



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष ६, अंक ४५(८) | सोमवार, डिसेंबर १४, २०२०/अग्रहायण २३, शके १९४२ [पृष्ठे १६, किंमत : रुपये २७.००]

असाधारण क्रमांक ९४

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of *SHAKTI Criminal Laws (Maharashtra Amendment) Bill, 2020* (L. A. Bill No. LI of 2020), introduced in the Maharashtra Legislative Assembly on the 14th December 2020, is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

BHUPENDRA M. GURAO,
I/c. Secretary (Legislation) to Government,
Law and Judiciary Department.

L. A. BILL No. LI OF 2020

A BILL

further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012, in their application to the State of Maharashtra.

WHEREAS it is expedient further to amend the Indian Penal Code, the 45 of 1860. Code of Criminal Procedure, 1973 and the Protection of Children from 2 of 1974. Sexual Offences Act, 2012, in its application to the State of Maharashtra, 32 of 2012. for the purposes hereinafter appearing; it is hereby enacted in the Seventy-first Year of the Republic of India as follows :—

(१)

CHAPTER I PRELIMINARY

Short title,
extent and
commencement.

1. (1) This Act may be called the *SHAKTI* Criminal Laws (Maharashtra Amendment) Act, 2020.

(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.

CHAPTER II AMENDMENTS TO THE INDIAN PENAL CODE.

Amendment of
section 166A of
45 of 1860.

2. In section 166A of the Indian Penal Code, in its application to the State of Maharashtra (hereinafter, in this Chapter, referred to as “the Penal Code”),—

45 of
1860.

(1) in clause (c), after the word and figures “section 509” the word “or” shall be added;

(2) after clause (c), the following clause shall be added, namely :-

“(d) deliberately fails to obey the specific directions given by the police officer in the investigation of offences punishable under section 326A, section 326B, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E, as required under section 100 of the Criminal Procedure Code, 1973.”.

2 of 1974.

Insertion of
section 175A
in 45 of 1860.

3. After section 175 of the Penal Code, the following section shall be inserted, namely :—

Failure to
share data for
police
investigation.

“**175A.** Notwithstanding anything contained in any law for time being in force, any social media platform or internet or mobile telephony data provider including any intermediary or custodian who fails to share any data including document or electronic record with the Investigation Officer as requested, for the purpose of investigation of offence punishable under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 354E, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E, within a period of seven working days from receiving request shall be punished with simple imprisonment for a term which may extend to one month or a fine of five lakh rupees, or with both.”.

4. After section 182 of the Penal Code, the following section shall be inserted, namely :—
- Insertion of section 182A in 45 of 1860.
- “**182A.** Any person, who makes false complaint or provides false information against any person, in respect of an offence punishable under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 354E, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E, solely with the intention to humiliate, extort, threaten, defame or harass, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.”
- Punishment for false complaint or false information to public servant of certain offences.
5. In section 228A of the Penal Code, in sub-section (1), for the portion beginning with the words, figures and letter “section 376, section 376A” and ending with the word, figures and letter “section 376E”, the following shall be substituted, namely :—
- Amendment of section 228A of 45 of 1860.
- “section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 354E, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E”.
6. In section 326A of the Penal Code,—
- Amendment of section 326A of 45 of 1860.
- (a) for the portion beginning with the words “shall be punished with imprisonment” and ending with the words “and with fine”, the following shall be substituted, namely :—
- “shall be punished,—
- (a) with imprisonment for a term which shall not be less than ten years but which may extend to the remainder of the natural life of such person and with fine; or
- (b) in cases which have the characteristic of the offence is heinous in nature and where adequate conclusive evidence is there and the circumstances warrant exemplary punishment, with death”;
- (b) in the first proviso, after the words “medical expenses” the words “including expenses for plastic surgery and face reconstruction” shall be added.
7. In section 326B of the Penal Code, for the portion beginning with the words “shall be punished with imprisonment” and ending with the words “extend to seven years,”, the following shall be substituted, namely :—
- Amendment of section 326B of 45 of 1860.
- “shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to ten years.”.

Insertion of
section 354E
in 45 of 1860.

8. After section 354D of the Penal Code, the following section shall be inserted, namely :—

Intimidating
woman by
any mode
of
communication,
in addition
to insulting
her modesty.

“354E. Whoever intentionally does any act to create a sense of danger, intimidation or fear to a woman, in addition to insulting her modesty, by any act, deed or words including,—

(a) offensive communication by telephone, email, social media platform or through any other electronic or digital mode of communication in a manner which is of lascivious or lewd nature; or

(b) threat to upload or disseminates any sound or video file including a real or fabricated depiction of any part of the body of that woman including the involvement of that woman in any sexual act through electronic or any other form of media; or

(c) use of social electronic media or any other media in any form to defame or cause disrepute to that woman; or

(d) use of that woman's name, particulars, photographs or any other means of identification to directly or indirectly outrage her modesty or violate her privacy,

shall be punished with imprisonment of either description for a term which may extend to two years and with fine which may extend up to one lakh rupees.”.

Amendment
of section 376
of 45 of 1860.

9. In section 376 of the Penal Code,—

(a) in sub-section (1), after the words “shall also be liable to fine” the words “or in cases which have the characteristic of offence is heinous in nature and where adequate conclusive evidence is there and the circumstances warrant exemplary punishment, with death” shall be added;

(b) in sub-section (2),—

(i) after clause (f), the following clause shall be inserted, namely :—

“(f-1) being on the management or employed by the management including staff or contractual employee for the purpose of providing security and maintenance of building or any public utility service inside building or within building complex whether regulated by law or otherwise, commits rape on a woman in such area; or”;

(ii) after the words “shall also be liable to fine” the words “or in cases which have the characteristic of offence is heinous in nature and where adequate conclusive evidence is there and the circumstances warrant exemplary punishment, with death” shall be added;

(c) in sub-section (3), after the words “shall also be liable to fine” the words “or in cases which have the characteristic of offence is heinous in nature and where adequate conclusive evidence is there and the circumstances warrant exemplary punishment, with death” shall be added.

10. In section 376D of the Penal Code, after the words “and with fine” the words “or in cases which have the characteristic of offence is heinous in nature and where adequate conclusive evidence is there and the circumstances warrant exemplary punishment, with death” shall be added.

Amendment of section 376D of 45 of 1860.

11. In section 376DA of the Penal Code, after the words “and with fine” the words “or in cases which have the characteristic of offence is heinous in nature and where adequate conclusive evidence is there and the circumstances warrant exemplary punishment, with death” shall be added.

Amendment of section 376DA of 45 of 1860.

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973.

2 of 1974. **12.** After section 37 of the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra (hereinafter, in this Chapter, referred to as “the Code of Criminal Procedure”), the following section shall be inserted, namely :—

Insertion of section 37A in 2 of 1974.

45 of 1860.
32 of 2012. **“37A.** Every social media platform or internet or mobile telephony data provider, including any intermediary or custodian shall be bound to share any data, including the document or electronic record to the Investigation Officer on demand, for the purpose of investigation of offence, punishable under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 354E, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, or any offence punishable under the Protection of Children from Sexual Offences Act, 2012.”.

Providing data for police investigation

13. In section 39 of the Code of Criminal Procedure, in sub-section (1),—

Amendment of section 39 of 2 of 1974.

(1) after clause (v), the following clauses shall be inserted, namely:-

“(v-1) sections 326A and 326B (that is to say, offences related causing grievous hurt by use of acid and attempting to throw acid, etc);

(v-2) sections 354, 354A, 354B, 354C, 354D and 354E (that is to say, offences related to assault to outrage modesty, sexual harassment, disrobe, voyeurism, stalking, harassment of woman by any mode of communication, etc.);”;

(2) after clause (va), the following clause shall be inserted, namely:

“(vb) sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB and 376E, both inclusive (that is to say, offences related to rape and gang rape, etc.);”.

Amendment
of section 100
of 2 of 1974.

14. In section 100 of the Code of Criminal Procedure, in sub-section (4), the following proviso shall be added, namely :—

“Provided that, in case of offences under section 326A, section 326B, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code and the offences under the Protection of Children from Sexual Offences Act, 2012, the person conducting the search shall call upon two public servants or two social workers recognized by the Women and Child Development Department of Government of Maharashtra, who are available in the locality in which the place to be searched is situated. Where, such public servants are not available despite diligent efforts, the person conducting the search shall, after recording in writing the same, follow the procedure provided in this sub-section.”.

45 of 1860.

32 of 2012.

Amendment
of section 164
of 2 of 1974.

15. In section 164 of the Code of Criminal Procedure, in sub-section (5A), in clause (a), after the words “punishable under” the words, figures and letters “section 326A, section 326B,” shall be inserted.

Amendment
of section 173
of 2 of 1974.

16. In section 173 of the Code of Criminal Procedure,—

(i) in sub-section (1A), for the word, figures and letters “sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E ” the word, figures and letters “section 376B or 376C ” shall be substituted ;

(ii) after sub-section (1A), the following sub-section shall be inserted, namely :—

“(1B) In relation to offences under section 326A, section 326B, section 376, section 376A, section 376AB, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the investigation shall be completed within a period of fifteen working days from the date on which the information was recorded by the officer-in-charge of the police station :

45 of 1860.

Provided that, if it is not possible to complete the investigation within the period of fifteen working days from the date on which the information was recorded, then the reasons for the same shall be recorded in writing by the concerned investigating officer; such instances may include the inability to identify the accused; whereupon the said period can be further extended by seven working days by the concerned Special Inspector General of Police or Commissioner of Police:

Provided further that, nothing contained in this section shall be deemed to have any effect on the various provisions of bail specified in this Code.”.

- 17.** In section 309 of the Code of Criminal Procedure, in sub-section (1), for the proviso, the following proviso shall be substituted, namely :— Amendment of section 309 of 2 of 1974.

45 of 1860.

“Provided that, when the inquiry or trial relates to an offence under section 326A, section 326B, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E, of the Indian Penal Code, the inquiry or trial shall be conducted on the day to day basis and completed within a period of thirty working days from the date of filing of the charge sheet.”.

- 18.** In section 320 of the Code of Criminal Procedure, in sub-section (2), in the table, after entry relating to section 338, the following entry shall be inserted, namely :— Amendment of section 320 of 2 of 1974.

“Intimidating woman by any mode of communication, in addition to insulting her modesty	354E	The woman to whom sense of danger, intimidation or fear is created.”.
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- 19.** In section 327 of the Code of Criminal Procedure, in sub-section (2),— Amendment of section 327 of 2 of 1974.
- (1) after the words “offence under” the words, figures and letters “section 326A, section 326B,” shall be inserted;

(2) after the second proviso, the following proviso shall be added, namely :—

“Provided also that, *in camera* proceedings shall be held in the chamber of the Presiding Officer recording the evidence and every effort shall be made by such Presiding Officer to make the victim or vulnerable witnesses feel comfortable and this shall be recorded in the evidence.”.

- 20.** In section 374 of the Code of Criminal Procedure, in sub-section (4),— Amendment of section 374 of 2 of 1974.
- (1) after the words “passed under” the words, figures and letters “section 326A, section 326B,” shall be inserted ;

(2) for the words “six months” the words “forty-five days” shall be substituted.

- 21.** In section 377 of the Code of Criminal Procedure, in sub-section (4),— Amendment of section 377 of 2 of 1974.
- (1) after the words “passed under” the words, figures and letters “section 326A, section 326B,” shall be inserted;

(2) for the words “six months” the words “forty-five days” shall be substituted.

Amendment
of section 438
of 2 of 1974.

22. In section 438 of the Code of Criminal Procedure, as amended by the Code of Criminal Procedure (Maharashtra Amendment) Act, 1993, after sub-section (2), the following sub-section shall be inserted, namely :—

Mah. 24 of
1993.

“(2A) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 326A or section 326B or section 376 or section 376A or section 376AB or section 376D or section 376DA or section 376DB or section 376E of the Indian Penal Code.”.

45 of 1860.

Amendment
of section 439
of 2 of 1974.

23. In section 439 of the Code of Criminal Procedure, in sub-section (1A), for the portion beginning with the words “the person under” and ending with the words “Indian Penal Code”, the following shall be substituted, namely :—

45 of 1860.

“the person under section 326A or section 326B or sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB or section 376E of the Indian Penal Code”.

45 of 1860.

Amendment
of FIRST
SCHEDULE
of 2 of 1974.

24. In the FIRST SCHEDULE to the Code of Criminal Procedure, under the heading “I- OFFENCES UNDER THE INDIAN PENAL CODE”,-

(a) after entry relating to section 175, the following entry shall be inserted, namely :—

“175A	Failure to share data by social media platforms and internet or mobile telephony data providers, etc.	Simple imprisonment upto 1 month or fine of 5,00,000 rupees or both.	Cognizable	Bailable	Magistrate of the first class”;
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(b) after entry relating to section 182, the following entry shall be inserted, namely :—

“182A	Punishment for false complaint or false information to public servant of certain offences.	Simple imprisonment upto 1 year or fine or both.	Cognizable	Bailable	Magistrate of the first class”;
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(c) for entries relating to sections 326A and 326B, the following entries shall be substituted, namely :—

“326A	Voluntarily causing grievous hurt by use of acid, etc.	Imprisonment for not less than 10 years but which may extend to the remainder of the natural life	Cognizable	Non-bailable	Court of Session.
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of such person,
and with fine to
be paid to the
victim or in case
of heinous offences
with conclusive
evidence, with
death.

326B	Voluntarily throwing or attempting to throw acid.	Imprisonment for not less than 7 years but which may extend to 10 years and with fine.	Cognizable Non- bailable	Court of Session.”;
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(d) after entry relating to section 354D, the following entry shall be inserted, namely :--

“354E	Intimidating woman by any mode of communication, in addition to insulting her modesty.	Imprisonment of either description for a term upto 2 years and with fine which may extend to 1,00,000 rupees.	Cognizable Bailable	Any Magistrate.”;
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(e) for entry relating to section 376, the following entries shall be substituted, namely :--

“376(1)	Rape by persons other than persons covered under sub-section (2).	Rigorous imprisonment of not less than 10 years which may extend to imprisonment for life and with fine. In case of heinous offences with conclusive evidence, with death.	Cognizable Non- bailable	Court of Session.
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376(2)	Rape by persons in authority or trust, etc.	Rigorous imprisonment of not less than 10 years which may extend to imprisonment for life which shall mean the remainder of that person's natural life and with fine. In case of heinous offences with conclusive evidence, with death.	Cognizable Non-bailable	Court of Session.
376(3)	Persons committing offence of rape on a woman under 16 years of age.	Rigorous imprisonment of not less than 20 years which may extend to imprisonment for life which shall mean the remainder of that person's natural life and with fine. In case of heinous offences with conclusive evidence, with death.	Cognizable Non-bailable	Court of Session.”;

(f) for entries relating to sections 376D and 376DA, the following entries shall be substituted, namely :—

“376D	Gang rape	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean the remainder of that person’s natural life and with fine. to be paid to the victim. In case of heinous offences with conclusive evidence, with death.	Cognizable	Non-bailable	Court of Session.
376DA	Gang rape on a woman under 16 years of age	Imprisonment for life which shall mean the remainder of that person’s natural life and with fine. In case of heinous offences with conclusive evidence, with death.	Cognizable	Non-bailable	Court of Session.”.

CHAPTER IV

AMENDMENTS TO THE PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012.

- Amendment of section 2 of 32 of 2012. **25.** In section 2 of the Protection of Children from Sexual Offences Act, 2012, in its application to the State of Maharashtra (hereinafter, in this Chapter, referred to as “the Protection of Children from Sexual Offences Act”), after clause (m), the following clause shall be added, namely :—
- “(n) “staff” means any person appointed as regular, temporary, contractual employee or worker and includes any person provided by an outsourced agency that renders assistance of any kind.”.
- Amendment of section 4 of 32 of 2012. **26.** In section 4 of the Protection of Children from Sexual Offences Act, in sub-section (2), after the words “shall also be liable to fine” the words “which shall not be less than five lakh rupees or in case which have the characteristic of offence is heinous in nature and where adequate conclusive evidence is there and the circumstances warrant exemplary punishment, with death” shall be added.
- Amendment of section 5 of 32 of 2012. **27.** In section 5 of the Protection of Children from Sexual Offences Act,—
- (a) in clause (d), after the words “being inmate” the words “or resident” shall be inserted;
- (b) in clause (h), for the words “corrosive substance; or” the words “corrosive substance or intoxicant; or” shall be substituted;
- (c) in clause (j), in sub-clause (i), for the words, brackets, letter and figures “become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987” the words, brackets, letter and figures “have mental illness as defined under clause (s) of section 2 of the Mental Healthcare Act, 2017” shall be substituted.
- Amendment of section 8 of 32 of 2012. **28.** In section 8 of the Protection of Children from Sexual Offences Act, for the words “shall not be less than three years but which may extend to five years” the words “shall not be less than five years but which may extend to seven years” shall be substituted.
- Amendment of section 9 of 32 of 2012. **29.** In section 9 of the Protection of Children from Sexual Offences Act,—
- (a) in clause (d), after the words “being inmate” the words “or resident” shall be inserted;
- (b) in clause (h), for the words “corrosive substance; or” the words “corrosive substance or intoxicant; or” shall be substituted;
- (c) in clause (j), in sub-clause (i), for the words, brackets, letter and figures “become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987” the words, brackets, letter and figures “have mental illness as defined under clause (s) of section 2 of the Mental Healthcare Act, 2017” shall be substituted.

- 30.** In section 10 of the Protection of Children from Sexual Offences Act, for the words “shall not be less than five years but which may extend to seven years” the words “shall not be less than seven years but which may extend to ten years” shall be substituted. Amendment of section 10 of 32 of 2012.
- 31.** After section 23 of the Protection of Children from Sexual Offences Act, the following section shall be inserted, namely :— Insertion of section 23A in 32 of 2012.
- “**23A.** Notwithstanding anything contained in any law for time being in force, any social media platform or internet or mobile telephony data provider including any intermediary or custodian who fails to share any data with the Investigation Officer as requested, for the purpose of investigation of offence, punishable under this Act, within a period of seven working days from receiving request, shall be punished with to imprisonment for a term which may extend to one month or a fine of five lakh rupees, or with both.”. Failure to share data for police investigation.

STATEMENT OF OBJECTS AND REASONS

Sections 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB and 376E of the Indian Penal Code, (45 of 1860) provides for offences against women regarding heinous and sexual offences. The Parliament has enacted the Protection of Children from Sexual Offences Act, 2012 (32 of 2012) to protect the children from offences of sexual assault, sexual harassment and pornography and for establishment of Special Courts for trial of such offences. The offences against women and children, specially sexual offences have been increased many fold in the State. The perpetrators continue their inhuman acts on innocent and helpless women and children despite the penal provisions in the said Acts. Recently, such numerous inhuman acts have been taken place in the State where the women were subjected to rape, burning alive and murder. Such incidents are shocking to the social conscience.

2. In order to effectively control the heinous and sexual offence against women and children, the Government had appointed a Committee to make suggestions for stringent punishment and other related matters to amend the said Acts. The Committee has submitted its report to the Government. The Committee suggested amendments in the Indian Penal Code, the Protection of Children from Sexual Offences Act, 2012 and Code of Criminal Procedure, 1973 (2 of 1974) to provide for heavy fines and penalty upto death to the accused and speedy investigation and speedy trials of the said offences.

The Government has considered the said report and decided to make more stringent punishment for such heinous and sexual crimes against women and children and therefore, proposes to make suitable amendments in sections relating to heinous and sexual offences against women and children in the Indian Penal Code, the Protection of Children from Sexual Offences Act, 2012 and the Code of Criminal Procedure, 1973.

3. The salient features of the proposed law are as follows :—

(1) Amendments are proposed in the Indian Penal Code,—

(i) to provide for life imprisonment for the remainder of natural life of such person and heavy fines for heinous and sexual offences ;

(ii) to provide for death punishment for such grave offences;

(iii) to provide for punishment for failure to share any data with investigating officer relating to such offences by social media platform, internet or mobile telephony data providers, etc.;

(iv) to provide for punishment for not furnishing information or assistance for investigation of offences ;

(v) to provide for punishment for intimidating women by any mode of communication ;

(vi) to provide for punishment for false complaints or false information.

(2) Amendments are proposed in the Code of Criminal Procedure, 1973,—

(i) to make compulsory for media platform, internet or mobile telephony data providers, etc, to share data including any document or electronic record relating to such offences to the investigation officer;

(ii) to call public servant or two social workers while making search of places by investigation officer;

(iii) to complete the investigation within the period of fifteen working days from the date on which the information was recorded by the officer incharge of police station ;

(iv) to complete the inquiry and trial within the period of thirty working days from the date of filing of charge sheet ;

(v) to held *in camera* proceedings in the chamber of Presiding Officer for recording of evidence of victims and witnesses;

(vi) to reduce the period for disposal of appeal by any person or by the State Government from six months to forty-five days ;

(vii) to make stringent provisions for anticipatory bail to the accused persons for the said offences.

(3) Amendments are proposed in the Protection of Children from Sexual Offences Act, 2012,

(i) to provide for life imprisonment for the remainder of natural life of such person and heavy fines for the offences under sections 4, 8 and 10 of Protection of Children from Sexual Offences Act, 2010;

(ii) to provide for death punishment for certain grave offences.

4. The Bill is intended to achieve the above objectives.

Mumbai,

dated the 13th December 2020.

ANIL DESHMUKH,

Minister for Home.

MEMORANDUM REGARDING DELEGATED LEGISLATION.

The Bill involves the following proposal for delegation of legislative power, namely.

Clause 1(2).— Under this clause, power is taken to the State Government to bring the Act into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

2. The above-mentioned proposal for delegation of legislative power is of a normal character.