

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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THE CRIMINAL LAW (AMENDMENT) ACT, 2018

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Introduction

The Criminal Law (Amendment) Act, 2018, represents a noteworthy development in India's legislative response to the growing incidents of sexual violence and heinous crimes against women and children. This amendment emerged as a crucial legal intervention aimed at addressing systemic inadequacies and societal demands for justice. The Act was introduced in response to public outrage over numerous incidents of sexual assault, which exposed the limitations of existing laws in providing justice to victims and punishment of offenders. This report aims to provide an in-depth study of the amendment, its historical context, the specific legal changes it brought forth, and its impact on India's criminal justice framework.

Historically, India's criminal laws have evolved progressively to address crimes against women and children. Key legislative milestones include the Criminal Law (Amendment) Act, 2013, enacted after the *Nirbhaya case (AIR 2017 SC 2161)*, and the Protection of Children from Sexual Offenses (POCSO) Act, 2012. However, despite these efforts, the country continued to witness harrowing instances of sexual violence that highlighted persistent gaps in the legal framework. The Criminal Law (Amendment) Act, 2018, sought to address these gaps by introducing harsher punishments, fasten the legal processes, and measures to increase victim support. It marked a critical effort by lawmakers to prioritize the safety and dignity of women and children.

Historical Background

Context before the Amendment

Before the 2018 amendment, India's criminal laws, particularly those related to sexual offenses, were governed by the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Protection of Children from Sexual Offenses (POCSO) Act. Despite previous amendments, there were growing concerns about the adequacy of these laws in addressing heinous crimes

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such as rape, especially against minors.³⁴⁵

Catalyst for Change

The Criminal Law (Amendment) Act, 2018, was provoked by widespread public outrage and protests following several brutal incidents of rape and sexual assault, notably the rape and murder of an 8-year-old girl in Kathua, Jammu, and Kashmir (*Mohd Akhtar v. State of J&K & Ors*). These incidents highlighted significant gaps in the existing legal framework and a pressing need for more stringent measures to deter such crimes.

The Kathua rape and murder case, officially titled *Mohd Akhtar v. State of J&K & Ors.*, pertains to the brutal abduction, gang rape, and murder of an 8-year-old girl from the Bakarwal nomadic community in January 2018. The crime, committed in Rasana village, Kathua, Jammu & Kashmir, drew nationwide outrage and showcased systemic issues in handling sexual violence in India. The victim was held captive in a temple and subjected to severe abuse before being murdered. The accused included a local priest, Sanji Ram, and several police officers, highlighting the connection between communal motives and institutional lapses.

The Supreme Court, citing concerns over impartiality and threats to witnesses and advocates, transferred the trial to Pathankot in Punjab to ensure a fair trial. The case saw rigorous legal proceedings, with the Pathankot court convicting six out of eight accused in June 2019. It also underscored the importance of judicial integrity and protection for victims' families and legal representatives⁶

Key Provisions of the Criminal Law (Amendment) Act, 2018

The 2018 amendment introduced several critical changes to India's criminal laws to address sexual offenses more effectively:

1. Stricter Punishments for Rape:

- Increased the minimum punishment for rape of women from 7 to 10 years of

³ <https://iddashboard.legislative.gov.in/sites/default/files/A1860-45.pdf>

⁴ Wikipedia. (2024). Protection of Children from Sexual Offenses Act. [online] Available at: https://en.wikipedia.org/wiki/Protection_of_Children_from_Sexual_Offenses_Act [Accessed 21 Jun. 2024].

⁵ districts.ecourts.gov.in. (n.d.). Home/District Court in India | Official Website of District Court of India. [online] Available at: <https://districts.ecourts.gov.in/sites/default/files/>

⁶ Bhardwaj, P. (2018). Kathua Rape-Murder case: Provide protection to victim's family & lawyer: SC to J&K | SCC Times. [online] SCC Times. Available at: <https://www.scconline.com/blog/post/2018/04/17/kathua-rape-murder-case-provide-protection-to-victims-family-lawyer-sc-to-jk/>

rigorous imprisonment.

- Introduced the death penalty for the rape of girls below 12 years of age.
- Increased the minimum punishment for the rape of girls below 16 years from 10 to 20 years of rigorous imprisonment, extendable to life imprisonment.

2. Speedy Investigation and Trial:

- Mandated the completion of investigation in rape cases within two months.
- Provided for the trial of rape cases to be completed within two months.
- Allowed for an appeal against the conviction or acquittal in rape cases to be disposed of within six months.

3. Enhanced Security Measures:

- Increased the minimum punishment for gang rape of a girl below 16 years from 20 years to life imprisonment.
- Established special courts for the speedy trial of rape cases.

Impact and Implications

Positive Outcomes

The Criminal Law (Amendment) Act, 2018, has brought about several significant changes:

- **Reduction:** The introduction of harsher punishments, including the death penalty, aims to serve as a strong reducer against sexual crimes.
- **Efficiency:** The mandates for speedy investigation and trial help ensure that justice is delivered promptly, which can improve public confidence in the legal system.
- **Victim Support:** The amendment also emphasizes the need for special courts, which can provide a more supportive environment for victims during trials.

Challenges and Criticisms

Despite these positive changes, the amendment has faced criticism:

- **Implementation Issues:** There are concerns about the feasibility of completing investigations and trials within the stipulated timeframes, given the existing backlog in the judicial system.
- **Effectiveness of Death Penalty:** Some legal experts argue that the death penalty may not be an effective deterrent and could lead to underreporting of crimes, as perpetrators might go to greater lengths to silence victims.

- **Resource Allocation:** Ensuring the success of the amendment requires significant resources for law enforcement, forensic capabilities, and judicial infrastructure, which are currently inadequate in many parts of India.

Opinion

The Criminal Law (Amendment) Act of 2018 is, in my opinion, a major step forward in the fight against India's grave problem of sexual violence. The government's commitment to addressing these acts is demonstrated by the imposition of harsh penalties in addition to expedited legal proceedings. However, in order for the amendment to truly be effective, the challenges that arise during implementation must be addressed with a strong strategy. This also entails providing enough funding to support the same, training police officers, and modernizing the legal system.

But these legislative adjustments must be complemented by wide-spread social initiatives to shift public perceptions of gender equality, sexual assault, and survivor assistance. Only then can a holistic approach be done in creating a safer environment for all and ensuring the laws serve their intended purpose.

Suggestions

1. **Balancing Suppression with Rehabilitation:** While the amendment emphasizes suppression through harsher punishments, including the death penalty, it is vital to also consider rehabilitation. Programs that focus on reformation and education for offenders can address the causes of such behaviour, ensuring a more comprehensive approach to reducing crime.
2. **Feasibility of Strict Timelines:** The mandated timelines for completing investigations and trials are ambitious and praiseworthy but require sufficient resources. Increasing the number of special courts, enhancing forensic capabilities, and addressing judicial backlogs are important to ensure these timelines are practical and not merely aspirational.
3. **Fostering Societal Change:** Legal reforms must go hand in hand with societal transformation. Public awareness campaigns, gender-sensitivity education, and community outreach programs can play a crucial role in addressing cultural and societal norms that perpetuate gender-based violence.

- 4. Enhancing Victim Support:** The amendment should also prioritize the well-being of survivors. This includes psychological counselling, financial assistance, legal aid, and protection measures during trials to create a victim-centric justice system that inspires confidence.
- 5. Periodic Impact Assessments:** To gauge the effectiveness of the amendment, the government should conduct regular evaluations by analysing crime rates, conviction trends, and public feedback. Such assessments can guide further legal and procedural improvements.
- 6. Incorporating Restorative Justice:** Complement punitive measures with restorative justice initiatives, which emphasize healing for victims, accountability for offenders, and community reconciliation. This approach addresses the broader impacts of the crime while fostering societal harmony.

Conclusion

The Criminal Law (Amendment) Act, 2018, marks a significant legislative milestone in India's ongoing efforts to address the pressing issues of sexual violence and crimes against women and children. The Act's provisions, ranging from stricter punishments to accelerated legal processes, reflect a determined response to the national outcry against the systemic failures highlighted by brutal crimes like the Kathua case. By introducing harsher penalties, including the death penalty for the rape of minors, and mandating faster investigations and trials, the amendment seeks to address public demands for justice and punishment.

However, the success of the Act cannot be measured merely by the severity of its provisions but by its effective implementation. Challenges such as resource limitations, judicial backlogs, and logistical hurdles in adhering to strict timelines underscore the complexity of taking the goals and objectives of this law and ensuring that they are achieved in practice, leading to real, measurable results in society. The exploited judicial and law enforcement systems require substantial strengthening in terms of infrastructure, training, and modernization to meet the demands of the new provisions.

The Act's emphasis on suppression, while praiseworthy, must be balanced with measures aimed at addressing the root causes of sexual violence. Public awareness campaigns, community outreach, and gender-sensitivity education is essential to changing societal attitudes that normalize or continue gender-based violence. Furthermore, efforts to improve

victim support mechanisms—such as counseling, financial aid, and protective measures—are vital in building a justice system that prioritizes the needs and dignity of survivors.

Criticism of the death penalty as a punishment also raises valid concerns. Some experts argue that its potential to reduce crime remains unproven and that it may lead perpetrators to further endanger victims to avoid detection. This highlights the need for a nuanced approach that complements punitive measures with rehabilitative and restorative justice strategies. Programs aimed at offender reformation and community reconciliation can contribute to a broader cultural and systemic shift.

The Act's introduction is a step in the right direction, but it should not be seen as the endpoint of the journey to a safer and more just society. Instead, it must serve as a foundation for continuous improvement. Periodic assessments of its impact, coupled with iterative policy adjustments, are essential to ensure that the amendment remains effective and relevant in addressing evolving societal challenges.

In conclusion, the Criminal Law (Amendment) Act, 2018, reflects both the potential and limitations of legislative action in combating sexual violence. While its provisions send a strong message about the state's commitment to justice, true progress requires a holistic approach. By integrating legal reforms with societal change, enhancing support systems for survivors, and addressing systemic inefficiencies, India can move closer to creating an environment where all individuals can live with dignity, security, and equality. This requires sustained collaboration between the government, civil society, and citizens to ensure that the law not only punishes but also prevents crime, rehabilitates offenders, and supports victims, ultimately fostering a safer and more equitable society.