



महाराष्ट्र शासन राजपत्र

असाधारण भाग पाच-अ

वर्ष ८, अंक २(५)]

सोमवार, मार्च ७, २०२२/फाल्गुन १६, शके १९४३

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असाधारण क्रमांक ६

प्राधिकृत प्रकाशन

महाराष्ट्र विधानसभेत व महाराष्ट्र विधानपरिषदेत सादर केलेली विधेयके (इंग्रजी अनुवाद).

MAHARASHTRA LEGISLATURE SECRETARIAT

The following report of the Joint Committee on the a Bill to provide for establishment of exclusive special court for the speedy trial of certain specified offences against women and children and constitution of implementation machinery for such offences and for matters connected therewith or incidental thereto which was presented to the Maharashtra Legislative Assembly on the 7th March, 2022 is, in accordance with the provisions of sub-rule (4) of Rule 129 of the Maharashtra Legislative Assembly Rules, published for general information :—

Constitution of a Joint Committee of both the Houses on

L. A. Bill No. LII of 2020 - Maharashtra Exclusive Special Courts (for certain offences against Women and Children under SHAKTI Law) Bill, 2020

Shri Dilip Walse-Patil, Hon. Home Minister – Chairman of the Committee Member :

1. Shri Jitendra Awhad, Hon. Minister for Housing
2. Adv. Anil Parab, Hon. Minister for Parliamentary Affairs
3. Shri Suresh Warpudkar, M.L.A.
4. Shri Deepak Kesarkar, M.L.A.
5. Smt. Praniti Shinde, M.L.A.
6. Smt. Madhuri Misal, M.L.A.
7. Shri Sunil Prabhu, M.L.A.
8. Smt. Manisha Choudhari, M.L.A.
9. Smt. Devyani Pharande, M.L.A.
10. Dr. Bharati Lavekar, M.L.A.

(१)

11. Adv. Rahul Narvekar, M.L.A.
12. Smt. Saroj Ahire, M.L.A.
13. Smt. Yamini Yashwant Jadhav, M.L.A.
14. Shri Rais Shaikh, M.L.A.
15. Smt. Shweta Mahale, M.L.A.
16. Shri Shashikant Shinde, M.L.C.
17. Shri Vijay *Alias* Bhai Girkar, M.L.C.
18. Shri Kapil Patil, M.L.C.
19. Shri Vinayak Mete, M.L.C.
20. Shri Amol Mitkari, M.L.C.
21. Dr. Pradnya Satav, M.L.C.

Invitee Members :

1. Smt. Manisha Kayande, M.L.C.
2. Smt. Pratibha Dhanorkar, M.L.A.**

** **Has been appointed as an invitee member by the Hon. Deputy Speaker, Maharashtra Legislative Assembly, on 27th January, 2022.**

The Maharashtra Legislature Secretariat :

- (1) Shri Rajendra Bhagwat, Principal Secretary
- (2) Shri Shivdarshan Sathye, Deputy Secretary
- (3) Shri Subhash Nalawade, Under Secretary
- (4) Shri G. D. Debadwar, Under Secretary (Committee)
- (5) Shri Nagsen Bansode, Section Officer
- (6) Shri Anand Telang, Assistant Section Officer

Officers from Mantralaya :

- (1) Shri Manukumar Srivastava, Additional Chief Secretary, Home Department.
- (2) Shri Anand Limaye, Additional Chief Secretary (Appeal and Security), Home Department.
- (3) Shri N. P. Dhote, Principal Secretary, (Legal Remembrancer), Law and Judiciary Department.
- (4) Shri Sanjay Saxena, Principal Secretary, Home (Special) Department.
- (5) Shri Satish Waghole, Secretary (Legislation), Law and Judiciary Department.
- (6) Shri Rahul Kulkarni, Joint Secretary, Home Department.
- (7) Smt. Mugdha Sawant, Joint Secretary, Law and Judiciary Department.
- (8) Shri N. M. Pusnake, Under Secretary, Law and Judiciary Department.

**Report of the Joint Committee on L. A. Bill No. LII of 2020—
Maharashtra Exclusive Special Courts (for certain offences against Women and
Children under SHAKTI Law) Bill, 2020.**

L. A. Bill No. LII – Maharashtra Exclusive Special Courts (for certain offences against Women and Children under SHAKTI Law) Bill, 2020 was referred for consideration to this Joint Committee. As a Chairman of this Committee, I have been authorised to present this report on its behalf. So, I am hereby presenting this report along with the aforesaid Bill containing amendments made in it by the Committee.

This bill was introduced in the Maharashtra Legislative Assembly on 14th December, 2020. The motion to refer the said Bill for consideration to a Joint Committee of both the Houses was adopted by the Legislative Assembly on 27th December, 2021 after getting the concurrence of the Legislative Council.

The Committee convened total 04 (four) meetings. The first meeting of the Committee was held on 1st February, 2022 to pinpoint certain initial matters. During this meeting, it was decided to solicit amendments/suggestions from the members of Joint Committee upto 10th February, 2022. Accordingly, the Hon. Members of Joint Committee were informed through letters. After compiling the suggestions/amendments received from the Members of the Joint Committee, its printed copies were distributed among them on 14th February, 2022.

This Joint Committee in its two meetings convened on 16th February, 2022 and 22nd February, 2022, considered the aforesaid Bill clause by clause while paying due attention to the various suggestions/amendments received from all the concerned. Accordingly, the Committee finalised the amendments to be carried out in the Bill. The Committee accepted this report along with the amendments during its meeting held on 3rd March, 2022

The Report

At the outset, it is necessary to understand the aims and objectives of L.A. Bill No. LII of 2020 - Maharashtra Exclusive Special Courts (for certain offences against Women and Children under SHAKTI Law) Bill, 2020.

Both the Houses have passed L. A. Bill No. LI - SHAKTI Criminal Laws (Maharashtra Amendment) Bill, 2020 proposing stringent punishments to the offenders involved in the incidents of offences on Women and Children. Hence, it has become imperative to avoid unnecessary delay in the implementation of punishments proposed against specific offences in the said Bill. Otherwise, it will defeat the very objective of the Bill to cause deterrent effect on the offenders. Hence, the present Bill is moved for establishment of exclusive special courts for conviction, speedy trial of certain specified offences against Women and Children.

An established procedure exists in the rules of business of the legislature for passage of Bills. As a part of such procedure, a draft of legislation received from a Member in-charge by the Legislature is referred to as the Bill. Once such Bill is passed by the Legislature, it is converted into an Act. Generally, the long title, the enacting clause, short title followed by clauses and schedules constitutes the parts of a Bill. The Long title provides the summarised description of the purpose of the Bill.

The Long title of L. A. Bill No. LII of 2020 - Maharashtra Exclusive Special Courts (for certain offences against Women and Children under SHAKTI Law) Bill, 2020, mentions that, "A bill to provide for establishment of exclusive special courts for the speedy trial of certain specified offences against women and children and constitution of implementation machinery for such offences and for matter connected therewith or incidental thereto." The said bill provides for establishment of special courts for conducting hearing of offences against women and children. As it will be possible under the present Bill to establish exclusive special courts for the speedy trial of certain specified offences against women and children, the Committee, on further deliberation in its meeting, has decided that, to achieve the said objective the existing courts be accorded the status of exclusive special courts designate them for speedy trial on case-to-case basis. Therefore, in long title of the Bill, after the word "Establishment" the words "or Designating" shall be inserted. Accordingly, an amendment to this effect is proposed. Consequential amendment is also proposed in the enacting clause of the Bill, Clause 2 (b), title of Chapter II, sub-clause (1) of Clause 3 and in its marginal note.

As per the prevailing practice, numerical years during which a Bill is to be enacted is mentioned in the enacting clause of the Bill. This numerical year is counted from the day our country was declared as a republic by the Constitution of India *i.e.* from 26th January, 1950. The present Bill was introduced in year 2020 and accordingly, the enacting clause of the Bill mentions the enacting year as "Seventy First". However, the current year is 2022 and hence in the committee's opinion it is necessary to mention enacting year as "Seventy-Third" in the enacting clause of the Bill. Accordingly the said amendment is proposed.

Observations of the Committee in respect of amendments to various clauses of the Bill are laid in detail in following paras.

Clause 1 : Information regarding short title, extent and commencement has been provided in this clause.

In Sub-clause (1), the expression "Maharashtra Exclusive Special Courts (for certain offences against women and children under SHAKTI Law) Act, 2020" has been provided.

The said Bill was introduced in the Legislative Assembly in the year 2020 and thereafter the same was referred to a Joint Committee of both the Houses on 27th December, 2020 for presenting its report thereon. As the Committee has not yet submitted its report, a technical amendment is proposed in this sub-clause by incorporating the year as 2022".

Clause 5 : This clause provides that the exclusive special court shall exclusively conduct trials of specified offences within its jurisdiction other than the offence with which the accused may be charged under the code.

In the Marathi version of the Bill, the Committee has found that language of the wording of said clause do not reflect the correct position and has proposed appropriate changes accordingly. However, in the English version of the Bill, the Committee has decided to retain the construction of the said clause.

Clause 7 : The sub-clause (1) of this clause provides for appointment of a Special Public Prosecutor for the purpose of conducting trials of specified offences before Exclusive Special Courts. However, the said sub-clause may be interpreted to mean that only a single Special Public Prosecutor may be appointed for all cases involving offences committed against women

and children in a district and that only this single Prosecutor is to handle all the said cases. Hence, the Committee deemed it appropriate to modify the same. Accordingly, the Committee suggested an amendment that after the words “a Special Public Prosecutor” the words “or one or more Additional Special Public Prosecutors” be substituted. Accordingly, the said amendment has been proposed in sub-clause (1).

Sub-clause (4) provides that the tenure of the Special Public Prosecutor so appointed on a case to case basis shall be for the duration of the trial of the concerned offence.

The Committee is of the opinion that, since the tenure of the said Special Public Prosecutor has been extended till the duration of the case, the prevailing provision might render it impossible to remove the Special Public Prosecutor from the case even if he fails to present the concerned matter before the Court with requisite competence and effectiveness and consequently may affect conviction. Therefore the Committee opined that it is imperative on the part of the Government to wield the powers to change Special Public Prosecutor and appoint any other in his place at any stage of the case. Hence, the Committee decided to delete the sub-clause (4) in its entirety. An amendment to that effect has been proposed in the bill.

Clause 8 : This clause provides for constitution of a Special Police Team by the State Government for investigating specified offences. Under the said clause, every such team is to be headed by an officer of the rank of Deputy Superintendent of Police, the officers of Crime Branch of the District or Commissionerate along with at least one woman police officer and women personnel.

After weighing pros and cons of the provisions made in this clause, the Committee noticed that, under prevalent procedures, a complaint of an offence committed at a place is to be made in the concerned police station having jurisdiction over the said place. However, in a case as mentioned above, an issue of jurisdiction of a police station may arise since there is no clarity for deciding whether the F.I.R. is to be filed in the concerned police station or with Special Police Team constituted for the purpose. Hence, with a view to maintain jurisdictions of police stations unaffected as well as to bring clarity in who is to handover investigation of specific offences to the aforesaid team and to increase the number of such of teams in consideration of the volume of crimes, the Committee has decided to rewrite the draft of the said clause to lay down fixed provisions in this regard. Accordingly, a decision has been taken to accept the following revised draft for Clause 8 instead of the existing Clause 8 as follows :—

Clause 8 : “(1) The State Government, shall constitute a district or Commissionerate Special Police Team or additional police team, headed by an officer of the rank of Deputy Superintendent of Police, at the district or Commissionerate level, for investigating the specified offences. In every such team, at least one woman police constable and woman personnel shall be included.

Provided that, priority shall be given to the officers of Crime Branch of district or Commissionerate in the Special Police Team.

