

**Bill No. XXII of 2019**

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

A

**BILL**

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

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Protection of Children from Sexual Offences (Amendment) Act, 2019. Short title and commencement.

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

32 of 2012. **2.** In the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the principal Act), in section 2,— Amendment of section 2.

(a) in sub-section (1), after clause (d), the following clause shall be inserted, namely:—

10                                    '(da) "child pornography" means any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated image indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child;'

|                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                           |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
|                                                       | (b) in sub-section (2), for the words, brackets and figures "the Juvenile Justice (Care and Protection of Children) Act, 2000", the words, brackets and figures "the Juvenile Justice (Care and Protection of Children) Act, 2015" shall be substituted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 56 of 2000.<br>2 of 2016. |
| Amendment of section 4.                               | <p><b>3.</b> In the principal Act, section 4 shall be renumbered as section 4(I) thereof and—</p> <p>(a) in sub-section (I) as so renumbered, for the words "seven years", the words "ten years" shall be substituted;</p> <p>(b) after sub-section (I), the following sub-sections shall be inserted, namely:—</p> <p>"(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.</p> <p>(3) The fine imposed under sub-section (I) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."</p> | 5<br>10<br>15             |
| Amendment of section 5.                               | <p><b>4.</b> In section 5 of the principal Act,—</p> <p>(I) in clause (j),—</p> <p>(A) in sub-clause (i), the word "or" occurring at the end shall be omitted;</p> <p>(B) in sub-clause (iii), the word "or" occurring at the end shall be omitted;</p> <p>(C) after sub-clause (iii), the following sub-clause shall be inserted, namely:—</p> <p>"(iv) causes death of the child; or";</p> <p>(II) in clause (s), for the words "communal or sectarian violence", the words "violence or during any natural calamity or in similar situations" shall be substituted.</p>                                                                                                                                                                                                                                                                         | 20                        |
| Substitution of new section for section 6.            | <p><b>5.</b> For section 6 of the principal Act, the following section shall be substituted, namely:—</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 25                        |
| Punishment for aggravated penetrative sexual assault. | <p>"6. (I) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.</p> <p>(2) The fine imposed under sub-section (I) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."</p>                                                                                                                                                                                                                                                                                                                     | 30                        |
| Amendment of section 9.                               | <p><b>6.</b> In section 9 of the principal Act,—</p> <p>(i) in clause (s), for the words "communal or sectarian violence", the words "violence or during any natural calamity or in any similar situations" shall be substituted;</p> <p>(ii) after clause (u), the following clause shall be inserted, namely:—</p> <p>"(v) whoever persuades, induces, entices or coerces a child to get administered or administers or direct anyone to administer, help in getting administered any drug or hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity;"</p>                                                                                                                                                                                                                                  | 35<br>40                  |
| Substitution of new section for section 14.           | <p><b>7.</b> For section 14 of the principal Act, the following section shall be substituted, namely:—</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                           |
| Punishment for using child for pornographic purposes. | <p>"14. (I) Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine, and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 45                        |

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

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

Substitution of new section for section 15.

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

Punishment for storage of pornographic material involving child.

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

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

**9.** In section 34 of the principal Act, for the words, brackets and figures "the Juvenile Justice (Care and Protection of Children) Act, 2000", the words, brackets and figures "the Juvenile Justice (Care and Protection of Children) Act, 2015" shall be substituted.

Amendment of section 34.

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

Amendment of section 42.

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

Amendment of section 45.

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

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

## STATEMENT OF OBJECTS AND REASONS

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

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

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

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

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

6. The Protection of Children from Sexual Offences (Amendment) Bill, 2019, for the aforementioned purpose, which was introduced and pending consideration and passing in the Lok Sabha, lapsed on the dissolution of the Sixteenth Lok Sabha. Hence, the present Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 12th July, 2019.*

SMRITI ZUBIN IRANI

## MEMORANDUM REGARDING DELEGATED LEGISLATION

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

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

ANNEXURE

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

(32 OF 2012)

|                                                       |                                                                         |                                                                                                                                                                                                                                                                                                                                  |   |   |   |
|-------------------------------------------------------|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|
|                                                       | *                                                                       | *                                                                                                                                                                                                                                                                                                                                | * | * | * |
| Definitions.                                          | <b>2.</b>                                                               | In this Act, unless the context otherwise requires,—                                                                                                                                                                                                                                                                             |   |   |   |
|                                                       | *                                                                       | *                                                                                                                                                                                                                                                                                                                                | * | * | * |
|                                                       | (2)                                                                     | The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts. |   |   |   |
|                                                       | *                                                                       | *                                                                                                                                                                                                                                                                                                                                | * | * | * |
| Punishment for penetrative sexual assault.            | <b>4.</b>                                                               | (1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.                                                                                    |   |   |   |
|                                                       | *                                                                       | *                                                                                                                                                                                                                                                                                                                                | * | * | * |
|                                                       | <b>B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR</b> |                                                                                                                                                                                                                                                                                                                                  |   |   |   |
| Aggravated penetrative sexual assault.                | <b>5.</b>                                                               | *                                                                                                                                                                                                                                                                                                                                | * | * | * |
|                                                       | (j)                                                                     | (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or                                             |   |   |   |
|                                                       | *                                                                       | *                                                                                                                                                                                                                                                                                                                                | * | * | * |
|                                                       | (iii)                                                                   | inflicts the child with Human Immuno Deficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or                                                                    |   |   |   |
|                                                       | (s)                                                                     | whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or                                                                                                                                                                                                                        |   |   |   |
|                                                       | *                                                                       | *                                                                                                                                                                                                                                                                                                                                | * | * | * |
| Punishment for aggravated penetrative sexual assault. | <b>6.</b>                                                               | Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.                                                                                           |   |   |   |
|                                                       | *                                                                       | *                                                                                                                                                                                                                                                                                                                                | * | * | * |
|                                                       | <b>D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR</b>             |                                                                                                                                                                                                                                                                                                                                  |   |   |   |
| Aggravated sexual assault.                            | <b>9.</b>                                                               | *                                                                                                                                                                                                                                                                                                                                | * | * | * |
|                                                       | (s)                                                                     | whoever commits sexual assault on a child in the course of communal or sectarian violence; or                                                                                                                                                                                                                                    |   |   |   |
|                                                       | *                                                                       | *                                                                                                                                                                                                                                                                                                                                | * | * | * |

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

Punishment for using child for pornographic purposes.

(2) If the person using the child for pornographic purposes commits an offence referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

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

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

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

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

Punishment for storage of pornographic material involving child.

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**34.** (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

56 of 2000.

Procedure in case of commission of offence by child and determination of age by Special Court.

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

\* \* \* \* \*

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

45 of 1860.

Alternate punishment.

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RAJYA SABHA

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**BILL**

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

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*(Smt. Smriti Zubin Irani, Minister of Women and Child Development and Textiles)*