

# PARLIAMENT OF INDIA

## RAJYA SABHA

**DEPARTMENT-RELATED PARLIAMENTARY  
STANDING COMMITTEE ON HOME AFFAIRS  
ONE HUNDRED AND TWENTY EIGHTH REPORT  
ON  
THE CODE OF CRIMINAL PROCEDURE  
(AMENDMENT) BILL, 2006  
(PRESENTED TO RAJYA SABHA ON 16 AUGUST, 2007)  
(LAID ON THE TABLE OF LOK SABHA ON 16 AUGUST, 2007)  
RAJYA SABHA SECRETARIAT  
NEW DELHI**

AUGUST, 2007/ SHRAVANA, 1928 (SAKA)

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**COMMITTEE ON HOME AFFAIRS**  
**(Constituted on 5 August 2006)**

1. Smt. Sushma Swaraj - Chairperson

**RAJYA SABHA**

2. Shri V. Narayanasamy  
3. Shri Rishang Keishing  
4. Shri R.K. Dhawan  
5. Shri S.S. Ahluwalia  
6. Shri Janeshwar Mishra  
7. Shri Prasanta Chatterjee  
8. Shri N. Jothi  
9. Shri Satish Chandra Misra  
10. Shri Sanjay Raut

**LOK SABHA**

11. Shri L.K. Advani  
12. Dr. Rattan Singh Ajnala  
13. Shri Ilyas Azmi  
14. Km. Mamata Banerjee  
15. Smt. Sangeeta Kumari Singh Deo  
16. Shri Biren Singh Engti  
17. Shri Tapir Gao  
18. Shri T.K. Hamza  
19. Shri Raghunath Jha  
20. Shri Naveen Jindal  
21. Shri Ajit Jogi  
22. Prof. K.M. Kader Mohideen  
23. Shri Ram Chandra Paswan  
24. Shri Sachin Pilot  
25. Shri Ashok Kumar Pradhan  
26. Shri G. Karunakara Reddy  
27. \*Shri M. Rajamohan Reddy  
28. Shri Baju Ban Rryan  
29. Choudhary Bijendra Singh  
30. Shri Brij Bhushan Sharan Singh  
31. Shri Mohan Singh

## SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary  
Shri P.P.K. Ramacharyulu, Director  
Shri Rohtas, Joint Director  
Shri Sanjeev Chandra, Assistant Director

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\* Nominated w.e.f 10<sup>th</sup> October 2006 vice Shri Rahul Gandhi who was nominated to Standing Committee on Human Resource Development.

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## INTRODUCTION

I, the Chairperson of the Department-related Parliamentary Standing Committee on Home Affairs having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Twenty Eighth Report on the Code of Criminal Procedure (Amendment) Bill, 2006 (**Annexure I**).

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha referred <sup>•</sup> the Code of Criminal Procedure (Amendment) Bill, 2006, as introduced in the Rajya Sabha on 23 August 2006 and pending therein, to the Committee for examination and report within three months. The Committee in its sitting held on 30<sup>th</sup> October, 2006, took stock of the progress made in respect of the Bill and decided that in view of its preoccupation with the examination of another Bill, it may seek extension of time for presentation of Report on the Code of Criminal Procedure (Amendment) Bill, 2006 from Hon'ble Chairman, Rajya Sabha till the first day of the last week of the Budget Session of 2007. On the authorisation of the Committee, I approached Hon'ble Chairman for grant of extension of time which was acceded to.

3. The Committee held eleven sittings in all spread over fifteen hours on the Bill. In its meeting held on 8 January 2007, the Committee heard the presentation of the Home Secretary, Government of India on the Bill and held preliminary discussion thereon. The Committee in its meeting held on 17 January 2007 decided to hear the views of jurists and some legal experts. The Committee also felt that it would be necessary to seek the comments of various State Bar Councils on the provisions of the Bill.

4. In its sittings held on 1,2,12&13 February 2007, the Committee heard following witnesses on the subject: -

(i) Hon'ble Mr. Justice Jaspal Singh, Retd. Judge, High Court of Delhi and Senior Advocate, Supreme Court;

(ii) Hon'ble Mr. Justice K. Jayachandra Reddy, Retd. Judge, Supreme Court and former Chairman, Law Commission of India;

(iii) Hon'ble Mr. Justice Bhawani Singh, Former Chief Justice of J&K, Madhya Pradesh and Gujarat High Courts and Lokayukta, Himachal Pradesh;

(iv) Hon'ble Mr. Justice B. N. Srikrishna, Retd. Judge, Supreme Court and Chairman, Sixth Central Pay Commission;

(v) Shri M. N. Krishnamani, Sr. Advocate, Supreme Court,

(vi) Prof. N.R. Madhava Menon, Former Director, National Law Academy, Bhopal; and

(vii) Representatives of Bar Council of India.

4.1 In its sitting held on 22<sup>nd</sup> February 2007 the Committee heard the representatives of non-governmental organizations namely 'RAKSHAK' and '498A.org' on the various provisions of the Bill and particularly on Section 498A of Indian Penal Code, 1860. The Committee also received written views/suggestions from Shri K.N. Chandrashekharan Pillai, a legal expert and a former Director, Indian Law Institute and the State Bar Councils of (a) Andhra Pradesh, (b) West Bengal and (c) Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh & Sikkim. The Committee had also received written suggestions/views of Bar Council of India.

5. The Committee in its sitting held on 4<sup>th</sup> May, 2007, while taking stock of the progress made on the Bill and the remaining stages of examination, felt that further extension of time upto the last week of the Monsoon Session 2007 would have to be sought from the Hon'ble Chairman, Rajya Sabha. As authorised by the Committee, I approached Hon'ble Chairman to grant further extension to it which was kindly accorded by him.

6. In its sitting held on 11 June 2007, the Committee held discussion on the Bill in the light of evidence tendered by witnesses, written views submitted by individuals, organisations and

various State Bar Councils. The meetings of the Committee were convened for 5 & 6 July 2007 to take up clause-by-clause consideration of the Bill.

7. The Committee considered the draft Report in its sitting held on 3 August 2007 and adopted the same. It also decided that the evidence tendered before the Committee may be laid on the Table of both the Houses of Parliament.

8. In the course of its deliberations, the Committee has made use of the following documents:

(i) Background note on the Bill received from the Ministry of Home Affairs;

(iii)

(ii) One hundred fifty fourth, one hundred seventy seventh and one hundred seventy eighth Reports of the Law Commission of India;

(iii) One Hundred and Eleventh Report (2004) of the Committee on Home Affairs on the Criminal Law (Amendment) Bill, 2003;

(iv) Comments of the Ministry on the points/queries raised by the Members/witnesses/organizations on various provisions of the Bill (**Annexure-II**);

(v) Oral evidence tendered before the Committee; and

(vi) Written views/suggestions submitted to the Committee.

9. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

10. On behalf of the Committee, I would like to acknowledge with thanks the valuable contributions made by the witnesses who deposed before it and facilitated the Committee in formulating its views on the Bill.

NEW DELHI;

August 3, 2007.

**SUSHMA SWARAJ**

Chairperson

Committee on Home Affairs

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## **REPORT**

The Code of Criminal Procedure, 1973 has been amended nine times in the years 1978, 1980, 1983, 1988, 1990, 1991, 1993, 2001 and 2005. The 1973 Code was enacted after a comprehensive review of the old code was undertaken by the Law Commission in its Fifth Report (1969). Second comprehensive review of the Code was taken up by the Law Commission in its One Hundred Fifty Fourth Report (1996). The thrust of all the suggestions/recommendations of the successive Law Commissions have been on speedy disposal of cases.

