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SUPPLEMENT

(Issued on 13.02.2024)



PENAL CODE (AMENDMENT)

A

BILL

to amend the Penal Code (Chapter 19)

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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.

Penal Code (Amendment)

L.D.—O 10/2021

AN ACT TO AMEND THE PENAL CODE (CHAPTER 19)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

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

5 **2.** Section 363 of the Penal Code (Chapter 19) (hereinafter referred to as the “principal enactment”) is hereby amended as follows: - Amendment
of section
363 of
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 “offender”) is said to commit “rape” who commits an act of sexual penetration, on another person (in this section referred to as the “victim”);”;

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(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”;

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

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- 5 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
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”;
- 25 (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
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.”;

(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 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 victim.

Explanation -

Evidence of resistance such as physical injuries to the body is not essential to prove that sexual penetration took place without consent.”.

3. Section 364 of the principal enactment is hereby repealed and the following section is substituted therefor: -

“Punishment for rape 364. (1) Any person (in this section referred 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 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.

Replacement of section 364 of the principal enactment

- 5 (a) being a public officer or a person in a position of authority, takes advantage of such official position, and commits rape on a victim in the offender's official custody or
- 10 wrongfully restrains and commits rape on such victim;
- 15 (b) being on the management or on the staff of a remand home or other place of 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;

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

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(f) commits rape on a victim
who is mentally or
physically disabled; or

(g) commits gang rape,

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shall be punished with rigorous imprisonment
for a term not less than ten years and not
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:

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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, -

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(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
conviction may impose a
sentence of imprisonment
for a term less than ten
years:

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

5 term of imprisonment
imposed under this
paragraph, subject to the
provisions of section 303
of the Code of Criminal
Procedure Act, No. 15 of
1979; or

10 (b) where there is no sufficient
evidence to prove to the
satisfaction of the court that
the sexual penetration had
been with the consent of the
victim, the court shall
15 impose a sentence of
imprisonment for a term
not less than ten years and
not exceeding twenty years
and a fine and shall in
20 addition order the offender
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
the commission of such offence is deemed to
30 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.

Explanation 3

5 “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

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 imprisonment, for a term not less than fifteen years and not exceeding twenty years and with fine.

15 (4) Where an offender fails to pay the compensation ordered to pay under subsection (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 which may extend up to two years.”.

20 4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency

