shall be punished with imprisonment of either description for a term which shall also be liable to fine" shall be substituted.

10. Insertion of sections 354A, 354B, 354C and 354D, Act XII of 1989.

- After section 354 of the Penal Code, the following sections shall be inserted, namely:- "354A. Sexual harassment and punishment therefor. - (1) A man committing any of the following acts, -(i) physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) a demand or request for sexual favours; or (iii) forcibly showing pornography; or (iv) making sexually coloured remarks; shall be guilty of offence of sexual harassment. (2) Any person who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous

imprisonment which may extend to three years and with fine.(3)Any person who commits the offence specified in clause (iv) of subsection (1) shall be punishable with imprisonment of either description which may extend to one year and with fine.

354B. Assault or use of criminal force to women with intent to disrobe. - Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and with fine.

354C. Voyeurism. - Any man who watches, or captures the image of, a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

Explanation 1:- For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.Explanation 2:- Where the victim consents to the capture of images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D. Stalking. - Any man who,-

(i)follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly, despite a clear indication of disinterest by such woman; or(ii)monitors the use by a woman of the internet, e-mail or any other form of electronic communication,commits the offence of stalking;Provided that the course of conduct will not amount to staling if the man who pursued it proves that-(i)it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or(ii)it was pursued under any law or to comply with any condition or requirement imposed by an person under any law; or(iii)in the particular circumstances such conduct was reasonable and justified.(2)Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years,

and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years and shall also be liable to fine."

11. Substitution of section 370 and 370A for section 370, Act XII of 1989.

- For section 370 of the Penal Code, the following sections shall be substituted, namely; -"370. Trafficking of person. - (1) Whoever, for the purpose of explanation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receivers, a person or persons, by-First.- using threats; orSecondly.- using force, or any other form of coercion; orThirdly.- by abduction; orFourthly.- by practising fraud, or deception; orFifthly.- by abuse of power; orSixthly.- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.Explanation 1:- The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.Explanation 2:-The consent of the victim is immaterial in a determination of the offence of trafficking.(2)Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.(3)Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.(4)Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.(5)Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend fifteen years and shall also be liable to fine.(6)If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine up to Rupees two lakhs.(7)When a public servant including police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the remainder of the person's natural life and shall also be liable to fine up to Rupees one lakh.

370A. Exploitation of a trafficked person. - (1) Whoever, knowingly, or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any matter, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2)Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine."

12. Substitution of section 375, 376, 376-A, 376-B, 376-C and 376-D, Act XII of 1989.

- For sections 375, 376, 376-A, 376-B, 376-C and 376-D of the Penal Code, the following sections shall be substituted, namely:- "375. Rape. - A man is said to commit "rape" if he, -(a)penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or(b)inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or(c)manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or(d)applies his mouth to the vagina, anus or urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven description:-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 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;Seventhly.- When she is unable to communicate consent.Explanation 1:- For the purposes of this section, "vagina" shall also include labia majora.Explanation 2:- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:Provide that, a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.Exception 1:- A medical procedure or intervention shall not constitute rape.Exception 2:- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape. - (1) Whoever, except in the cases provided for by sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than eight years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2)Whoever,-(a)being a police officer, commits rape-(b)being a public servant, commits rape on a person in such public servant's custody or in the custody of a public servant subordinate to such public servant; or(c)being a member of the armed forces deployed in an area by the Central or the State Government, commits rape in such area; or(d)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, commits rape on any inmate of such jail, remand home, place or institution; or(e)being on the management or on the staff of a hospital commits rape on a woman in that hospital; or(f)being a relative, guardian or teacher of, or a person in a position of

trust or authority towards, the woman assaulted, commits rape on such woman; or(g)commits rape, during communal or sectarian violence; or(h)commits rape, on a woman knowing her to be pregnant; or(i)commits rape, on a woman when she is under sixteen years of age; or(j)commits rape, on a woman incapable of giving consent; or(k)being in a position of control or dominance over a woman, commits rape on such woman; or(l)commits rape, on a woman suffering from mental or physical disability; or(m)while committing rape, causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or(n)commits rape repeatedly on the same woman,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, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.Explanation:- For the purposes of this sub-section, -(a)"armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government.(b)"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 person requiring medical attention or rehabilitation or medical examination or pathological tests;(c)"police officer" shall have the same meaning as assigned to the expression "police under the Police Act, Samvat 1983;(d)"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.

376A. Punishment for causing death pre resulting in persistent vegetative state of the victim. - Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of woman or causes woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty five years, but which may extend to imprisonment for life, which shall mean the imprisonment for the remainder of that person's natural life, or with death.

376B. Sexual intercourse by husband upon his wife during separation. - Whoever commits sexual intercourse on his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

Explanation:- In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

376C. Sexual intercourse by a person in Authority. - Whoever, -

(a)being in a position of authority or in a fiduciary relationship; or(b)a public servant; or(c)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(d)being on the management of a hospital or being on the staff of a hospital,abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for term which shall not be less than ten years but which may extend to imprisonment for life, which shall mean the remainder of natural life of the person and shall also be liable to fine.Explanation 1:- In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.Explanation 2:- For the purposes of this section, Explanation 1 to section 375 shall also be applicable.Explanation 3:- "Superintendent", in relation to a jail, remain 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 such person can exercise any authority or control over its inmates.Explanation 4:- The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in Explanation to subsection (2) of section 376.

376D. Gang rape. - Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape, and shall be punished with rigorous imprisonment for a term which shall not be less than twenty five years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:Provided further that any fine imposed under this section shall be paid to the victim.

376E. Punishment for repeat offenders. - Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said section shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life or with death.

376F. Cancellation of driving licence. - (1) The licence of the accused of rape of an offence under section 294 shall stand suspended from the date the accused is challaned in a competent court of law till the announcement of the judgement.

2.

) Any person found guilty of offences mentioned in sub-section (1) shall have no right to drive any vehicle in the State and his licence shall stand cancelled on conviction."

13. Amendment of section 509, Act XII of 1989.

- In section 509 of Penal Code, -(i)after the words "or exhibits any object", the words "or transmits through SMS or e-mail any obscene song, ballad word or any abusive language" shall be inserted; and(ii)for the words "shall be punished with simple imprisonment for a term which shall not be less than six months but which may extend to two years and with fine upto 200 rupees" the words "shall be punished with simple imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine" shall be substituted.

Chapter III

Amendments to the Code of Criminal Procedure, Samvat 1989(1933 A.D)

14. Insertion of section 53A, 53B, 53C and 53D, Act XXIII of 1989.

- After section 53 of the Code of Criminal Procedure, Samvat 1989 (hereinafter in this Chapter referred to as the "Code of Criminal Procedure"), the following sections shall be inserted : -"53A. Examination of accused by medical practitioner at the request of police officer. - (1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances, that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting, at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.(2)Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.The word, "Person" used in this sub-section applies only to those parts of the body the expose which would violate a woman's modesty.Explanation:- In this section and in sections 53B and 53C, -(a)"examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DN A profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;(b)"registered medical practitioner" means a medical practitioner who possess any medical qualification as defined in clause (h) of section 2 of the Medical Council Act, 1956 and whose name has been entered in a State Medical Register.

53B. Examination of person accused of rape by medical practitioner. - (1)
When a person is arrested on a charge of committing an offence of rape or an attempt to commit offence of rape and there are reasonable grounds for believing that his examination will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely: -(i) the name and address of the accused and of the person by whom he was brought, (ii) the age of the accused, (iii) marks of injury, if any, on the person of the accused, (iv) the description of material, if any, taken from the person of the accused for DNA profiling, and (v) other material particulars in reasonable detail. (3) The report shall state precisely the reasons for each conclusion arrived at. (4) The exact time of commencement and completion of the examination shall also be noted in the report. (5) The registered medical practitioner shall, without delay, forward the report of the investigating officers, who shall forward it to the Magistrate referred to in section 173 of the Code as part of the documents referred to in clause (a) of sub-section (5) of that section.

53C. Examination of arrested person by medical officer. - (1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner. (2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

53D. Identification of person arrested. - Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer

incharge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit:

Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Medical Officer who shall take appropriate steps to ensure that such person identifies the person arrested using methods that the person is comfortable with: Provided further, that if the person identifying the person arrested is mentally or physically disabled, the identification process may be videographed."

15. Amendment of section 154, Act XXIII of 1989.

- In section 154 of the Code of Criminal Procedure, in sub-section (1), the following provisos shall be inserted, namely: - "Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 375, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Ranbir Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer and such woman shall be provided legal assistance and also the assistance of a healthcare worker or women's organisation or both: Provided further that - (a) in the event of such woman being temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such woman's choice, in the presence of a special educator or an interpreter or a medical officer, as the case may be; (b) the recording of such information may, as far as practicable, be videographed."