2. The recommendations of the Law Commission as contained in its One Hundred and Fifty Fourth Report (1996) relate to law of arrest; custody; bail, anticipatory bail and sureties; changes in procedure relating to summons cases and warrant cases and summary trial; examination of witnesses and recording of statements; protection and facilities to witnesses; examination of the accused; compounding of offences; victimology; inquiry and trial of persons of unsound mind; procedure for maintenance of wives, children and parents; special protection in respect of women; measures for speedy justice etc. The Law Commission meanwhile has suo mottu reviewed the provisions relating to arrest with a view to clearly delineate and regulate the power of arrest without warrant, vested in the police by section 41 and other provisions of the Criminal Procedure Code and submitted its One Hundred Seventy Seventh Report (2001). The Law Commission in its subsequent report viz. One Hundred and Seventy Eighth Report (2001) made certain recommendations for prevention of witnesses turning hostile.

3. Emphasizing the necessity and delineating the salient features of the Code of Criminal Procedure (Amendment) Bill, 2006, the Home Secretary in his presentation before the Committee stated that the present legislation is a step forward in the endeavour of the Government for improving the criminal justice system. The present Bill is mainly on the basis of the recommendations contained in the One Hundred Fifty Fourth, One Hundred Seventy Seventh and One Hundred Seventy Eighth Reports of the Law Commission on various issues concerning Criminal Justice System. The Law Commission suo mottu reviewed the provisions relating to arrest in its One Hundred Seventy Seventh Report in the wake of the Supreme Court Judgment in the D.K. Basu vs State of West Bengal (1997) 1 SCC 416. The report basically pertains to

regulating the power to arrest by the police without warrant. These recommendations have also been incorporated in the proposed amendments. In the backdrop of Jessica Lal murder case, there was a huge demand from the public to check the practice of witnesses turning hostile. The Malimath Committee and various other reports have highlighted the plight of the victim who was the worst sufferer of the crime but had no role presently in the functioning of the Criminal Justice System. The victims had to rely mainly on the efficacy of the prosecution side, which was invariably represented by the State. Therefore, it has been proposed in the Bill that victim should be given right to appeal against any adverse order passed by the courts. Video recording of statements of witnesses would reduce the possibility of their changing statements at a later stage. Therefore, in certain sections of the CrPC, enabling provisions for audio/video recording of statements of witnesses are sought to be provided.

4. As already stated, the Bill focuses upon various issues, which can be categorized broadly as following:

- (i) Law relating to arrests;
- (ii) Summons and warrants cases - mandatory summary trial in all the summons cases;
- (iii) Witnesses turning hostile;
- (iv) Special provisions for protection of women;
- (v) Victimology;
- (vi) Inquiry and trials of persons of unsound mind;
- (vii) Avoidance of adjournments;
- (viii) Compounding of offences; and
- (ix) Video conferencing.

Various issues in the Bill and views of jurists/experts/organisations and Members thereon are given below seriatim: -

## **ISSUE**

### **4.1.0 Changes in the law relating to arrests**

**4.1.1** In view of the Supreme Court's judgment in the D.K Basu Case, the proposed Bill places an embargo on the arbitrary arrests made by the Police. The apex Court propounded eleven guidelines in this case which are proposed to be incorporated in the CrPC vide clauses 5, 6, 7, 8, 9, 10 and 17 by amending Sections 41, 46, 54, 55, 60 and 172. These amendments will incorporate provisions to the Code of Criminal Procedure Code, 1973 like - exercise of power of arrest after reasonable care and justification; right of the arrested person to have his advocate present during the investigation; issuance of notice of appearance for investigation instead of

arresting the person; avoiding of touching the body of female accused by male police officers; examination of arrested persons by medical practitioner soon after the arrest; health and safety of the arrested person to be the duty of person having his custody; arrest to be made strictly according to the Code; case diary to contain statement of witnesses etc.

