

## THE APARAJITA BILL – UNDEFEATED WOMEN

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### INTRODUCTION

The recent introduction of the 'Aparajita Anti-Rape Bill'<sup>117</sup> by the West Bengal Chief Minister Mamata Banerjee in the West Bengal Assembly marks a significant legislative step towards addressing the alarming rise in sexual offenses against women and children in the state. Named after the term "Aparajita," meaning "undefeated," the bill aims to provide justice to victims of heinous crimes like rape and child abuse by implementing stricter punishments, including the death penalty. The proposal comes in the wake of public outrage over the brutal rape and murder of a young woman doctor at the state-run RG Kar Medical College and Hospital<sup>118</sup> in Kolkata, underlining the urgent need for reform. The bill not only amends specific provisions of the Bharatiya Nyaya Sanhita (BNS) 2023, but also seeks to create a more victim-centric legal framework. This article explores the intricacies of the Aparajita Bill, its key provisions, relevant case laws, its potential impact on improving law and order, and how it can be effectively implemented in other states across India.



<sup>117</sup> Bill No. 13 of 2024

<sup>118</sup> In Re: Alleged Rape and Murder of Trainee Doctor in RG Kar Medical College Hospital, Kolkata and related Issues. (The matter is sub-judice in the Hon'ble Supreme Court of India).

## BACKGROUND AND NEED FOR THE APARAJITA BILL

West Bengal has witnessed increasing concerns over crimes against women, particularly sexual offenses. The brutal rape and murder of the trainee woman doctor in Kolkata triggered widespread protests, with demands for more stringent laws and faster justice. While the Bharatiya Nyaya Sanhita, the new criminal code introduced in India, provides penalties for crimes like rape and child abuse, the Aparajita Bill goes further by intensifying these penalties and setting up additional mechanisms to ensure justice is delivered more efficiently and comprehensively.

Section 64<sup>119</sup> of the Bharatiya Nyaya Sanhita, for instance, stipulates a punishment of imprisonment for at least ten years, extendable to life for those convicted of rape. However, the Aparajita Bill takes a bolder approach by mandating that life imprisonment should mean the remainder of the convict's natural life and introducing the death penalty in certain cases, such as when the victim dies or is left in a permanent vegetative state. The bill also extends its scope by incorporating amendments to Section 66<sup>120</sup>, further escalating penalties where appropriate. The introduction of these stringent laws is reflective of a broader trend across the world to make laws tougher on crimes like rape to protect vulnerable populations better.

## JUDICIAL ANALYSIS

Several landmark cases in India have shaped the discourse around rape laws, contributing to legislative reforms like the Aparajita Bill. The notable development that came from the judiciary is when it was stuck with the issue of dealing with sexual harassment of women at workplaces when none of the laws existed to decide the matter in the case of *Vishaka & Ors. v. State of Rajasthan & Ors.*<sup>121</sup> The Hon'ble Supreme Court of India recognized the absence of a law specifically designed to prevent sexual

harassment and ensure a safe working environment for women. While Sections 354 and 354A of the Indian Penal Code, 1860, were applicable in cases of sexual harassment, they were not tailored to address the issue comprehensively. This highlighted the need for dedicated legislation to effectively address sexual harassment. To proceed with the case, the Hon'ble Court drew upon international conventions, citing the Beijing Statement of Principles on the Independence of the Judiciary<sup>122</sup> in the LAWASIA region. This allowed the judiciary to act as a protector of citizens' rights and create legal guidelines in the absence of specific legislative provisions. The Court also referred to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>123</sup> The Hon'ble Supreme Court framed the guidelines to prevent sexual harassment at the Workplace, known as Vishaka Guidelines, that were to be treated as law declared under Article 141 of the Indian Constitution. These guidelines were the foundation for The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

One of the most significant cases is the *Nirbhaya case*<sup>124</sup> of 2012, which brought about nationwide protests and led to amendments in the Indian Penal Code, including the introduction of the death penalty for certain cases of rape. The case centered around the gang rape and subsequent death of a young woman in Delhi, which highlighted the failures of the legal system in addressing crimes against women and underscored the need for stricter laws and faster trials. This case was a key factor behind the Criminal Law (Amendment) Act, 2013, which introduced harsher penalties for rape, including life imprisonment and the death penalty for certain offenses.

<sup>119</sup> The Bharatiya Nyaya Sanhita, 2023.

<sup>120</sup> Ibid.

<sup>121</sup> (1997) 6 SCC 241

<sup>122</sup> <https://www.icj.org/wp-content/uploads/2014/10/Beijing-Statement.pdf>  
Last accessed on 16th September, 2024 at 13.14 PM.

<sup>123</sup> <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx#:~:tex=t=Introduction,twentieth%20country%20had%20ratified%20it>. Last accessed on 16th September, 2024 at 13.01 PM.

<sup>124</sup> *Mukesh & Anr. v. State for NCT of Delhi & Ors.*, AIR 2017 SC 2161.

In a similar vein, the *Shakti Mills gang rape case*<sup>125</sup> in Mumbai in 2013 led to amendments to the law where repeat offenders could be sentenced to death. The Aparajita Bill draws inspiration from such cases, particularly in its focus on repeat offenders, proposing life imprisonment or the death penalty for those found guilty of multiple sexual offenses. Another noteworthy case is the *Kathua rape and murder case* of 2018<sup>126</sup>, where an eight-year-old girl was brutally raped and murdered in Jammu and Kashmir. This case stirred national consciousness about the vulnerabilities faced by children in India, leading to calls for the introduction of stricter penalties for child abuse, as seen in the Aparajita Bill.

