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**SUPPLEMENT**

*(Issued on 13.02.2024)*



**PENAL CODE (AMENDMENT)**

**A**

**BILL**

**to amend the Penal Code (Chapter 19)**

*Ordered to be published by the Minister of Justice, Prison Affairs and  
Constitutional Reforms*

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*STATEMENT OF LEGAL EFFECT*

*Clause 2* : This clause amends section 363 of the Penal Code (Chapter 19) (hereinafter referred to as the "principal enactment") and the legal effect of the section as amended is to make provisions to extend the application of the provisions of the section to male victims as well as to female victims.

*Clause 3* : This clause replaces section 364 of the principal enactment and the legal effect of the amendment is to make provisions to -

- (a) enable the court to impose a suspended sentence in lieu of the mandatory minimum sentence where there was an intimate relationship between the offender under twenty two years and the victim of or above fourteen years but under sixteen years and where the sexual penetration had been with the consent of the victim; and
- (b) enable the court to impose a lesser mandatory minimum sentence where there was an intimate relationship between the offender under twenty two years and the victim of or above fourteen years but under sixteen years and where there is no evidence to prove that the sexual penetration had been with the consent of the victim.

*Penal Code (Amendment)*

L.D.—O 10/2021

AN ACT TO AMEND THE PENAL CODE ( CHAPTER 19 )

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

**1.** This Act may be cited as the Penal Code (Amendment) Act, No of 2024. Short title

5 **2.** Section 363 of the Penal Code (Chapter 19) (hereinafter referred to as the “principal enactment”) is hereby amended as follows: - Amendment  
of section  
363 of  
Chapter 19

(1) by the renumbering of that section as subsection (1) of that section;

10 (2) in the renumbered subsection (1) of that section-

15 (a) by the substitution for the words “A man is said to commit “rape” who has sexual intercourse with a woman”, of the words “A person (in this section referred to as the “offender”) is said to commit “rape” who commits an act of sexual penetration, on another person (in this section referred to as the “victim”);

20 (b) in paragraph (a) thereof, by the substitution for the words “without her consent even where such woman is his wife”, of the words “without the consent of the victim even where the victim is the wife of the offender”;

25 (c) in paragraph (b) thereof, by the substitution for the words “with her consent, while she

5 was in lawful or unlawful detention or when her consent has been obtained, by use of force or intimidation, or by threat of detention or by putting her”, of the words “with the consent of the victim, while the victim was in lawful or unlawful detention or when the consent has been obtained, by use of force or intimidation, or by threat of detention or by putting the victim”;

10 (d) in paragraph (c) thereof, by the substitution for the words “with her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication induced by alcohol or drugs, administered to her by the man”, of the words  
15 “with the consent of the victim, when the victim’s consent has been obtained at a time when the victim was of unsound mind or was in a state of intoxication induced by alcohol or drugs administered to the victim by the  
20 offender”;

(e) in paragraph (d) thereof, by the substitution for the words “with her consent when the man knows”, of the words “in the case of a female  
25 victim, with her consent when the offender knows”; and

(f) by the repeal of paragraph (e) thereof and the substitution therefor of the following: -

30 “(e) with or without consent when the victim is under sixteen years of age.”;

(3) by the repeal of the explanation to that re-numbered subsection (1);

5 (4) by the addition immediately after the re-numbered subsection (1) of that section, of the following subsection: -

10 “(2) In this section “sexual penetration” means, any act which causes penetration to any extent whatsoever by the genital organ of the offender into or beyond the genital organ, anus or mouth of the victim.

*Explanation -*

15 Evidence of resistance such as physical injuries to the body is not essential to prove that sexual penetration took place without consent.”.

3. Section 364 of the principal enactment is hereby repealed and the following section is substituted therefor: -

Replacement of section 364 of the principal enactment

20 “Punishment for rape 364. (1) Any person (in this section referred to as the “offender”) who commits rape on another person (in this section referred to as the “victim”) shall, except, in the cases provided for in subsections (2) and (3), be punished with rigorous imprisonment for a term not less than seven years and not exceeding twenty years and with fine, and shall in addition be ordered to pay compensation of an amount determined by court, to the victim for the injuries caused to such person.

## (2) An offender who -

- 5 (a) being a public officer or a person in a position of authority, takes advantage of such official position, and commits rape on a victim in the offender's official custody or wrongfully restrains and commits rape on such victim;
- 10
- 15 (b) being on the management or on the staff of a remand home or other place of custody, established by or under law, or of a women's or children's institution, takes advantage of such offender's position and commits rape on any inmate of such remand home, place of custody or institution;
- 20
- 25 (c) being on the management or staff of a hospital, takes advantage of such offender's position and commits rape on a victim in that hospital;
- 30 (d) commits rape on a female victim knowing her to be pregnant;

(e) commits rape on a victim under eighteen years of age;

5

(f) commits rape on a victim who is mentally or physically disabled; or

(g) commits gang rape,

10

shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall in addition be ordered to pay compensation of an amount determined by court to the victim for the injuries caused to such victim:

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Provided however, where an offence under section 363 is committed in respect of a victim of or above fourteen years but under sixteen years of age, by an offender who is under twenty two years of age at the time of the commission of such offence, -

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(a) where it appears to the satisfaction of the court that the sexual penetration had been with the consent of the victim, the court upon conviction may impose a sentence of imprisonment for a term less than ten years:

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Provided however, the court may, in appropriate circumstances suspend the

5 term of imprisonment  
 imposed under this  
 paragraph, subject to the  
 provisions of section 303  
 of the Code of Criminal  
 Procedure Act, No. 15 of  
 1979; or

10 (b) where there is no sufficient  
 evidence to prove to the  
 satisfaction of the court that  
 the sexual penetration had  
 been with the consent of the  
 victim, the court shall  
 15 impose a sentence of  
 imprisonment for a term  
 not less than ten years and  
 not exceeding twenty years  
 and a fine and shall in  
 20 addition order the offender  
 to pay compensation of an  
 amount determined by  
 court to the victim for the  
 injuries caused to such  
 victim.

25 *Explanation 1*

30 Where the offence of rape is committed by one  
 or more persons in a group of persons, each  
 person in such group committing, or abetting  
 the commission of such offence is deemed to  
 have committed gang rape.

*Explanation 2*

“women’s or children’s institution”, means an  
 institution for the reception and care of women  
 or children, howsoever described.



*Explanation 3*

5 “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

*Explanation 4*

“injuries” includes psychological or mental trauma.

10 (3) Any offender who commits rape on a victim under sixteen years of age and the victim stands towards the offender in any of the degrees of relationships enumerated in section 364A shall on conviction be punished with rigorous imprisonment, for a term not less than fifteen years and not exceeding twenty years and with fine.

15 (4) Where an offender fails to pay the compensation ordered to pay under subsection (1) or subsection (2), such offender shall, in addition to the imprisonment imposed on such offender under subsection (1) or subsection (2) be punished with a further term of imprisonment of either description for a term which may extend up to two years.”

20 **4.** In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency

