

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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REPUBLIEK VAN SUID-AFRIKA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 648.

12 April 1989

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 39 of 1989: Criminal Law and Criminal Procedure Act Amendment Act, 1989.

No. 648.

12 April 1989

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 39 van 1989: Wysigingswet op die Strafreë en die Strafprosedewet, 1989.

Act No. 39, 1989

CRIMINAL LAW AND CRIMINAL PROCEDURE ACT  
AMENDMENT ACT, 1989

## GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

# ACT

To make provision that the court shall regard the fact that a husband could, but for the existence of the marriage relationship between him and his wife, have been convicted of rape, as an aggravating circumstance whenever he has been convicted of assault in respect of his wife; to amend the Criminal Procedure Act, 1977, so as to further regulate the adducing of evidence relating to the character of a female or male against or in connection with whom any offence of a sexual or indecent nature is alleged to have been committed; and to provide for matters incidental thereto.

*(English text signed by the State President.)  
(Assented to 21 March 1989.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

### Assault of wife by her husband

1. Whenever a man has been convicted of assault in any form on his lawful wife and could, but for the existence of the marriage relationship between them at the time of the commission of the crime, have been convicted of rape, the fact that he could have been convicted of rape had he not been married to his wife, shall be regarded by the court as an aggravating circumstance at the passing of sentence. 5

### Substitution of section 227 of Act 51 of 1977

2. The following section is hereby substituted for section 227 of the Criminal 10 Procedure Act, 1977:

#### “Evidence of character

227. (1) Evidence as to the character of an accused or as to the character of any **[woman upon or with regard to]** female against or in connection with whom any offence of an indecent nature **[has]** is alleged 15 to have been committed, shall, subject to the provisions of subsection (2), be admissible or inadmissible if such evidence would have been admissible or inadmissible on the thirtieth day of May, 1961.

(2) Evidence as to sexual intercourse by, or any sexual experience of, 20 any female against or in connection with whom any offence of a sexual nature is alleged to have been committed, shall not be adduced, and such female shall not be questioned regarding such sexual intercourse or sexual experience, except with the leave of the court, which leave shall not be granted unless the court is satisfied that such evidence or 25 questioning is relevant: Provided that such evidence may be adduced and

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AMENDMENT ACT, 1989

such female may be so questioned in respect of the offence which is being tried.

(3) Before an application for leave contemplated in subsection (2) is heard, the court shall direct that any person whose presence is not necessary may not be present at the proceedings, and the court may direct that a female referred to in subsection (2) may not be present.

(4) The provisions of this section are *mutatis mutandis* applicable in respect of a male against or in connection with whom any offence of an indecent nature is alleged to have been committed.”.

**Short title and commencement**

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3. This Act shall be called the Criminal Law and the Criminal Procedure Act Amendment Act, 1989, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.