

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

APARAJITA BILL: A MILESTONE IN WEST BENGAL'S FIGHT AGAINST RAPE

AUTHORED BY - SAMAIRA SINGHA

Introduction

The legislative framework in India has seen various amendments and reforms in response to increasing public concern over issues of sexual violence, particularly rape. A recent example of such proactive legislative reform is the passage of the **Aparajita Bill** by the West Bengal Assembly, a landmark anti-rape bill aimed at addressing systemic inefficiencies in the prevention, investigation, and adjudication of rape cases. This bill not only reflects a legal advancement in the fight against sexual violence but also provides a direct response to the public outcry following the highly publicized **R.G. Kar Medical College rape case**.

This article examines the **Aparajita Bill** in the context of legal principles, its influence on the existing criminal law framework concerning sexual violence, and the role played by high-profile cases like the **R.G. Kar College incident** in its conception. We will explore the provisions of the bill, their alignment with existing laws like the **Indian Penal Code, 1860** (IPC), the **Code of Criminal Procedure, 1973** (CrPC), and case law that has shaped anti-rape legislation in India.

R.G. Kar Medical College Rape Case: The Spark for Legislative Action

On March 28, 2023, an incident at the **R.G. Kar Medical College**, Kolkata, came to the forefront of public and media attention. A young woman was brutally assaulted and raped on the college premises, bringing to light the vulnerability of women even in places meant for care and protection. The case drew comparisons to earlier instances of heinous sexual crimes, such as the **2012 Nirbhaya case**, which had sparked national outrage and led to the **Criminal Law (Amendment) Act, 2013**.

In the R.G. Kar case, the inefficiency of the institutional response, delay in medical treatment, and lack of immediate police action highlighted grave lacunae in the system. These failures contributed to public outcry, and women's rights groups demanded an urgent need for

legislative change, one that would bring more stringent provisions for rape and sexual violence, enhance the accountability of institutions, and ensure swifter judicial processes.

It was against this backdrop that the **Aparajita Bill** was introduced in the **West Bengal Legislative Assembly**, signaling the state's determination to address rape cases more comprehensively and provide justice to survivors.

Key Provisions of the Aparajita Bill

The **Aparajita Bill**, named after the Sanskrit term for “undefeated,” is aimed at reinforcing the legal mechanisms surrounding rape cases in West Bengal. The bill is divided into several key provisions that enhance procedural safeguards, increase punitive measures, and provide for institutional responsibility.

1. Increased Punishment for Rape Convictions

One of the most significant aspects of the bill is its enhanced punishment for rape. While under the **Indian Penal Code (Section 376)**, the punishment for rape ranges from 7 years to life imprisonment, the **Aparajita Bill** mandates a minimum sentence of **20 years imprisonment**, extending up to life imprisonment without the possibility of parole. The bill also includes the provision for the **death penalty** in cases involving **aggravated forms of rape**—such as those involving minors, gang rape, or instances where the victim dies or is left in a vegetative state.

This aligns with the amendment to Section 376A of the IPC brought by the **Criminal Law (Amendment) Act, 2018**, which also provided for the death penalty in cases of rape of children under 12 years of age.

2. Fast-Track Courts and Special Investigation Teams (SITs)

In order to ensure **expeditious justice**, the bill mandates the establishment of **Fast-Track Courts (FTCs)** across all districts in West Bengal. These courts, much like those introduced after the **2012 Criminal Law Amendments**, are meant to handle rape cases exclusively, ensuring that trials are completed within **6 months from the date of filing of the charge sheet**.

Moreover, the bill requires the constitution of **Special Investigation Teams (SITs)** for the investigation of rape cases, particularly those involving institutional negligence, as was evident in the R.G. Kar case. The SITs will be led by senior officers of the rank of Deputy Inspector

General (DIG) of Police or above and will be mandated to complete investigations within **60 days**, in compliance with the **Code of Criminal Procedure, 1973 (Section 173(1A))**.

3. Medical and Institutional Accountability

Drawing from the negligence witnessed in the **R.G. Kar Medical College incident**, the **Aparajita Bill** places **strict liability on medical institutions** to immediately treat survivors of sexual violence, irrespective of the legal formalities. Any delay in providing medical assistance to a rape victim would invite criminal liability under the bill, punishable with imprisonment up to **7 years** under **Section 166B of the IPC**.

Additionally, the bill establishes a framework for the **accountability of educational institutions**, mandating them to maintain robust grievance redressal mechanisms and to ensure a safe environment for women. In case of institutional failure, the heads of these institutions can be held liable under **vicarious liability principles**, ensuring systemic responsibility.

4. Compensation for Survivors

The bill also addresses the need for **adequate compensation** for rape survivors. Drawing from the principles established in **Delhi Domestic Working Women's Forum v. Union of India (1995)**, where the Supreme Court held that compensation is an integral part of justice for rape survivors, the **Aparajita Bill** sets up a **State Victim Compensation Fund**. Under this, victims are entitled to interim compensation of **Rs. 10 lakhs** within 30 days of the filing of the FIR, with final compensation determined at the discretion of the court.