#### **4.1.2 Views of Members/witnesses**

(i) Under sub clause (ii) (b) of clause 5, a police officer is empowered to arrest a person for proper investigation of the offence or for the reason that detention of such person in custody is in the interest of his safety. Arresting a person in the interest of his safety is highly objectionable as the provision is likely to be misused by the Police;

(ii) The words ‘credible information’ in clause 5 (i) (b) are liable to be misused as it gives a free hand to police officer to arrest people without warrant. The words “who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made” in the existing code are more appropriate and thus may be retained;

(iii) Clause 6 (New Section 41A) proposes to provide that the police officer may, instead of arresting the person concerned, issue to him a notice requiring him to appear before the Police Officer issuing the notice, or at such other place as may be specified in the notice and to cooperate with the Police Officer. Police will never arrest an accused but he would just send a notice to the accused to come over the police station or any other place where he may be arrested. Secondly, if he defies the notice he is exposed to prosecution for not responding to the notice of the public servant. Anticipatory bail application is also circumscribed inasmuch as when the police officer calls the accused he has no option but to appear and surrender;

(iv) In Section 54 (clause-8), it has been suggested that the words “registered medical practitioner” should be substituted by the words “registered government medical practitioner”.

## **ISSUE**

### **4.2.0 Summons and Warrant Cases**

4.2.1 To expedite the trial of minor offences, definition of warrant case and summons case are proposed to be changed so that more cases can be disposed of in a summary manner. Based on the recommendations of One hundred and fifty fourth Report of the Law Commission, it is proposed vide Clauses 2, 21, 22, 23 and 24 that amendments may be carried out in Sections 2, 242, 260 and 262 and deletion of Chapter XX of CrPC (Sections 251 to 259) is also proposed which will modify the definition of summons and warrants cases so that offences with imprisonment of a term of more than 3 years will come under the warrant cases; summons



procedure to be dispensed with; all summons cases are to be tried summarily and if a summons case cannot be tried summarily the court has to record reasons and convert it to warrant case. It is also proposed that all statements recorded during investigation are to be supplied in advance.

#### **4.2.2 Views of Members/witnesses**

- (i) Deletion of Sections 251-259 (Chapter XX) of Cr. PC may not be prudent as the accused will be deprived of the benefits and protection of the summons trials;
- (ii) By changing the definition of warrant cases and summons cases, the number of offences likely to be tried summarily will increase from 153 to 211, as 58 offences under Cr.PC carry imprisonment upto three years, other than the 153 offences which carry imprisonment up to two years. This will not serve the intended purpose as it will include serious offences like, theft (Section 379), extortion (Section 384), criminal breach of trust (Section 406), subjecting married women to cruelty (Section 498 A) etc. If these serious offences are tried summarily, it would not be possible for the appellate court to appreciate the case as the evidence recorded in those cases will be very scanty.
- (iii) Sub-clause (2) of clause 23 seeking to amend section 260 of the Code, seems to be incomplete as it provides that when in summons case, of a summary trial it appears to the magistrate that nature of the case is such that it is improper to try the case summarily, he may, as the case may be, record reasons for not trying the case summarily. It does not provide how such a case shall be dealt;
- (iv) To dispense with summons procedure for the purpose of quick disposal of cases would go against the basic tenets of criminal jurisprudence.

## **ISSUE**

### **4.3.0 Victimology**

4.3.1 The Malimath Committee Report on Reforms in Criminal Justice System has highlighted the plight of the victim who is the worst sufferer of the crime but has no role presently in the criminal justice system. Therefore, provisions have been proposed vide Clauses 3, 37 and 38 to provide for a comprehensive scheme to be prepared for compensating the victim or his dependants who have suffered loss or injury as a result of crime and who require rehabilitation. It is also proposed that the victim may be permitted to engage an advocate in a case and he shall have a right to prefer an appeal against any adverse order passed by the court.

#### **4.3.2 Views of Members/witnesses**

- (i) Permission under proviso to section 24 of the Code should be given by the court and it should be made mandatory; it is suggested that there is no need for consulting the State Government or the Central Government to engage an advocate. The Clause may be re-worded as: “the victim may engage an advocate of his choice to coordinate with the prosecution”;
- (ii) With reference to Clause 37 (new section 357A) it has been suggested that the Central Government and every State Government should allocate special funds and deposit the same in the courts for the purpose of Victim Compensation Scheme.

## ISSUE

### 4.4.0 Special provisions for protection of women

4.4.1 The representatives of the Ministry of Home Affairs while making their presentation on the Bill inter-alia highlighted the special provisions incorporated for the protection of women by making amendment in Sections 26, 54, 157, 173, 327 and 416 of Cr.PC vide clauses 4, 8, 11, 18A, 31 and 39. The proposed amendments incorporate provisions like all rape cases as far as practicable to be tried in the court of a woman judge; the medical examination for arrested women will be done only by or under supervision of a female registered medical practitioner; investigation in cases of rape, to be conducted at the residence of the victim as far as practicable by a woman police officer and if the victim is less than 18 years old, her parents or a social worker may remain present during the investigation; investigation of child rape cases may be completed within three months of time; in-camera trial of sexual offences cases shall be conducted as far as practicable by woman judge and death sentence of a pregnant woman shall be mandatorily commuted to life imprisonment.

### 4.4.2 Views of Members/witnesses

- (i) Woman judges are not adequate in number. Appointments of new woman judges will only help the successful implementation of the new provisions;
- (ii) In Section 157 (clause 11), it has been proposed that in case of offence of rape, the investigation shall be conducted at the residence of the victim or any other place of her choice;
- (iii) Under clause 11 questioning of victim in the presence of parents or social workers, should be expanded and may include “close relatives” too;
- (iv) In clause 11, the word “questioned” should be substituted by some other suitable word;

- (v) In clause 11, all victims of rape, irrespective of age, should be covered.

## ISSUE

### 4.5.0 Avoidance of adjournments

4.5.1 In view of the Law Commission's recommendations and Supreme Court's directives to avoid adjournments, the government is bringing forward certain amendments by inserting proviso to section 309, sub-sections (1) and (2) vide clause 28 of the Bill. According to the amendments no adjournments will be granted at the request of the party unless circumstances are beyond the control of that party.

#### 4.5.2 Views of Members/witnesses

Clause 28 prohibits adjournment in case of non-availability or inconvenience of an advocate on the ground that he is engaged in some other court. This provision will equally be applicable to a prosecuting as well as defending counsel. Such rigid provisions will do no good for smooth conduct of the criminal trials.

## ISSUE

### 4.6.0 Compounding of Offences

4.6.1 The Bill proposes amendments to the Table, under sub-section (1) of Section 320 (Clause 30) relating to compounding of offences punishable under various sections of Indian Penal Code, 1860. 24 more offences contained in IPC are proposed to be included under Table-1 of Section 320. The officials of the Ministry has stated that it is also proposed that if an offence is compoundable, its abatement or an attempt to commit the offence will also be made compoundable.

#### 4.6.2 Views of Members/witnesses

- (i) Offence under section 498 IPC should be made compoundable by the woman concerned in addition to husband of a woman;
- (ii) Section 498 A, IPC should also be included in the Table-I of Section 320 CrPC and made bailable as well as compoundable;
- (iii) Compounding of offences under section 451 (house trespass), section 497 (adultery) and section 498 (enticing or taking away or detaining with criminal intent a married woman) is not

desirable.

## ISSUE

### 4.7.0 Inquiry and trial of persons of unsound mind

4.7.1 Law Commission in its 154<sup>th</sup> Report had inter-alia recommended the amendment to laws relating to inquiry and trial of persons of unsound mind. The proposed legislation amend sections 328 to 330 (vide clauses 32 to 34) so that an accused incapable of defending himself due to unsoundness of mind is given a fair trial. It is also proposed that such a person should appropriately be referred for medical treatment. Besides, psychiatrist or clinical psychologist may be consulted in such cases. Such a person may be discharged or released on bail also.