(2) Police Superintendent, or as the case may be, the Police Commissioner, after considering the seriousness and sensitivity of the offence, shall have the right to handover the investigation of any specified offence to such Special Police Team.

(3) The investigation of the specified Offences shall be carried out by the Special Police Team. The Team shall be assisted by the other officers and shall be supported by equipment and personnel as required for the investigation.

Clause 10 : This Clause provides for operating and maintaining a register in electronic form to be called as "Women and Child Offenders Registry" in which the full details of the persons convicted of specified offences shall be maintained.

In the Marathi version of the Bill, the Committee has proposed an amendment that for the words "Veejkiya (Electronic)" the words "Electronic" shall be substituted since it is an established term in the spoken language and easy to understand. However, in the English version of the Bill, the Committee has decided to retain the word "Electronic" in the said clause.

The Changes made by the Committee in other Clauses are of minor consequences drafting point of view.

Vidhan Bhavan :
Mumbai,
Dated 3rd March, 2022.

DILIP WALSE-PATIL,
Committee Chairman.

[Note:— Deletions made by the Joint Committee are shown in square brackets and additions are either underlined or side-lined.]

L. A. BILL No. LII OF 2020.

A BILL

to provide for establishment or designation of exclusive special courts for the speedy trial of certain specified offences against women and children and constitution of implementation machinery for such offences and for matters connected therewith or incidental thereto.

(As Amended by the Joint Committee)

WHEREAS it is expedient to provide for establishment or designation of exclusive special courts for the speedy trial of certain specified offences against women and children and constitution of implementation machinery for such offences and for matters connected therewith or incidental thereto; it is hereby enacted in the [Seventy-first] Seventy-third Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Maharashtra Exclusive Special Courts Act, [2020] 2022. Short title,
extent and
commencement.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “Code” means the Code of Criminal Procedure, 1973;

2 of 1974.

(b) “Exclusive Special Court” means the Exclusive Special Court established or designated under section 3 of this Act;

(c) “Government” means the Government of Maharashtra;

(d) “prescribed” means prescribed by rules made under this Act;

(e) “specified offences” means the offences against women and children punishable under sections 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E of the Indian Penal Code and under the Protection of Children against Sexual Offences Act, 2012;

45 of 1860.

32 of 2012.

(g) “State” means the State of Maharashtra.

(2) Words and expressions used hereinafter in this Act and not defined herein but defined in the Code of Criminal Procedure, 1973 or the Protection of Children against Sexual Offences Act, 2012, shall have the same meaning as respectively assigned to them in the Code or the Protection of Children from Sexual Offences Act, 2012.

2 of 1974.

32 of 2012.

32 of 2012.

CHAPTER II

ESTABLISHMENT OR DESEGNATION OF EXCLUSIVE SPECIAL COURTS

Establishment
or Designation
of Exclusive
Special Courts.

3. (1) The Government shall, in consultation with the High Court, for the purpose of speedy trial of specified offences, by notification in the *Official Gazette*, establish or designate in each district, one or more Exclusive Special Courts.

(2) An Exclusive Special Court shall be presided over by a Judge to be nominated by the Government with the concurrence of the High Court.

(3) No person shall be qualified for nomination as a Judge of Exclusive Special Court unless he is or has been an Additional Sessions Judge or Sessions Judge in the State.

Cognizance of
cases by
Exclusive
Special Courts.

4. Notwithstanding anything contained in the Code, the Exclusive Special Court shall take cognizance of specified offences.

Jurisdiction of
Exclusive
Special Courts.

5. (1) The Exclusive Special Court shall exclusively conduct trials of specified offences within its jurisdiction.

(2) While trying an offence under the Exclusive Special Court, an offence (other than the offence referred to in sub-section (1), with which the accused may be charged under the Code, shall also be tried by the Exclusive Special Court under the same trial.

Working of
Exclusive
Special Courts.

6. The provisions of the Code, shall apply to the proceedings before the Exclusive Special Court and for the purposes of the said provisions, the Exclusive Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before Exclusive Special Court, shall be deemed to be a Public Prosecutor :

32 of
2012.

Provided that, in respect of the offences punishable under the Protection of Children against Sexual Offences Act, 2012, all the provisions of that Act shall *mutatis mutandis* apply.

7. (1) The State Government shall, by notification in the *Official Gazette*, appoint [a Special Public Prosecutor] one Special Public Prosecutor and One or more additional Special Public Prosecutors for the purpose of conducting the trials before the Exclusive Special Courts.

Special Provisions relating to Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1), only if he has been in practice as an advocate for not less than seven years.

(3) The Special Public Prosecutor appointed under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code and the provisions of that Code shall have effect accordingly.

[(4) The tenure of the Special Public Prosecutor so appointed on a case to case basis shall be for the duration of the trial of the concerned offence.]

CHAPTER III

CONSTITUTION OF SPECIAL POLICE TEAMS

8. (1) The State Government shall constitute a Special Police Team at District or Commissionerate Level to be called the District or Commissionerate Special Police Team headed by an officer of the rank of Deputy Superintendent of Police, for investigating the specified offences.

Constitution of Special Police Teams.

(2) The officers of Crime Branch of the District or Commissionerate shall be appointed in the Special Police Team.

(3) The investigation of the specified offences shall be carried out by said officers of Special Police Team. The team shall be assisted by other officers on a case to case basis and shall be supported by equipment and personnel as required, for the investigation :

Provided that, every such team shall consist of at least one woman police officer and women personnel.]

“8. (1) The State Government shall constitute one or more Special Police Teams at District or Commissionerate level to be called the District or Commissionerate Special Police Teams headed by an officer of the rank of Deputy Superintendent of Police. Every such team shall include at least one woman police officer and women personnel :

Provided that, preference shall be given to the officers of Crime Branch of the District or Commissionerate, for appointment in the Special Police Team.

(2) The Superintendent of Police or Commissioner of Police, as the case may be, shall have the power to assign the investigation of any specified offence to such Special Police Team, in view of its seriousness and sensitivity of the offence.

(3) The investigation of such assigned specified offence shall be carried out by the Special Police Team, which shall be assisted by other officers and shall be supported by equipment and personnel, as required for the investigation.”.

CHAPTER IV

CONSTITUTION OF INSTITUTIONS FOR
PROVIDING SERVICES TO VICTIMS

Establishment
or designate
of institutions
providing
services to
victims.

9. The State Government shall establish or designate institutions (One-stop Centres, Trauma Centres, *Swadhar Gruha*, *Ujwala* Centres, etc.) for providing services to victims of the specified offences, including providing medical or psychiatric support and care, psychiatric counselling, facilitating legal aid and financial aid and rehabilitation in co-ordination with the concerned agencies, specially endowed with the said function by the Government.

CHAPTER V

WOMEN AND CHILDREN OFFENDERS REGISTRY

Establishment
of Women and
Children
Offenders
Registry.

10. (1) The State Government shall establish, operate and maintain a register, in electronic form, to be called the “Women and Children Offenders Registry”, in which the full details of the persons convicted of specified offences shall be maintained and made available to law enforcement agencies.

(2) This Registry shall be linked to the National Registry of Sexual Offenders.

CHAPTER VI

MISCELLANEOUS

Overriding
effect over any
other laws.

11. The provisions of this Act shall be in addition to and not in derogation to the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of inconsistency.

Protection of
action taken
in good faith.

12. No suit, prosecution or other legal proceedings shall lie against the Government, or any officer or employee of the Government for anything done or purported to have been done in good faith, in pursuance of the provisions of this Act or the rules made thereunder.

Power to
make rules.

13. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of the Act.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the *Official Gazette*, the rule shall from the date of publication of such decision in the *Official Gazette*, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

14. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order, published in the *Official Gazette*, do anything, not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purposes of removing the difficulty :

Power to remove difficulty.

Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

Vidhan Bhavan :

Mumbai,

Dated the 7th March 2022.

RAJENDRA BHAGWAT,

Principal Secretary,

Maharashtra Legislative Assembly.