**THE GAZETTE OF THE DEMOCRATIC SOCIALIST REPUBLIC OF**   
**SRI LANKA**

**Part II of February 09, 2024**

**SUPPLEMENT**

(*Issued on 13.02.2024*)



**PENAL CODE (AMENDMENT)**

**A**

**BILL**

**to amend the Penal Code (Chapter 19)**

*Ordered to be published by the Minister of Justice, Prison Affairs and Constitutional Reforms*

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*STATEMENT OF LEGAL EFFECT*

*Clause 2* : This clause amends section 363 of the Penal Code (Chapter 19) (hereinafter referred to as the “principal enactment”) and the legal effect of the section as amended is to make provisions to extend the application of the provisions of the section to male victims as well as to female victims.

*Clause 3* : This clause replaces section 364 of the principal enactment and the legal effect of the amendment is to make provisions to -

(*a*) enable the court to impose a suspended sentence in lieu of the mandatory minimum sentence where there was an intimate relationship between the offender under twenty two years and the victim of or above fourteen years but under sixteen years and where the sexual penetration had been with the consent of the victim; and

(*b*) enable the court to impose a lesser mandatory minimum sentence where there was an intimate relationship between the offender under twenty two years and the victim of or above fourteen years but under sixteen years and where there is no evidence to prove that the sexual penetration had been with the consent of the victim.

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| *Penal Code (Amendment)* | 1 |

L.D.—O 10/2021

AN ACTTOAMENDTHE PENAL CODE ( CHAPTER 19 )

BEit enacted by theParliament of theDemocratic Socialist Republic of Sri Lanka as follows: -

**1.** This Act may be cited as the Penal Code (Amendment) Short title Act, No of 2024.

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | **2.** Section 363 of the Penal Code (Chapter 19) (hereinafter | | Amendment |
| referred to as the “principal enactment”) is hereby amended | | of section |
| 363 of |
| as follows: - | |
| Chapter 19 |
| (1) | by the renumbering of that section as subsection |

(1) of that section;

|  |  |  |  |
| --- | --- | --- | --- |
| 10 | (2) | in the renumbered subsection (1) of that section- | |
| (*a*) | by the substitution for the words “A man is |

said to commit “rape” who has sexual intercourse with a woman”, of the words “A person (in this section referred to as the 15 “offender”) is said to commit “rape” who commits an act of sexual penetration, on another person (in this section referred to as the “victim”)”;

|  |  |  |
| --- | --- | --- |
| 20 | (*b*) | in paragraph (*a*) thereof, by the substitution |
| for the words “without her consent even where |

such woman is his wife”, of the words “without   
the consent of the victim even where the   
victim is the wife of the offender”;

|  |  |  |
| --- | --- | --- |
| 25 | (*c*) | in paragraph (*b*) thereof, by the substitution |
| for the words “with her consent, while she |

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was in lawful or unlawful detention or when her consent has been obtained, by use of force or intimidation, or by threat of detention or by putting her”, of the words “with the 5 consent of the victim, while the victim was in lawful or unlawful detention or when the consent has been obtained, by use of force or intimidation, or by threat of detention or by putting the victim”;

|  |  |  |
| --- | --- | --- |
| 10 | (*d*) | in paragraph (*c*) thereof, by the substitution |

for the words “with her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication induced by alcohol or drugs, 15 administered to her by the man”, of the words “with the consent of the victim, when the victim’s consent has been obtained at a time when the victim was of unsound mind or was in a state of intoxication induced by alcohol 20 or drugs administered to the victim by the offender”;

(*e*) in paragraph (*d*) thereof, by the substitution for the words “with her consent when the man knows”, of the words “in the case of a female 25 victim, with her consent when the offender knows”; and

(*f*) by the repeal of paragraph (*e*) thereof and the   
 substitution therefor of the following: -

|  |  |  |
| --- | --- | --- |
| 30 | “(*e*) | with or without consent when the victim |
| is under sixteen years of age.”; |

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(3) by the repeal of the explanation to that re-numbered   
 subsection (1);

(4) by the addition immediately after the re-numbered subsection (1) of that section, of the following 5 subsection: -

“(2) In this section “sexual penetration” means, any act which causes penetration to any extent whatsoever by the genital organ of the offender into or beyond the genital organ, anus or mouth of the 10 victim.

