APPENDIX-V

THE CRIMINAL LAW (AMENDMENT) ORDINANCE, 2013

Promulgated by the President in the Sixty-fourth Year of the Republic of India.
An Ordinance further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

CHAPTER II
AMENDMENTS TO THE INDIAN PENAL CODE

2. In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in section 100, in the clause Secondly, after the words “grievous hurt”, the words “including the offence of grievous hurt punishable under section 326A” shall be inserted.

3. After section 166 of the Penal Code, the following section shall be inserted, namely:

“166A. Whoever, being a public servant,—
(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
(c) fails to record any information given to him under subsection (7) of section 154 of the Code of Criminal Procedure, 1973 and in particular in relation to cognizable offence punishable under serious offence punishable under sections 345, 354A, section 354B, section 354C, sub-section (2) of section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”

4. After section 326 of the Penal Code, the following sections shall be inserted, namely:

“326A. Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid
on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life and with fine which may extend to ten lakh rupees.
Provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered.

326B. Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

5. In section 354 of the Penal Code, for the words “shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”, the words “shall be punished with imprisonment of either description for a term of one year which may extend to five years and shall also be liable to fine” shall be substituted.

6. After section 354 of the Penal Code, the following sections shall be inserted, namely:

   ‘354A. (1) The following acts or behaviour shall constitute the offence of sexual harassment—
   (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
   (ii) a demand or request for sexual favours; or
   (iii) making sexually coloured remarks; or
   (iv) forcibly showing pornography; or
   (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

   (2) Any person who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both.

   (3) Any person who commits the offence specified in clause (iii) or clause (iv) or clause (v) of sub-section (1) shall be punishable with imprisonment of either description that may extend to one year, or with fine, or with both.

354B. Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and with fine.

354C. Whoever watches, or captures the image of, a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.
354D. (1) Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking: Provided that the course of conduct will not amount to stalking if the person who pursued it shows—
(i) that it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or
(ii) that it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
(iii) that in the particular circumstances the pursuit of the course of conduct was reasonable.
(2) Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

7. For section 370 of the Penal Code, the following sections shall be substituted, namely:—

‘370. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—
First.— using threats, or
Secondly.— using force, or any other form of coercion, or
Thirdly.— by abduction, or
Fourthly.— by practicing fraud, or deception, or
Fifthly.— by abuse of power, or
Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.
(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.
(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.

Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.

When a public servant including police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the remainder of that person’s natural life.

If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life.

370A. (1) Whoever, despite knowing, or having reason to believe that a child has been trafficked, employs such child in any form of labour, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and with fine.

(2) Whoever, despite knowing or having reason to believe that an adult has been trafficked, employs such adult for labour, shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:—

‘375. A person is said to commit “sexual assault” if that person—
(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of another person or makes the person to do so with him or any other person; or
(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of another person or makes the person to do so with him or any other person; or
(c) manipulates any part of the body of another person so as to cause penetration into the vagina, urethra, anus or any part of body of such person or makes the person to do so with him or any other person; or
(d) applies his mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;
(e) touches the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person, except where such penetration or touching is carried out for proper hygienic or medical purposes under the circumstances falling under any of the following seven descriptions:—
First. — Against the other person’s will.
Secondly. — Without the other person’s consent.’.
Thirdly. — With the other person’s consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or of hurt.

Fourthly. — When the person assaulted is a female, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married.

Fifthly. — With the consent of the other person when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by that person personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that action to which such other person gives consent.

Sixthly. — With or without the other person’s consent, when such other person is under eighteen years of age.

Seventhly. — When the person is unable to communicate consent.

376. (1) Whoever, except in the cases provided for by sub-section (2), commits sexual assault, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits sexual assault—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a person in such police officer’s custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits sexual assault on a person in such public servant’s custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces is in the area by virtue of deployment by the Central or a State Government, commits sexual assault; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution, commits sexual assault on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits sexual assault on a person in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards, the person assaulted, commits sexual assault on such person; or

(g) commits sexual assault on a woman knowing her to be pregnant; or

(h) commits sexual assault on a person when such person is under eighteen years of age; or

(i) commits sexual assault, where the person assaulted is incapable of giving consent; or
(j) being in a position of economic or social dominance, commits sexual assault on a person under such dominance; or
(k) commits sexual assault on a person suffering from mental or physical disability; or
(l) while committing sexual assault causes grievous bodily harm or maims or disfigures or endangers the life of a person; or
(m) commits persistent sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

376A. Whoever, commits an offence punishable under sub-section(7) or sub-section(2) of section 376 and in the course of such commission inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person’s natural life, or with death.

376B. Whoever commits sexual assault on his own wife, who is living separately under a decree of separation or under any custom or usage, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

376C. Whoever,—
(a) being in a position of authority or in a fiduciary relationship; or
(b) a public servant; or
(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women’s or children’s institution; or
(d) being on the management of a hospital or being on the staff of a hospital, and abuses such position or fiduciary relationship to induce or seduce any person either in the first mentioned person’s custody or under the first mentioned person’s charge or present in the premises and has sexual intercourse with that person, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine.

376D. Where a person is sexually assaulted by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of sexual assault, regardless of gender and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to
life and shall pay compensation to the victim which shall be reasonable to meet the medical expenses and rehabilitation of the victim.

376E. Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376C or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life, which shall mean the remainder of that person’s natural life or with death.’.

9. In section 509 of the Penal Code, for the words “shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both”, the words “shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine” shall be substituted.