

## THE APARAJITA WOMAN AND CHILD (WEST BENGAL, CRIMINAL LAWS AMENDMENT) BILL, 2024

**Kanishtha Bahukhandi\***

The West Bengal Assembly has unanimously passed the Aparajita Women and Child (West Bengal Criminal Laws Amendment) Bill, 2024, in the wake of the recent rape and murder of a doctor at R.G. Kar Medical College and Hospital. The Aparajita Anti-Rape Bill 2024 is an important law designed to prevent and combat sexual violence. The bill aims to further strengthen the protection of survivors in cases of sexual violence, simplify and expedite the court process, and provide stringent punishment to perpetrators. This bill contains the establishment of special courts to hear rape cases expeditiously and sensitively; services will be offered, including mental health counselling, legal aid, and other support; more stringent punishment will be made for rapists; and compulsory education programs will be conducted in schools and society to prevent sexual violence and increase awareness. Through this bill, awareness of sexual violence will be increased in society, survivors will get greater justice and a safe and respectful environment will be created for all people. This law is unique because it is the only one that requires a mandatory death sentence for a specific crime. This article includes a brief analysis of this bill, covering all the sections of The Indian Penal Code, 1860 (IPC), The Bharatiya Nyaya Sanhita, 2023 (BNS), and Protection of Children from Sexual Offences, 2012 (POSCO) related to rape, and major amendments and provisions proposed in this bill. Also a comparative analysis of present and new amendments to the bill and the challenges in making state laws to prevent sexual harassment of women and children.

### INTRODUCTION

The field of legal reform is constantly changing and advancing, as the recent introduction of the Aparajita Women & Child (West Bengal, Criminal Laws Amendment) Bill, 2024, reflects a major change to increase the safety and empowerment of women and children in West Bengal. This landmark piece of legislation aims at strengthening protections for women and children in the state by amending and introducing the provision related to sexual offences.

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The Aparajita Bill of 2024 came about because of a certain recognition of persistent deficiencies in the existing legal framework by providing a more robust and comprehensive approach to protecting vulnerable populations from abuse and exploitation. This bill provides for stricter penalties for serious crimes and sets new deadlines for investigations.

The bill provides for severe penalties for serious crimes, such as violence against women and children. By imposing severe punishment, this bill aims to deter criminals and show zero tolerance against violence. This aspect is essential to ensuring that criminals get severe punishment for their acts. The bill also introduces increased penalties as well as new time limits for investigating crimes against women and children. By fixing the time limit to complete the investigation. This will eliminate the problem of delay in investigation and provide quick justice to the victims, who often have to wait for a very long time.

This bill is an important step toward gender equality and child protection. It demonstrates the need for a better and more sensitive legal system that addresses the immediate needs of victims and actively works to prevent abuse. The bill seeks to reform both the penal and investigative processes so that the rights and dignity of women and children are protected and they get proper protection and justice. When this bill is passed, it will spark important discussion and increase interest from various groups, policymakers, and the public. The Bill reflects India's commitment to promoting human rights and ensuring a safe and just society for its vulnerable citizens.

**Relevant Sections of The Indian Penal Code, 1860 (IPC), The Bharatiya Nyaya Sanhita, 2023 (BNS), and Protection of Children from Sexual Offenses, 2012 (POSCO) related to Rape:**

BNS SECTIONS	IPC SECTIONS	DESCRIPTION
63	375	Definition of rape (NOTE: Exception 2 in BNS: wife not being under 18 years, IPC: 15 years)
64	376(1) and (2)	Punishment for rape

65(1)	376(3)	Punishment for rape of women less than 16 years
65(2)	376AB	Punishment for rape of woman less than 12 years
66	376A	Punishment for causing death or persistent vegetative state of victim
67	376B	Sexual intercourse by a husband upon wife during separation
68	376C	Sexual intercourse by a person in authority
69	NA	Punishment for sexual intercourse by deceitful means (NOTE: Newly introduced in BNS)
70(1)	376D	The offence of gang rape
70(2)	NA	Gang rape of women less than 18 years (NOTE: Replaces IPC Sections 376DA and 376D.)
71	376E	Punishment for repeat offenders
72	228A	Non-disclosure of the identity of the rape victim <sup>1</sup>

**The POCSO Act of 2012 is designed to protect children from sexual abuse. It doesn't use the word "rape" like in-laws for adults, but it covers similar serious crimes against kids. Here are important sections related to crimes:**

SECTIONS	DESCRIPTION
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<sup>1</sup> "The Aparajita Women and Child Bill, 2024" (*Drishti Judiciary*)  
<<https://www.drishtijudiciary.com/editorial/the-aparajita-women-and-child-bill-2024>>.