16. Amendment of section 160, Act XXIII of 1989.

- In section 160 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words "under the age of fifteen years or woman", the words "under the age of fifteen years or above the age of sixty-five years or a woman or a physically or mentally disabled person" shall be substituted.

17. Amendment of section 161, Act XXIII of 1989.

- In section 161 of the Code of Criminal Procedure, in sub-section (3), - (i) after the first proviso, the following proviso shall also be inserted, namely: - "Provided further where the statement of a woman against whom an offence under section 294, section 354, section 354A, section 354B, section 354C, section 354D, section 375, section 376, section 376A, section 376B section 376C, section 376D, section 376E or section 509 of the Ranbir Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer."; and (ii) in existing second proviso, the words "provided further" shall be substituted by words "Provided also".

18. Amendment of section 164A, Act XXIII of 1989.

- In section 164A of the Code of Criminal Procedure, after sub-section (4) the following sub-section shall be inserted, namely:-(5) In case the person making the statement is temporarily or permanently physically or mentally disabled, the Magistrate shall take the assistance of an interpreter or a special educator or a Medical Officer in recording the statement: Provided that if the person making the statement is temporarily or permanent physically or mentally disabled, the statement made by the person, with the assistance of an interpreter or special educator or Medical Officer, may be videographed: Provided further a statement recorded under sub-section (2) of a person who is temporarily or permanently physically or mentally disabled shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Evidence Act, Samvat, 1977 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial."

19. Insertion of section 164B, Act 5 XXIII of 1989.

- After section 164A of the Code of Criminal Procedure, the following section shall be inserted, namely: -"164B. Medical examination of the victim of rape. - (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a female registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other female registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from time of receiving the information relating to the commission of such offence.(2)The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely: -I. the name and address of the woman and of the person by whom she was brought;II. the age of the woman;III. the description of material if any, taken from the person of the woman for DNA profiling;IV. marks of injury, if any, on the person of the woman;V. general mental condition of the woman; andVI. other material particulars in reasonable detail.(3)The report shall state precisely the reasons for each conclusion arrived at.(4)The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.(5)The exact time of commencement and completion of the examination shall also be noted in the report.(6)The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.(7)Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.Explanation:- For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in section 53A."

20. Amendment of section 167, Act XXIII of 1989.

- In clause (a) of proviso to sub-section (2) of section 167 of the Code of Criminal Procedure, at the end of said clause, the words "In case of offences punishable under section 326A, section 326B, section 376, section 376A, section 376C, section 376D and section 376E, the period of "fifteen days" and "sixty days", mentioned aforesaid shall be read as "thirty days" and "ninety days" respectively.

21. Insertion of section 198D, Act XXIII of 1989.

- After section 198C of the Code of Criminal Procedure, the following section shall be inserted, namely:-"198D. Cognizance of offence under section 376B of Ranbir Penal Code. - No Court shall take cognizance of an offence under section 376B of the Ranbir Penal Code where the person are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the accused husband."

22. Insertion of section 259AA, Act XXIII of 1989.

- After section 259A of the Code of Criminal Procedure, the following section shall be inserted, namely: -"259AA. Special Procedure in offences of sexual assault. -(1) The trial of offences under section 376, section 376A, section 376B, section 376C, section 376D and section 376E shall commence within one week from the date of the presentation of the police report under section 173 of this Code and shall as far as possible be completed within a period of six months. The proceedings of the Court shall preferably be held on day to day basis: Provided that a report on the status of the trial shall be sent by the Trial Court to the High Court after every after every three months with reasons of non-conclusion of trial. (2) The witnesses of the prosecution shall be bound to appear before the Court on the date fixed for the hearing on a notice received from Investigating Officer, Public Prosecutor or Court. (3) The list of defence witnesses shall be submitted by the accused within two working days of the closure of prosecution evidence and recording of statement of the accused, if any. These witnesses shall be summoned and served by the Court: Provided that the court may at the request of the defence summon witnesses other than those included in the list for reasons to be recorded. (4) When trying any under any case under sub-section (1), the Court may also try any offence other than an offence specified in said sub-section with which the accused may under this Code be charged at the same trial."

23. Amendment of section 352, Act XXIII of 1989.

- In section 352 of the Code of Criminal Procedure, in the sub-section (2), for the words, figures and letters "or 376-D", the words, figures and letters "376-D and 376-E" shall be substituted.

24. Amendment to section 353, Act XXIII of 1989.

- In section 353 of the Code of Criminal Procedure 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 rape 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."

