

ATTN: JT. SEC (MHA) MR. CHAUHAN.

Revised Formulations by Women's Groups following meeting of February 22nd, 2013

S. No AND RATIONALE	Original Section in Draft Replacement Criminal Law Amendment Bill 2013(Law Ministry version Feb 20, 2013)	Suggested Revisions (Red text indicates new text)
1 TO REFLECT REALITY,THE ACCUSED OF RAPE CANONLYBE MALE, AND NOT GENDER NEUTRAL	Section 375 "A person is said to commit "sexual assault" if that person--"	<i>Make Perpetrator Male.</i> New Text: "A MAN is said to commit RAPE if HE--"
2 TO ENSURE MEDICAL INTERVENTION WITH CONSENT AND PROTECT AGAINST SEXUAL ASSAULT ON FALSE GROUNDS OF MEDICAL INTERVENTION	Section 375 (Exception 1)	Exemption of acts under 375 (b) and (c) through the addition of an exception. New Text: "Where acts mentioned in sub clause (b) and sub clause (c) are carried out in the person's medical interests, with the consent of the person, it does not amount to rape. Provided that where the person cannot give consent, it is obtained from the person's guardian or another person who is competent to give consent."
3 TO ACKNOWLEDGE THE EXISTENCE OF RAPE WITHIN MARRIAGE	Section 375 (Exception 2)	To be deleted in its entirety. <i>Note: If such a deletion is done, then currently existing Sec 376A of the IPC on "Judicial Separation" must also be deleted.</i> Only if it is not possible to delete the exception in its entirety, then replace with the following: New Text: "Sexual intercourse by a man with his own wife, the wife not being under 16

		years of age, is rape if the wife does not consent to intercourse and the rape is reported to a police officer or a judicial officer or a registered medical practitioner or a rape crisis agency recognized by government, or a recognized welfare institution or organization within three months after the date of occurrence; where, (a) there is previous history of cruelty or harassment by her husband; <i>OR</i> (b) the wife is living separately from the husband under a decree of separation or under any custom or usage or under a de-facto separation
4 TO NOT CRIMINALISE CONSENSUAL SEXUAL RELATIONS BETWEEN YOUNG PEOPLE	Section 375 (Sixthly)	Reduce Age of Consent to Sixteen. <u>New Text:</u> "With or without the other person's consent when such other person is UNDER SIXTEEN YEARS of age."
		ONLY IF such deletion is impossible, add a Young Person's Defense as an exception. "Exception: Except for cases falling under section 376 (2) below, any sexual act is not sexual assault/ rape, when such act is engaged in consensually by both the parties and one of the parties is between 16-18 years of age, and the other party is not more than 4 years older."
5 TO REMOVE OUTDATED LANGUAGE OF 'MODESTY' FROM LAW WHICH ONLY SERVES TO PLACE FOCUS ON WOMEN'S BEHAVIOR RATHER THAN ON THE PERPETRATORS ACTIONS TO FURTHER ENSURE THAT WHILE VICTIM IS GENDER NEUTRAL THE PERPETRATOR OF	Section 354	Make victim gender neutral and replace the Section of "Outraging the Modesty" with: <u>New Text:</u> "Assault or Criminal Force to woman with intent to violate bodily integrity: When a man assaults or uses criminal force on a person, with the intent to violate her bodily integrity or knowing it to be likely that he will thereby harm such person's bodily integrity."
	Section 354A	Make perpetrator male. <u>New Text:</u> "(1) The following acts of behaviour, COMMITTED BY A MAN, shall constitute...." "(2) Any MAN who commits...." "(3) Any MAN who commits...."
	Section 354B	Make perpetrator male <u>New Text:</u> "Whoever, BEING A MAN, assaults or uses"

SEXUAL ASSAULT IS MALE	Section 354C	Make perpetrator male New Text: "Whoever, BEING A MAN, watches or...."
	Section 354D	Make perpetrator male New Text: "Whoever, BEING A MAN, follows person..."
	Section 354E	Make perpetrator male, insert requirement of consent. New Text: " Whoever, BEING A MAN, touches the vagina, penis, anus or breast of a person with sexual intent or abets any person to do so AGAINST HER WILL OR WITHOUT HER CONSENT OR UNDER THE CIRCUMSTANCES FALLING UNDER ANY OF THE SEVEN DESCRIPTIONS UNDER SECTION 375 IPC, shall be...."
6 UPHOLD JUSTICE VERMA RECOMMENDATIONS AND PROVIDE MINIMUM PENALTY FOR POLICE & PUBLIC SERVANTS DISOBEYING DIRECTION OF LAW IN CASES OF SEXUAL ASSAULT AND RAPE	Section 166A	Replace with: New Text: "shall be punished with imprisonment which shall not be less than 1 year but may extend to 5 years AND fine " Offence shall be classified under Cr.P.C. as Cognizable, Non Bailable and non compoundable.
7 DELETE THIS 'CHILLING' CLAUSE INTRODUCED IN THE LATEST (FEB 20 TH) VERSION OF THE BILL BY LAW MINISTRY. THERE IS ALREADY A WHOLE CHAPTER ON FALSE PROSECUTION IN EXISTING IPC	Section 195B	To be deleted in its entirety.