*Explanation -*

Evidence of resistance such as physical

injuries to the body is not essential to prove

that sexual penetration took place without

|  |  |  |
| --- | --- | --- |
| 15 | consent.”. | Replacement |
| **3.** Section 364 of the principal enactment is hereby |
| of section |
| repealed and the following section is substituted therefor: - |
| 364 of the |

principal

|  |  |  |  |
| --- | --- | --- | --- |
| 20 | “Punishment | 364. (1) Any person (in this section referred | enactment |
| for rape |
| to as the “offender”) who commits rape on |
| another person (in this section referred to as |

the “victim”) shall, except, in the cases provided for in subsections (2) and (3), be punished with rigorous imprisonment for a term not less than seven years and not exceeding 25 twenty years and with fine, and shall in addition be ordered to pay compensation of an amount determined by court, to the victim for the injuries caused to such person.

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(2) An offender who -

(*a*) being a public officer or a person in a position of authority, takes advantage 5 of such official position, and commits rape on a victim in the offender’s official custody or wrongfully restrains and 10 commits rape on such victim;

(*b*) being on the management or on the staff of a remand home or other place of 15 custody, established by or under law, or of a women’s or children’s institution, takes advantage of such offender’s position and

20 commits rape on any inmate of such remand home, place of custody or institution;

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 25 | (*c*) | being on the management | | |
| or staff of a hospital, takes | | |
| advantage | of | such |

offender’s position and   
commits rape on a victim   
in that hospital;

|  |  |  |
| --- | --- | --- |
| 30 | (*d*) | commits rape on a female |

victim knowing her to be   
pregnant;

*Penal Code (Amendment)*  5

(*e*) commits rape on a victim   
 under eighteen years of   
 age;

|  |  |  |
| --- | --- | --- |
| 5 | (*f*) | commits rape on a victim |
| who is mentally or |

physically disabled; or

(*g*) commits gang rape,

shall be punished with rigorous imprisonment for a term not less than ten years and not 10 exceeding twenty years and with fine and shall in addition be ordered to pay compensation of an amount determined by court to the victim for the injuries caused to such victim:

|  |  |
| --- | --- |
| 15 | Provided however, where an offence under section 363 is committed in respect of a victim |

of or above fourteen years but under sixteen   
years of age, by an offender who is under twenty   
two years of age at the time of the commission   
of such offence, -

|  |  |  |
| --- | --- | --- |
| 20 | (*a*) | where it appears to the |

satisfaction of the court that the sexual penetration had been with the consent of the victim, the court upon 25 conviction may impose a sentence of imprisonment for a term less than ten years:

Provided however, the 30 court may, in appropriate circumstances suspend the

6 *Penal Code (Amendment)*

term of imprisonment

|  |  |  |
| --- | --- | --- |
| imposed | under | this |

paragraph, subject to the   
provisions of section 303

|  |  |
| --- | --- |
| 5 | of the Code of Criminal  Procedure Act, No. 15 of |

1979; or

(*b*) where there is no sufficient evidence to prove to the 10 satisfaction of the court that the sexual penetration had been with the consent of the victim, the court shall impose a sentence of 15 imprisonment for a term not less than ten years and not exceeding twenty years and a fine and shall in addition order the offender 20   
 to pay compensation of an amount determined by court to the victim for the injuries caused to such victim.

25 *Explanation 1*

Where the offence of rape is committed by one   
or more persons in a group of persons, each   
person in such group committing, or abetting

|  |  |
| --- | --- |
| 30 | the commission of such offence is deemed to have committed gang rape. |

*Explanation 2*

“women’s or children’s institution”, means an   
institution for the reception and care of women   
or children, howsoever described.

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*Explanation 3*

“hospital” means the precincts of the

hospital and includes the precincts of any

institution for the reception and treatment of

5 persons during convalescence or of persons

requiring medical attention or rehabilitation.

*Explanation 4*

“injuries’ includes psychological or mental

trauma.

10 (3) Any offender who commits rape on a victim under sixteen years of age and the victim stands towards the offender in any of the degrees of relationships enumerated in section 364A shall on conviction be punished with rigorous 15 imprisonment, for a term not less than fifteen years and not exceeding twenty years and with fine.

(4) Where an offender fails to pay the   
compensation ordered to pay under subsection

|  |  |
| --- | --- |
| 20 | (1) or subsection (2), such offender shall, in addition to the imprisonment imposed on such |

offender under subsection (1) or subsection (2)   
be punished with a further term of   
imprisonment of either description for a term

|  |  |  |
| --- | --- | --- |
| 25 | which may extend up to two years.”. | Sinhala text |
| **4.** In the event of any inconsistency between the Sinhala |
| and Tamil texts of this Act, the Sinhala text shall prevail. | to prevail in |
| case of |

inconsistency

|  |  |
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| 8 | *Penal Code (Amendment)* |

Department of Government Printing