25. Insertion of section 497-C, and 497-D, Act XXIII of 1989.

- After section 497-B of the Code of Criminal Procedure, the following sections shall be inserted, namely: -"497-C. Special provision regarding bail in certain offences against women etc. - (1) Notwithstanding anything contained in this Code no person accused of an offence punishable under section 304-B, 326A, 370, 376, 376A, 376C, 376D or 376E of Ranbir Penal Code, shall if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code, is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true. (2) The restrictions on granting of bail specified in sub-section (1) shall be in addition to the restrictions under the Code or any other law for the time being in force on granting of bail. (3) Nothing in section 497A of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence specified in sub-section (1)."

497-D. Maximum period for which an under trial prisoner can be detained. - Where a person has during the period of investigation, inquiry or trial under this Code or an offence under any law (not being an offence for which the punishment under the law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties: Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded in the writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of personal bond with or without sureties: Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than maximum period of imprisonment provided for said offence under the law. Explanation:- In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

26. Insertion of sections 545B and 545C, Act XXIII of 1989.

- After section 545A of the Code of Criminal Procedure, Samvat 1989, the following sections shall be inserted, namely: -"545B. Compensation to be in addition to fine under section 326A or section 376D of the Ranbir Penal Code. - Compensation payable by the State Government under section 545 B shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Ranbir Penal Code.

545C. Treatment of victims. - All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of

cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Penal Code and shall immediately inform the police of such incident.

Explanation:- The expression "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of victims during convalescence or of victims requiring medical attention or rehabilitation or medical examination or pathological tests."

27. In the Schedule-II of the Code of Criminal Procedure:

(a) after the entries relating to section 166, the following entries shall be inserted, namely:-

1	2	3	4	5	6	7
166A.	Public servant disobeying direct on under law	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Imprisonment for on years or fine or with both
166B.	Non-treatment of victim by hospital	Shall not arrest without warrant	Summons	Bailable	Not compoundable	Imprisonment for on year or fine or with both

(b) entry relating to section 294, in column 7, for the words "Simple imprisonment for three months or fine or both," the words "Simple imprisonment which shall not be less than six months but which may extend to 3 years and with fine" shall be substituted. (c) after the entries relating to section 326, the following entries shall be inserted, namely:-

1	2	3	4	5	6	7
"326A	Voluntary causing grievous hurt by use of acid, etc.	May arrest without warrant	Warrants	Non-Bailable	Not compoundable	Imprisonment for not less than 10 years but which may extend to imprisonment for life and fine of 10 lakh rupees.
326B.	Voluntarily throwing or attempting to throw acid.	May arrest without warrant.	Warrants	Non-Bailable	Not compoundable	Imprisonment for 5 years but which may extend to 7 years and fine.
(d) for the entries relating to section 354, the following entries shall be substituted, namely:-						
1	2	3	4	5	6	7
"354.	Assault of use of criminal force to woman with intent to outrage her modesty.	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment of 1 year which may extend to 5 years and with fine
354A.	(1) Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours	May arrest without warrant	Warrant	Bailable	Not Compoundable	Imprisonment which may extend to 3 years or with fine or with both
354B.	(2) Sexual harassment of the nature of making sexually coloured remark.	May arrest without warrant	Warrant	Bailable	Not Compoundable	Imprisonment which may extend to 1 year and with fine
354B.	Assault or use of criminal force	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment of not less than 3 years but which may extend to 7

	without force to woman warrant with	warrant				years and with fine
354C.	Voyeurism	May arrest without warrant	Warrant	Bailable	Not Compoundable	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction Judicial Magistrate.
				Non Bailable	Not Compoundable	Imprisonment of not less than 3 years but which may extend to 5 years and with fine for second or subsequent conviction
354D.	Stalking	May arrest without warrant	Warrant	Bailable	Not Compoundable	Imprisonment of not less than 1 year but which may extend to 3 years and with fine
(e) for the entries relating to section 370, the following entries shall be substituted, namely:-						
1	2	3	4	5	6	7
"370.	(1) Trafficking of person	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment of not less than 3 years but which may extend to 7 years and with fine
	(2) Trafficking of more than one person.	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment of not less than 5 years but which may extend to 7 years and with fine
	(3) Trafficking of a minor.	May arrest without warrant.	Warrant	Non-Bailable	Not Compoundable	Imprisonment of not less than 5 years but which may extend to imprisonment for life which shall mean remainder of that person's natural life
	(4) Trafficking	Shall not	Warrant	Non-Bailable	Not	Imprisonment of not

	of more than one minor	arrest without warrant			Compoundable	less than 10 years but which may extend to 15 years
	(5) Public servant or a police officer involved in trafficking of minor	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment of life which shall mean the remainder of that person's life and fine of Rs. One lakh
	(6) Person convicted of offence of trafficking of minor on more than one occasion	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment for life which shall mean the remainder of that person's natural life and fine of Rs. 2 lakh
370A.	(1) Employing of a trafficked child	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment of not less than 5 years but which may extend to 7 years and with fine
	(2) Employing of a trafficked adult person	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment of not less than 1 year but which may extend to 3 years and with fine
(f) for the entries relating to section 376, 376A, 376B, 376C and 376D, the following entries shall be substituted, namely:-						
1	2	3	4	5	6	7
376.	(1) Rape	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Rigorous Imprisonment of not less than 8 years but which may extend to imprisonment for five years and with fine
	(2) Rape by a police officer or a public servant	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Rigorous imprisonment of not less than 10 years but which may extend to

	member of armed forces or 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, and rape committed by a person in a position of trust or authority towards the victim assaulted or by a near relative of the victim					Imprisonment for life which shall mean remainder of that person's natural life and with fine
376A.	Persons committing an offence of rape and inflicting injury which causes death or causes the victim to be in a persistent vegetative state	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Rigorous Imprisonment of not less than 25 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life with death
376B.	Sexual Intercourse by the husband upon his wife during separation	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment for not less than 2 years but which may extend to 7 years and with fine

376C.	Sexual Intercourse by a person in authority	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Rigorous Imprisonment for not less than 10 years but which may extend to Imprisonment for life which shall mean remainder of that person's life and with fine
376D.	Gang Rape	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Rigorous Imprisonment for not less than 25 years but which may extend to imprisonment for life which shall mean remainder of that person's life and compensation to the victim
376E.	Repeat offenders	May arrest without warrant	Warrant	Non-Bailable	Not Compoundable	Imprisonment for life which shall mean remainder of that person's natural life.

(g)entry relating to section 420, in column "whether bailable or not", the words "bailable" shall be substituted by words "not bailable";(h)entry relating to section 509, in column 3, for the words "simple imprisonment for one year, or line, or both," the words "simple imprisonment which shall not be less than one year but which may extend to three years and with fine" shall be substituted.

Chapter IV

Amendments to the Evidence Act, Samvat 1977(1920 AD)

28. Amendment of section 3, Act No. XIII of Samvat 1977.

- In section 3 of the Evidence Act, Samvat 1977 (hereinafter referred to in this chapter referred to as the Evidence Act), the following shall be added as illustration, to "Document" at the end of existing illustrations, namely:-"Electronic signature and electronic signature shall be documents."

29. Insertion of section 45-A, Act No. XIII of Samvat 1977.

- After section 45 of the Evidence Act, the following shall be inserted as sub-section 45-A, namely:-"45-A. Opinion of Examiner of electronic evidence. - When in any proceedings Court has to form an opinion on any matter relating to any information transmitted or stored in any computer

source or any other electronic or digital form, the opinion of examiner of electronic evidence referred to in section 79-A of the Information Technology Act, 2000 is a relevant fact.Explanation:- For the purpose of this section, examiner of electronic evidence shall be an expert."

30. Insertion of section 53A, Act XIII of 1977.

- After section 53 of the Evidence Act, the following section shall be inserted, namely:-"53A. Evidence of character or previous sexual experience not relevant in certain cases. - In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Ranbir 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 her previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent."

31. Substitution of section 114-B, Act XIII of 1977.

- Section 114-B shall be substituted by following section, namely:-"114-B. Presumption as to absence of consent in certain prosecution for rape. - In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) and clause (n) of sub-section (2) of section 376 of the Ranbir 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 such other woman states in that person's evidence before the Court that such complainant did not consent, the Court shall presume that such victim did not consent.Explanation:- In this section "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Ranbir Penal Code."

32. Insertion of section 114CC, Act XI11 of 1977.

- After section 114CC of the Evidence Act, the following section shall be inserted, namely: -"114-CC. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.Explanation:- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Ranbir Penal Code."

33. Substitution of section 119, Act XIII of 1977.

- Section 119 of the Evidence Act shall be substituted by following section, namely:-"119. Witness unable to communicate verbally. - A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by sings; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of a special educator or interpreter in recording the statement, and such statement shall

be videographed."

34. Amendment of section 146, Act XIII of 1977.

- In section 146 of the Evidence Act, after sub-section (3), the following proviso shall be inserted, namely: "Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Ranbir 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 the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.