3	Definition of penetrative sexual assault
4	Penetrative Sexual Assault
5	Aggravated Penetrative Sexual Assault
7	Sexual Assault
8	Aggravated Sexual Assault

### Major Amendments Proposed In The Aparajita Women And Child Bill, 2024:

- **Capital Punishment:** The bill introduces provisions for capital punishment for rape<sup>2</sup> convictions resulting in the victim's death or leaving her in a vegetative state.
- **Investigation Timeline:** Investigations into rape<sup>3</sup> cases must be concluded within 21 days of the initial report.
- **Aparajita Task Force:** The state government will form a special 'Aparajita Task Force' from the state police to ensure time-bound completion of investigations.
- **Proposed Amendments (under consideration):** compulsory punishment for police officials who refuse to register First Information Reports (FIRs) in sexual assault cases.
- **Implementation:** The bill has been approved by the Assembly and now awaits the Governor's assent for implementation.
- **Scope:** The legislation aims to strengthen the justice system's response to crimes against women and children in West Bengal.

<sup>2</sup> <https://www.drishtijudiciary.com/editorial/punishment-in-rape-cases/#%3A~%3Atext%3DThe%20recent%20incidents%20of%20rape%20have>

<sup>3</sup> <https://www.drishtijudiciary.com/current-affairs/offence-of-rape/#%3A~%3Atext%3DUnder%20the%20IPC%2C%20rape%20is%20addressed>

- **Comparison with Central Laws:** The Chief Minister suggested this bill could serve as a model for the rest of the country, implying it may have stricter provisions than central laws.
- **Review of Proposed Amendments:** The state government will study the **amendments proposed** by the opposition and compare them with provisions in the Bharatiya Nyaya Samhita (BNS).

#### **Legal Provisions Proposed In The Aparajita Women And Child Bill, 2024 Proposed:**

- **Amendment to Section 64(1) of the Bharatiya Nyaya Sanhita, 2023 (BNS):** In Section 64, sub-section (1) of BNS, 2023<sup>4</sup>, for the words "rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for the remainder of that person's natural life, and shall also be liable to fine," the following shall be substituted, namely:
  - "Rigorous imprisonment for life, which shall mean rigorous imprisonment for the remainder of the person's natural life and fine, or with death".
- **Amendment to Section 64(2) of the Bharatiya Nyaya Sanhita, 2023:** In Section 64, sub-section (2) of the BNS, 2023, the words "rigorous imprisonment for life, which shall mean rigorous imprisonment for the remainder of that person's natural life and shall also be liable to fine," shall be substituted, namely:
  - "Rigorous imprisonment for life, which shall mean rigorous imprisonment for the remainder of that person's natural life and fine, or with death".
- **Amendment to Section 66 of the Bharatiya Nyaya Sanhita, 2023:** In Section 66 of the BNS, 2023, for the words "rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death," the following shall be substituted, namely:"
  - "With death".

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<sup>4</sup> [https://vault.drishtijudiciary.com/english\\_file\\_uploads/1705304528\\_BHARATIYA\\_NYAYA\\_SANHITA%2C\\_2023.pdf](https://vault.drishtijudiciary.com/english_file_uploads/1705304528_BHARATIYA_NYAYA_SANHITA%2C_2023.pdf)

**COMPARATIVE ANALYSIS OF PRESENT AND NEW AMENDMENTS IN THE BILL:**

Sections	New	Present
64 of BNS: Punishment for rape	Enhances punishment for the offence of rape to life imprisonment for the remainder of the convict's natural life or death, with a penalty	Rigorous imprisonment of at least 10 years, which may extend to life imprisonment for this offence Lack of sensitivity: Many people do not understand the seriousness of sexual harassment, which makes it difficult to enforce the law properly.
66 of BNS: Punishment for causing death or resulting in a persistent vegetative state of the victim	Capital punishment: mandatory punishment with the death penalty or fine;	rigorous imprisonment for a term not less than twenty years, but may extend to imprisonment for the remainder of that person's natural life or with death.
70(1) of BNS: Punishment for Gang Rape	death penalty or life imprisonment	rigorous imprisonment for a term not less than twenty years, but may extend to imprisonment for the remainder of that person's natural life and fine.
72 of BNS: Disclosure of the identity of the victim	imprisonment of 3-5 years and a fine	punished with up to two years in prison and a fine.

<p>65(1), 65(2), 70(2) of BNS: Punishment of perpetrators of varying ages</p>	<p>Focus on the gravity of the crime rather than the age of the offender.</p>	<p>Women under the age of sixteen years and twelve years shall be punished with rigorous imprisonment for a term not less than twenty years, but may extend to imprisonment for the remainder of that person's natural life;</p> <p>Women under eighteen years of age shall be punished with life imprisonment and a fine or death;</p>
<p>29A of BNSS (addition)</p>	<p>Establishment of a special court under a new section of 29A: for speedy inquiries or trial</p>	<p>NA</p>
<p>29B of BNSS (addition)</p>	<p>Trials will only be conducted by a special public prosecutor with at least seven years of practice.</p>	<p>NA</p>
	<p>Creation of a special task force known as the Aparajita task force at the district level headed by the deputy superintendent of police. An investigation under this task</p>	

29C of BNSS (addition)	force would, as far as possible, be conducted by a female police officer.	NA
29C(4) of BNSS (addition)	Those who fail to perform their duty shall be punished with six months of imprisonment or a fine that may extend to rupees five thousand or both.	NA
193 of BNSS: investigation completion	It should be completed in 21 days, with a maximum 15-day extension if documented in the case diary.	Must be completed within two months from the date of recording the information.
346(1) of BNSS: proceeding of inquiry or trial	An inquiry or trial of rape cases must be completed within 30 days of filing the chargesheet.	detention or arrest of an accused
4 of POSCO: Punishment for penetration sexual assault	Death penalty	imprisoned for a minimum of 10 years and up to life in prison, and may also be fined  Children under 16 years of age: imprisoned for a minimum of 20 years and up to life in prison, and may also be fined.