5. Amendments to the Code of Criminal Procedure, 1973

The **Aparajita Bill** proposes significant amendments to the **Code of Criminal Procedure, 1973**. One such amendment includes a mandatory **one-time medical examination of the accused**, conducted within 24 hours of the arrest. Additionally, the bill stipulates that **all rape trials** must be conducted **in-camera**, with stringent restrictions on the disclosure of the victim's identity, in line with **Section 228A of the IPC**.

The bill also lays down provisions for ensuring the **video-recording of victim statements**, thus minimizing the risk of re-traumatization and ensuring accuracy during the judicial process.

Case Law and Legal Precedents Influencing the Aparajita Bill

The **Aparajita Bill** draws inspiration from several landmark judgments and amendments to Indian criminal law.

1. Nirbhaya Case and Criminal Law (Amendment) Act, 2013

The **Nirbhaya case** (Mukesh & Anr v. State for NCT of Delhi & Ors., 2017), which led to nationwide protests, culminated in the **Criminal Law (Amendment) Act, 2013**, which expanded the definition of rape, increased punishment, and introduced new offenses such as **stalking and voyeurism**. The **Aparajita Bill** similarly seeks to bring comprehensive changes to how rape is prosecuted in West Bengal, ensuring a survivor-centered approach.

2. Vishaka v. State of Rajasthan (1997)

In **Vishaka v. State of Rajasthan**, the Supreme Court of India laid down guidelines for the prevention of sexual harassment at the workplace, based on the principle of **right to life and dignity under Article 21 of the Constitution**. The **Aparajita Bill** builds upon this jurisprudence by introducing stringent liability for institutional negligence and failure to prevent rape or sexual harassment within their premises.

3. Bodhisattwa Gautam v. Subhra Chakraborty (1996)

In **Bodhisattwa Gautam v. Subhra Chakraborty**, the Supreme Court emphasized the importance of providing interim compensation to victims of sexual assault. This principle is now codified under the **Aparajita Bill**, which makes provisions for state compensation for survivors, ensuring financial aid to cope with the aftermath of the crime.

The Influence of the R.G. Kar Case on the Aparajita Bill

The **R.G. Kar Medical College rape case** has had a significant influence on the formulation and passage of the **Aparajita Bill**. The inadequacies in the institutional response, delayed police action, and negligence in medical assistance in this case highlighted the need for a robust legal framework that would ensure institutional accountability. The provisions in the bill, including mandatory medical aid and vicarious liability for institutional heads, were direct responses to the failures witnessed in this case.

Moreover, the public outrage following the R.G. Kar incident put immense pressure on

lawmakers to introduce reforms that would not only punish offenders but also hold institutions accountable for creating safe environments for women.

Criticisms and Challenges

While the **Aparajita Bill** has been lauded as a significant step forward in combating rape in West Bengal, it has also faced some criticisms. Legal scholars have raised concerns about the increased reliance on **capital punishment**, questioning its effectiveness as a deterrent. Additionally, the implementation of **Fast-Track Courts** and **SITs** will require substantial financial resources, and there are concerns about whether the state machinery is adequately equipped to handle this.

Further, there are questions about the bill's alignment with **central laws**. Given that criminal law falls under the **Concurrent List**, it remains to be seen whether the central government will raise objections to certain provisions that may conflict with the **Indian Penal Code** and the **Criminal Law (Amendment) Act, 2013**. Additionally, the practicality of ensuring the swift functioning of fast-track courts and special investigation teams (SITs) has been questioned due to the existing backlog in courts and the general slow pace of the criminal justice system in India.

Comparative Analysis with Central and Other State Laws

A critical comparative analysis reveals that the **Aparajita Bill** introduces several novel provisions, but it also overlaps with existing central laws, particularly the **Criminal Law (Amendment) Acts** of 2013 and 2018. These acts were enacted in response to increasing sexual violence and aim to tighten laws concerning rape and other forms of sexual assault. However, the **Aparajita Bill** goes a step further in its emphasis on institutional accountability and systemic reforms.

1. Criminal Law (Amendment) Act, 2013 vs. Aparajita Bill

The **2013 Amendment** extended the scope of Section 375 of the IPC to include broader definitions of sexual offenses. The **Aparajita Bill** not only retains these changes but builds upon them by introducing stricter punishments and ensuring institutional liability in cases where rape occurs within an educational or medical setting. The emphasis on institutional accountability was a direct response to the **R.G. Kar Medical College case**, which exposed critical failures

in protecting women in institutional spaces.

2. Madhya Pradesh's Anti-Rape Laws

West Bengal's **Aparajita Bill** can be compared with reforms introduced in other states. For instance, **Madhya Pradesh** introduced a law in 2018 that allowed the death penalty for convicted rapists of children below 12 years. While the **Aparajita Bill** similarly provides for the death penalty in aggravated cases of rape, it extends its purview to adult victims and also incorporates provisions for **institutional responsibility**—something that other state laws do not emphasize as strongly.