#### 4.7.2 Views of Members/witnesses

In the proposed insertion of sub-section 1(A) to Section 329 the following proviso should be added:-

“Provided any party being aggrieved by the report of the psychologist or clinical psychiatrist for care and treatment may appeal, to the medical board and the persons constituting the medical board be provided.”

## ISSUE

### 4.8.0 Video Conferencing

4.8.1 It has been proposed in the Bill vide clause 16 that the Magistrates may extend detention of an accused in judicial custody through the medium of electronic video linkages except for the first time where the production of the accused in person is required. Enabling provisions for video recording of statement of witnesses before police and magistrates are also introduced in the Bill vide clause 12, 14 and 27 by inserting new proviso to Section 161, Section 164 and Section 275 of Cr. PC.

#### 4.8.2 Views of Members/witnesses

- (i) Person in judicial custody during video conferencing cannot explain whatever he wants to say had he appeared before the judge;
- (ii) Recording of statement through audio/video electronic means can be misused;

(iii) The provision of video linkages should not be implemented unless a foolproof system is in place to ensure that the statement by the witness is made voluntary; and

(iv) An advocate will become a witness if he remains present during video conferencing. Then he cannot appear as an advocate. Hence, the amendment is totally opposed.

## ISSUE

### 4.9.0 Witness turning hostile

4.9.1 The Government in the backdrop of media hyped high profile cases introduced certain provisions seeking to amend Section 161, 162 and section 344 and insert sections 164A and 344A in CrPC with a view to prevent the witness turning hostile vide the Criminal Law (Amendment) Bill, 2003.

4.9.2 As per the amendments proposed in the 2003 Bill to Sections 161, 162 of Cr. PC and insertion of Sections 164A into the Code, the following provisions were proposed to be put in place in the criminal justice system:-

(a) Police Officer has to acknowledge statement made to him/her by the witness and signed by the latter for the offence for which punishment is less than seven years and quickly transmit the same to the Magistrate; and

(b) Recording of evidence of material witnesses by Magistrate for all offences punishable with death or imprisonment for seven years or more during investigation.

4.9.3 It is pertinent to note that signed statement made to police officer would not have evidentiary value in the court of law which may help check perjury. Therefore, punishment for perjury is intended to be enhanced under proposed Section 344A of Cr. PC. Further, for cognizable offence punishable with seven years imprisonment, the Magistrates are empowered to record statement of the material witnesses instead of police officer.

4.9.4 Similar amendments to the Cr.PC as suggested by the Law Commission in its one hundred seventy eighth Report with minor amendments like enhanced punishment upto 10 years instead of 7 years have again been proposed in the Cr. PC (Amendment) Bill, 2006.

### Views of the Committee on Criminal Law (Amendment) Bill, 2003

4.9.5 The proposed amendments were opposed by the Committee in its One Hundred Eleventh Report on the Criminal Law (Amendment) Bill, 2003 on following grounds:

- (i) Such power may be misused by Investigating Officer (I.O.) by forcing the witness to sign the statement without knowing fully the implication of it. Furthermore, police officer may force the witness to sign on blank paper which can be manipulated by the former later on;
- (ii) In some cases the material witness may be the accused and in that circumstance it would violate provisions of Article 20 (3) of Constitution (self-incrimination);
- (iii) I.O. has discretion to decide who would be material witness in a criminal case, where punishment is more than seven years. The professional/fictitious witnesses available in police station can be turned as material witness by the police, which may increase corruption;
- (iv) Since the power available with the police officers is already being misused, it was apprehended that enhancement of power of the police may lead to more misuse and resultant corruption; and
- (v) Since the Magistrates are already overburdened making the recording of statement mandatory will increase their burden.

5. Comments of the Ministry of Home Affairs on the views/suggestions of Members witnesses and others are placed at **Annexure II** for perusal.

### **Further Deliberations in the Committee**

6. The Committee took up clause-by-clause consideration of the Bill. After considering a few clauses in detail, the Committee found that some of the new definitions/concepts/provisions introduced in the Bill, particularly relating to summons and warrants cases, arrest, video conferencing and witnesses turning hostile seem to be not well thought of and it could gather from the Ministry that they are based solely on the recommendations of the Law Commission and due deliberations had not taken place on various pros and cons and consequences that may flow from these provisions. The Ministry was not able to satisfy the Members about the questions regarding necessity and consequences of these new provisions.

6.1 The issue of doing away with summons procedure and compulsory trial of summons cases

summarily came to the centrestage repeatedly in the deliberations of the Committee. When the representatives of the Ministries of Home Affairs and Law & Justice were asked to comment on this issue they informed the Committee using the refrain that the main reason for bringing the Bill is to implement the recommendations contained in certain reports of the Law Commission aiming at reducing the pendency of cases before Courts. The Committee was surprised to take note of the fact that while the Government was trying to alter the basic tenets of criminal jurisprudence it was not addressing the primary issue of filling up of a large number of vacancies existing in various courts. As per the statistics available with the Committee, the number of sanctioned posts in the High Courts is 721 against which number of judges in position is 610, leaving 111 vacancies of judges in various High Courts. Similarly in lower courts the total sanctioned strength of Magistrates and Judges is 14641 against which only 11840 are in position, leaving vacancies of 2801 Judicial Officers. The Government instead of addressing the core issue of ensuring functioning of the courts with full capacity is seeking to tamper with the criminal jurisprudence.

6.2 A unanimous view, therefore, emerged in the Committee that no useful purpose would be served by proceeding further with the clause-by-clause consideration of the Bill as the Committee could not be convinced of the rationale for introducing drastic changes in the criminal jurisprudence of the country. The Committee, instead decided to submit its observations and conclusions on various concepts incorporated in the Bill while reporting its examination to the two Houses of Parliament. The following paragraphs deal with the major issues involved in the Bill and contain Committee's views and observations on each of them.

## **SUMMONS AND WARRANT CASES -- MANDATORY SUMMARY TRIAL IN ALL SUMMON CASES**

- 6.1 (i) Definition of summons and warrants cases has been sought to be modified so that only offences with imprisonment of term of more than 3 years to come under the warrant cases (Clause 2).
- (ii) All statements recorded during investigation to be supplied in advance (Clause 21).
- (iii) Summons Procedure to be dispensed with (Clause 22).
- (iv) If a summons case cannot be tried summarily the court to record reasons and convert it to warrant case (Clause 23).
- (v) All summons cases to be tried summarily (Clause 24).

6.2 As per existing provisions there are three procedures for trial under the Code of Criminal Procedure (i) Summons Procedure (ii) Summary Procedure (iii) Warrant Procedure. Summons cases and warrant cases have been defined under sub-section (w) & (x) of Section 2 of the Code of Criminal Procedure. Summary trials are dealt with under Sections 260 to 265 of the Code.

6.3 In the proposed Bill, Summons Procedure is proposed to be done away with. Under the existing provisions offences punishable with imprisonment upto two years are triable as summons cases, while in the proposed Bill Summons Cases and Warrant Cases have been redefined as follows:

‘Summons Case’ means a case relating to an offence triable summarily not being a warrant case.

‘Warrant Case’ means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding three years.

6.4 It will be seen from the above definitions that all summons cases with punishment upto three years are to be tried summarily. The Committee was informed that there are 153 offences in the Indian Penal Code, which carry punishment of imprisonment upto 2 years which were being tried summarily as per existing provisions. By increasing the scope of summons cases to three years, which are to be tried summarily in the new provision, 58 new offences would be added to that list. Thus, there will be 211 offences which can be tried summarily.