## DIFFICULTIES IN MAKING STATE LAWS TO PREVENT SEXUAL HARASSMENT OF WOMEN AND CHILDREN:

- **Legal Complexity:** Making laws is very complex and contains many rules that are difficult to understand and follow.
- **Lack of resources:** There may be a shortage of both money and people to properly enforce the law.
- **Lack of sensitivity:** Many people do not understand the seriousness of sexual harassment, which makes it difficult to enforce the law properly
- **Lack of infrastructure:** There may be a lack of facilities to lodge complaints and provide support, which hinders the effectiveness of the law.
- **Social and cultural barriers:** Sexual harassment is not taken seriously in some societies, making it difficult to create and enforce laws.<sup>5</sup>

### What are the challenges related to the Aparajita Bill 2024?

- **Constitutional Validity:** The Aparajita Women and Child (West Bengal Criminal Laws Amendment) Bill, 2024, seeks to amend central laws, raising concerns about its constitutional validity and jurisdictional issues.
  - Under Article 246 of the Indian Constitution, states have the authority to legislate on issues listed in the State List.<sup>6</sup> However, the concurrent<sup>7</sup> jurisdiction<sup>8</sup> over criminal laws introduces complexity. If the bill overrides the central law, it needs a president's assent.

<sup>5</sup> <<https://www.insightsonindia.com/2024/09/06/west-bengals-aparajita-women-and-child-bill-2024/>>.

<sup>6</sup> [https://www.drishtias.com/printpdf/federalism-and-emerging-challenges#%3A~%3Atext%3DThe%20State%20List%20has%2059%2CParliament%20prevails%20\(Article%20254\)](https://www.drishtias.com/printpdf/federalism-and-emerging-challenges#%3A~%3Atext%3DThe%20State%20List%20has%2059%2CParliament%20prevails%20(Article%20254))

<sup>7</sup> <https://www.drishtias.com/printpdf/important-sources-of-the-indian-constitution#%3A~%3Atext%3DThe%20Constitution%20of%20India%20is%2Con%2026th%20of%20January%201950>

<sup>8</sup> <https://www.drishtias.com/printpdf/important-sources-of-the-indian-constitution#%3A~%3Atext%3DThe%20Constitution%20of%20India%20is%2Con%2026th%20of%20January%201950>

- **Unrealistic Timeframe:** Completing investigations within 21 days is a significant challenge given the complexity of rape cases and the existing backlog in the legal system.
- **Legal Challenges:** There have been many instances in which state amendments to central laws have been contested in courts. For instance:
  - **State of West Bengal v. Union of India (1964):** In this, the Supreme Court invalidated the West Bengal Land Reforms Act, 1955, for conflicting with the Central Land Acquisition Act, 1894, affirming Parliament's supremacy.
  - **KK Verma v. Union of India (1960):** In this case, the Supreme Court struck down the Madhya Pradesh Agricultural Produce Markets Act, 1958, for inconsistency with central laws.
    - These cases underline the judiciary's stance on central legislation's supremacy over state amendments.
  - **Implementation Challenges:** The bill's effective implementation may face hurdles, requiring upgrades to law enforcement infrastructure and specialized training for police and judicial officers.
  - **Overburdened Courts:** Indian courts face severe delays, with cases taking an average of over 13 years to resolve. This backlog could hinder timely trials following the expedited investigations.
  - **Legal Rights of the Accused:** The legal framework guarantees the right to a fair trial for the accused, which can prolong the process through appeals and mercy petitions.<sup>9</sup>

## CONCLUSION

The Aparajita Women and Child Bill describes a remarkable step in West Bengal's approach to crimes against women and children, but the supporters of the bill consider it an important step forward for justice and security, while critics question whether it is needed, given that

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<sup>9</sup> “West Bengal ‘Aprajita’ Anti-Rape Bill” (*Drishti IAS*) <[\[www.jlrjs.com\]\(http://www.jlrjs.com\)](https://www.drishtiias.com/daily-updates/daily-news-analysis/west-bengal-aprajita-anti-rape-bill#:~:text=The%20West%20Bengal%20Assembly%20has,for%20rape%20and%20sexual%20harassment.>.”</a></p></div><div data-bbox=)

many laws already exist. The bill has also sprinkled major debate on issues such as crime reporting, law enforcement, and accountability in politics.