3. Kerala's Gender Sensitization Initiatives

While states like **Kerala** have focused more on gender sensitization and creating safer public spaces for women, the **Aparajita Bill** places its primary focus on legal deterrents and institutional responsibility. Kerala's approach, while valuable in preventing sexual crimes, does not place the same emphasis on legal reforms and punitive measures as the **Aparajita Bill**.

Legal Critique of the Death Penalty and Its Deterrent Effect

The provision of the **death penalty for aggravated rape** in the **Aparajita Bill** echoes the amendments made in the **Criminal Law (Amendment) Act, 2018**, following the rape and murder of an eight-year-old girl in Kathua, Jammu, and Kashmir. However, the inclusion of the death penalty has remained a controversial issue. The **Supreme Court of India** in cases like **Bachan Singh v. State of Punjab (1980)** has emphasized the “rarest of rare” doctrine, restricting the application of the death penalty.

While public sentiment, especially after heinous crimes, leans toward harsh punishments, several legal scholars and human rights activists argue that the death penalty does not act as a deterrent. They point to the **National Crime Records Bureau (NCRB)** data, which shows that crimes against women, including rape, have continued to rise despite the introduction of harsher penalties, including the death penalty.

Moreover, the death penalty may lead to unintended consequences, such as the killing of victims by offenders to avoid identification. The **Aparajita Bill**, despite its noble intentions, faces the challenge of balancing public expectations of justice with the legal realities of deterrence and reformatory justice.

The Role of Fast-Track Courts: A Double-Edged Sword?

The establishment of **Fast-Track Courts (FTCs)** for expeditious trials of rape cases is another highlight of the **Aparajita Bill**. While the notion of fast-track courts is not new—having been introduced in the aftermath of the **Nirbhaya case**—their effectiveness has been a subject of debate. The **Law Commission of India**, in its **245th Report**, noted that while fast-track courts can provide quicker justice, they often struggle with procedural delays, inadequate staffing, and infrastructural shortcomings.

In practice, fast-track courts have often been overburdened, leading to rushed trials and compromised judicial scrutiny. Moreover, there is a concern that placing rape cases in fast-track courts might deprive victims of a thorough trial process, leading to potential miscarriages of justice.

The **Aparajita Bill** attempts to address this by emphasizing the quality of trials, mandating the appointment of experienced judicial officers, and ensuring that these courts have adequate resources. However, whether these provisions can be effectively implemented remains to be seen.

Constitutional Concerns and Federalism

A key legal issue surrounding the **Aparajita Bill** is its potential conflict with central legislation. As **criminal law** falls under the **Concurrent List** of the **Seventh Schedule of the Indian Constitution**, states have the power to legislate on criminal matters, provided they do not conflict with central laws.

There is potential for the **Aparajita Bill** to be challenged if it is found to be inconsistent with the **Indian Penal Code** and other central legislation. While the bill strengthens certain provisions of the **IPC** and the **CrPC**, any contradiction with the **Criminal Law (Amendment) Act, 2013**, particularly concerning punishment and procedural requirements, could be a ground for judicial review.

Moreover, the bill's provision for institutional accountability and mandatory punishment for heads of institutions could raise constitutional questions about the **right to equality under Article 14** and the **right to due process under Article 21** of the Constitution. If the bill's

implementation leads to blanket liability without an opportunity for a fair defense, it may face legal challenges on the grounds of being **arbitrary** or **unconstitutional**.

Conclusion

The passage of the **Aparajita Bill** in West Bengal marks a significant step in the fight against rape and sexual violence. The bill addresses multiple aspects of the criminal justice system, including increasing punishment for rape, ensuring faster trials, holding institutions accountable, and providing for victim compensation. Its provisions are a direct response to the systemic failures highlighted in the **R.G. Kar Medical College rape case**, emphasizing the need for both legal reform and institutional responsibility.

However, the bill is not without its challenges. Issues concerning the effectiveness of fast-track courts, the constitutionality of certain provisions, and the ongoing debate over the deterrent effect of the death penalty continue to loom large. Additionally, the bill's implementation will require considerable political will, financial resources, and infrastructural support.

Ultimately, the success of the **Aparajita Bill** will depend on its ability to deliver justice to rape survivors while balancing the demands of due process and constitutional protections. By addressing the shortcomings of the existing legal framework, the bill holds the potential to create a safer and more just society for women in West Bengal, but its journey from legislative promise to ground reality remains a critical challenge.

References

1. Indian Penal Code, 1860 (Section 376, 228A, 166B)
2. Code of Criminal Procedure, 1973 (Sections 173(1A), 164A)
3. Criminal Law (Amendment) Act, 2013
4. Criminal Law (Amendment) Act, 2018
5. Delhi Domestic Working Women's Forum v. Union of India, (1995)
6. Mukesh & Anr v. State for NCT of Delhi & Ors., (2017) (Nirbhaya Case)
7. Bachan Singh v. State of Punjab, (1980)
8. Vishaka v. State of Rajasthan, (1997)
9. Bodhisattwa Gautam v. Subhra Chakraborty, (1996)
10. Law Commission of India, 245th Report