These cases reflect the public demand for legislative changes to ensure that justice is swift, and penalties are severe enough to act as a deterrent. The Aparajita Bill builds on these precedents by introducing fast-track investigation processes, specialized courts, and victim-centered approaches to make the legal system more effective in dealing with such cases.

#### KEY PROVISIONS OF THE APARAJITA BILL

The Aparajita Anti-Rape Bill proposes several amendments to the Bharatiya Nyaya Sanhita and introduces new provisions designed to address sexual offenses against women and children more stringently. Some of the key features of the bill include:

1. **Death Penalty for Rape Leading to Death or Vegetative State**<sup>127</sup>: Under the Aparajita Bill, a person convicted of rape, which results in the death of the victim or leaves her in a permanent vegetative state, will face the death penalty. This is a notable deviation from the BNS, which provides alternative punishments, including life imprisonment<sup>128</sup>.

2. **Mandatory Life Imprisonment for Rape Convicts**<sup>129</sup>: The bill mandates life imprisonment for those convicted of rape or gang rape, ensuring they remain incarcerated for the rest of their natural lives. This provision aims to remove the possibility of early release or parole for offenders.
3. **Stringent Punishments for Repeat Offenders**<sup>130</sup>: The bill proposes life imprisonment or the death penalty for repeat offenders, with additional fines in specific circumstances. This move is intended to deter individuals who may otherwise reoffend.<sup>131</sup>
4. **Fast-Track Investigations and Courts**<sup>132</sup>: To ensure speedy trials, the Aparajita Bill mandates that investigations into rape cases be completed within 21 days, with a possible 15-day extension. Additionally, it calls for the establishment of 52 special courts across the state, dedicated to handling cases of sexual offenses against women and children.
5. **Victim Compensation and Rehabilitation**<sup>133</sup>: The bill mandates that fines imposed on offenders be used to cover the medical expenses and rehabilitation costs of victims, ensuring that they receive support throughout the legal process and afterward.<sup>134</sup>
6. **Privacy Protections for Victims**<sup>135</sup>: In order to protect the dignity and privacy of victims, the bill introduces penalties for unauthorized publication or printing of court proceedings related to rape cases.<sup>136</sup>

<sup>129</sup> Section 4 of the Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024 read with Section 64 of the Bharatiya Nyaya Sanhita, 2023.

<sup>130</sup> Section 71 of the Bharatiya Nyaya Sanhita, 2023.

<sup>131</sup> Section 8 of the Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024.

<sup>132</sup> Section 29A of the Bharatiya Nagrik Suraksha Sanhita, 2023 (Chapter IIIA of the BNSS, 2023).

<sup>133</sup> Section 4(1)(b) of the Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024.

<sup>134</sup> Amendment of Section 461 of the Bharatiya Nagrik Suraksha Sanhita, 2023.

<sup>135</sup> Section 72(1) of the Bharatiya Nyaya Sanhita, 2023.

<sup>136</sup> Section 9 of the Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024.

<sup>125</sup> Vijay Yadav v. The State of Maharashtra & Anr., Sessions Case No. 846 of 2013.

<sup>126</sup> Arising out of the SLP (Criminal) No. 11220 of 2019

<sup>127</sup> Section 66, The Bharatiya Nyaya Sanhita, 2023.

<sup>128</sup> Section 6 of the Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024.

### UTILITY AND IMPACT ON LAW AND ORDER

The Aparajita Anti-Rape Bill has the potential to significantly improve law and order in West Bengal by acting as a deterrent to potential offenders and ensuring that those convicted of sexual offenses face severe consequences. The bill's provisions on speedy investigations and fast-track courts will help reduce the backlog of cases, ensuring that justice is delivered swiftly and preventing delays that often cause further trauma to victims and their families.

Moreover, the creation of specialized task forces and courts will enhance the state's capacity to handle complex cases of rape and child abuse, streamlining investigations and reducing the burden on the existing legal system. The bill's focus on victim compensation and rehabilitation ensures that survivors of sexual offenses are not only given justice but also the support needed to rebuild their lives.

### RECOMMENDATIONS FOR IMPLEMENTATION IN OTHER STATES

The Aparajita Bill's emphasis on strict penalties and swift justice offers a model that could be effectively implemented in other Indian states facing similar issues. However, for the law to be successful across the country, several factors need to be considered:

1. **Uniformity in Legislation:** States could adopt a uniform approach to sexual offense laws by amending their own legal codes in line with the Aparajita Bill. This would help create a cohesive national framework for addressing crimes against women and children.
2. **Infrastructure for Fast-Track Courts:** Other states should establish specialized fast-track courts to handle cases of sexual offenses. These courts would need to be staffed with trained judges and support personnel to ensure they function efficiently.
3. **Training for Law Enforcement:** Proper training should be provided to law enforcement officers to handle sensitive cases involving rape and child abuse. The success of such laws depends on

the ability of police and investigative agencies to gather evidence swiftly and treat victims with care.

4. **Public Awareness Campaigns:** States should also launch awareness campaigns to educate the public about the new laws and the severe penalties for sexual offenses. This would help create a cultural shift toward zero tolerance for such crimes.
5. **Victim Support Mechanisms:** Adequate resources should be allocated for the rehabilitation and support of victims, including medical care, counseling, and legal assistance.

### CONCLUSION

The Aparajita Anti-Rape Bill represents a bold step towards ensuring justice for victims of sexual offenses and improving the legal system's response to these heinous crimes. By introducing stringent penalties, fast-tracking investigations and trials, and focusing on victim-centered justice, the bill aims to protect the rights of women and children and deter future offenses. Its successful implementation in West Bengal could serve as a model for other states to follow, creating a safer environment for all citizens. If adopted nationwide, such reforms could pave the way for a more effective legal framework to combat rape and child abuse in India.