<p>8 INPROVISIONS OF AGGRAVATED SEXUAL ASSAULT,ADD SITUATIONS OF COMMUNAL & CASTE VIOLENCE, SINCE SEXUAL ASSAULT DURING COMMUNAL & SECTARIAN VIOLENCE IS ALREADY A PROVISION IN LAW –IN ‘Section 9 (s) of THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT’</p>	<p>Section 376 (2)</p>	<p>First subsection to be inserted after subsection (j) <u>New Text:</u> "commits rape in the course of communal or sectarian violence." Second subsection to be inserted after subsection (j): <u>New Text:</u> " Not being a member of a Scheduled Caste or a Scheduled Tribe, commits the offence of rape on a person belonging to a Scheduled Caste or Scheduled Tribe, knowing that the person is a member of SC or ST." Explanation: "For the purposes of this subsection, the accused’s knowledge of the victim’s SC or ST identity may be presumed by the Court, where from the facts and circumstances of the case it can be inferred that the accused knew, or ought to have known, or believed, that the victim belonged to a SC or ST group, or it is shown that the accused was acquainted with the victim or the victim's family."</p>
<p>9 REMOVE DEATH PENALTY AS IT WILL ONLY REDUCE CONVICTIONS AND MAY LEAD TO RAPISTS AND ASSAULTERS KILLING WOMEN TO PREVENT THEM FROM GIVING EVIDENCE</p>	<p>Section 376A</p>	<p>Remove phrase “or with death”</p>
<p>10 SAME AS ABOVE</p>	<p>Section 376D</p>	<p>Remove phrase “or with death”</p>
<p>11 THERE MUST BE JUDICIAL DISCRETION IN SENTENCING UNDER STATED SPECIAL CIRCUMSTANCES –</p>	<p>Sec 376 (1)</p>	<p><u>New Text:</u>Add Proviso: "Provided that the Court may, in exceptional circumstances, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term less than ___ years" Explanation: The following factors may not be considered as exceptional for justifying reduction of sentence below the minimum. These include: economic, social and</p>

OTHERWISE THE ENHANCED SENTENCES IN THIS BILL WILL ONLY LEAD TO AN EVEN LOWER CONVICTION RATE		educational status of the convict; the payment of compensation by the convict; the infamy and mental agony suffered by the convict; the previous sexual history and conduct of the victim, or that the victim has married post the offence of rape.
12 SAME AS ABOVE	Sec 376 (2)	<u>New Text:</u> Add Proviso: "Provided that the Court may, in exceptional circumstances, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term less than ___ years" Explanation: The following factors may not be considered as exceptional for justifying reduction of sentence below the minimum. These include: economic, social and educational status of the convict; the payment of compensation by the convict; the infamy and mental agony suffered by the convict; the previous sexual history and conduct of the victim, or that the victim has married post the offence of rape.

From the Criminal Procedure Code

1 TO ENSURE THERE IS NO STATUTORY PROTECTION FOR POLICE OR PUBLIC SERVANTS ACCUSED OF SEXUAL OFFENCES TO FURTHER ENSURE THAT THERE IS NO STATUTORY PROTECTION FOR POLICE & PUBLIC SERVANTS WHO ARE DERELICT IN DUTIES IN RELATION TO	Section 197	Second proviso to be added to Section 197(1) . <u>New Text:</u> "PROVIDED FURTHER THAT NO PREVIOUS SANCTION OF THE CENTRAL AND STATE GOVERNMENT REFERRED TO IN CLAUSE (a) or (b) SHALL BE REQUIRED IN RELATION TO COGNIZABLE OFFENCE PUNISHABLE UNDER SECTION 354, SECTION 354B, SECTION 354C, SUB SECTION (2) OF SECTION 354 D, SECTION 354 E, SECTION 376, SECTION 376A, SECTION 376B, SECTION 376C, SECTION 376D OR SECTION 376E OF THE INDIAN PENAL CODE. Third proviso to Section 197(1): <u>New Text:</u> PROVIDED FURTHER THAT NO PREVIOUS SANCTION OF THE CENTRAL AND STATE GOVERNMENT REFERRED TO IN CLAUSE (a) or (b) SHALL BE REQUIRED IN RELATION TO OFFENCES UNDER SECTION 166A
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<p>RECORDING, INVESTIGATING, PROSECUTING FOR OFFENCES OF SEXUAL ASSAULT AND RAPE</p>		<p>OF THE INDIAN PENAL CODE.</p>
<p>2 TO ENSURE THAT STATE IS RESPONSIBLE FOR COMPREHENSIVE REPARATION OF VICTIMS, INCLUDING MEDICAL CARE AND REHABILITATION</p>	<p>Section 357B</p>	<p>NEW - REPARATIONS “The state is obliged to provide reparations for the survivor of an acid attack, rape or sexual assault, including: emergency medical care, on-going medical treatment, surgeries, health care and attendant expenses as well as access to safe spaces, counseling and provision for education and other skills. The reparation should be made available as the first priority immediately after the incident and not linked to the criminal trial process or be contingent upon recovery of fine from the accused”</p>