

D.O.A 13.12.18
D.O.P 13.12.18**THE JAMMU AND KASHMIR CRIMINAL LAWS (SEXUAL OFFENCES) (AMENDMENT) BILL, 2018**(Governor Act No. **XLVII** of 2018)

Whereas, in a Public Interest Litigation titled Court on its Own Motion V/s State of Jammu and Kashmir, the Hon'ble High Court, vide its order dated 15.10.2018, directed the State to examine the concept of 'Sextortion' in the context of applicable laws and to undertake an exercise to make necessary amendments in the existing penal laws so that illegal acts, unwarranted demands for sexual favours and inappropriate contacts by the persons in authority are made punishable; and

Whereas, the matter was examined by the Government and it was found that in order to prevent misuse of authority for unwanted sexual favours, it is expedient to amend the existing laws so as to curb this menace and prevent and check such misuse of position by persons in authority, fiduciary relationship or by a public servant.

Enacted by the Governor in the Sixty-ninth Year of the Republic of India.

A Bill to amend the State Ranbir Penal Code, Samvat 1989, the Code of Criminal Procedure, Samvat 1989 and the Evidence Act, Samvat 1977.

In exercise of the powers vested under Proclamation No. P-1/18 of 2018 dated 20th of June, 2018, the Governor is pleased to enact as follows:-

PRELIMINARY I

1. Short title and commencement.—(1) This Act may be called the Jammu and Kashmir Criminal Laws (Sexual Offences)(Amendment) Act, 2018.

(2) It shall come into force from the date of publication in the Government Gazette.

CHAPTER II

Amendment to the State Ranbir Penal Code, Samvat, 1989.

2. Insertion of section 354 E, Act No. XII of Samvat 1989.—In the State Ranbir Penal Code, Samvat, 1989(hereinafter in this Chapter

referred to as the 'Penal Code'), after section 354 D, the following section shall be inserted, namely,-

"354E Sextortion.— (1) Whoever,—

- (a) being in a position of authority; or
- (b) being in a fiduciary relationship; or
- (c) being a public servant,

abuses such authority or fiduciary relationship or misuses his official position to employ physical or non physical forms of coercion to extort or demand sexual favours from any woman in exchange of some benefits or other favours that such person is empowered to grant or withhold, shall be guilty of offence of sextortion.

Explanation: 'Sexual favour' shall mean and include any kind of unwanted sexual activity ranging from sexually suggestive conduct, sexually explicit actions such as touching, exposure of private body parts to sexual intercourse, including exposure over the electronic mode of communication.

(2) Any person who commits the offence of sextortion shall be punished with rigorous imprisonment for a term which shall not be less than three years but may extend to five years and with fine."

3. Amendment of section 375, Act No. XII of Samvat 1989.—

In section 375 of the Penal Code :-

- I. for the words "following seven descriptions", the words "following eight descriptions", shall be substituted; and
- II. after description Seventhly, the following description shall be inserted, namely,-

"Eighthly.— With her consent obtained in exchange for exercising or misusing authority."

CHAPTER III

Amendment to the Code of Criminal Procedure, Samvat 1989

4. Amendment of section 154 Act No. XXIII of Samvat 1989.—

In section 154 of the Code of Criminal Procedure, Samvat, 1989, (hereinafter referred to as 'the Code of Criminal Procedure') in sub-section

(1) in first proviso thereto, for the words and figures "section 354D", the words and figures "section 354D, section 354E", shall be substituted.

5. Amendment of section 161 Act No. XXIII of Samvat 1989.— In section 161 of the Code of Criminal Procedure, in sub-section (3), in second proviso thereto, for the words and figures "section 354 D", the words and figures "section 354D, section 354E", shall be substituted.

6. Amendment of Schedule II, Act No. XXIII of Samvat 1989.— In Schedule II of the Code of Criminal Procedure, after the entry 354D, the following entry shall be inserted, namely,-

1	2	3	4	5	6	7	8
354E	Sextortion	May arrest without warrant	Warrant	Non Bailable	Not compoundable	Imprisonment of not less than 3 years but which may extend to five years and with fine.	Judicial Magistrate

CHAPTER IV

Amendment to the Evidence Act, Samvat 1977.

7. Amendment of section 53 A, Act XIII of Samvat 1977.— In section 53A of the Evidence Act, Samvat 1977, for the words and figures "section 354D", the words and figures "section 354D, section 354E", shall be substituted.