6.5 When the Committee enquired from the Home Ministry and the Law Ministry about the justification for bringing about such a radical change in the criminal justice system, the Committee was informed by the Ministry that the change in the definitions of Summons and Warrant cases is on the basis of 154<sup>th</sup> report of the Law Commission. A relevant portion of that report was read out to the Committee which is as follows: -

“A perusal of the two procedures would show that they are somewhat alike in many respects. To ensure speedy trial, the procedure must be simplified so that the bulk of cases which are being handled by the Magistrates can be disposed of more expeditiously. In all the workshops conducted, it was unanimously voiced that the summary procedure is not being adopted and that is one of the reasons for heavy pendency and delay. It is also suggested that all the summons cases and the other offences mentioned under section 260 should be made compulsorily triable by way of summary trial. The survey conducted also shows that there is unanimity about the suggestion to convert all offences carrying punishment up to three years’ imprisonment into summons cases and to make it mandatory that all such offences should be tried summarily”.



6.6 Attention of the Committee was also drawn to the provision in sub-clause (a) of clause 24 in the Bill, whereunder a bar has been imposed on sentence of imprisonment which cannot exceed for a term exceeding six months or fine up to rupees three thousand or both in case of convictions under the Summons Case.

## **VIEWS OF THE COMMITTEE**

6.7 On the above mentioned proposed amendments the Committee is of the view that :

(a) There seems to be no application of mind in attempting to expand the scope of Summons Case for offences which entails punishment up to three years. No scrutiny of each of the 58 new offences that would be added for summary trial has been undertaken. The proposed amendment has been brought about in a routine way. Instead of including all offences punishable up to three years in the Summons Cases mechanically, each of the offence ought to have been examined separately for its inclusion keeping in view its implications.

(b) There has not been any empirical evidence to suggest that by trying offences punishable up to 3 years summarily, the pendency of cases in courts will get reduced. On the contrary under proposed sub-section (2) of Section 260 of the Code, Magistrates may resort not to try summons case summarily if it appears to him that the nature of the case is such that it is improper to try the case summarily.

(c) Sub-section (2) of section 260 of the principal Act, proposed to be substituted by clause 23 of the Bill is somewhat incomplete. It does not provide how the case would be proceeded when it appears to the Magistrate that the nature of the case is such that it is improper to try the case summarily. Only reasons for not trying such case summarily are to be recorded.

(d) The proposed amendments have been averred to be ‘accused friendly’ but it may prove otherwise since maximum punishment for summarily tried cases cannot be more than six months, a tendency may develop to punish all accused for six months routinely to maximize the disposal of cases and thus reduce pendency. In this way it may be detrimental to the accused.

(e) The proposed amendment is not even ‘victim friendly’ because all the accused tried summarily may get maximum punishment of six months instead of maximum three

years. In fact the provisions should not be looked at as 'Accused friendly' or 'victim friendly'. It should only be justice friendly. But by this amendment, justice will be the first casualty.

(f) Under sub-section (9) of section 262 proposed to be substituted by clause 24 of the Bill, sentence beyond six months imprisonment cannot be awarded in summons case tried summarily. Therefore, the very purpose of prescribing maximum punishment of three years may come to naught because that punishment cannot be awarded in a summary trial.

(g) Summarily tried cases may cause problem for those who want to appeal against such judgment because there is no evidence before the appellate court to appreciate.

(h) It may even be violative of article 21 of the Constitution i.e. Right to Life and Liberty on the ground that summary trial deprives the accused of his Life and Liberty.

(i) It may make the Indian Evidence Act redundant because 211 offences of the IPC would be tried summarily under the proposed amendment without any appreciation of evidence.

(j) A review of earlier measures taken for reducing pendency of cases in the courts like Fast Track Courts, Plea Bargaining should be undertaken.

(k) There may be cases in the 211 offences which may have provision of minimum imprisonment beyond six months. This may cause repugnancy to proposed sub section (a) of section 262.

## **7. VICTIMOLOGY :**

(i) Victim may be permitted to engage an advocate in a case (Clause 3).

(ii) A comprehensive scheme to be prepared for compensating the victim or his dependants who have suffered loss or injury, as a result of crime and who require rehabilitation (Clause 37).

(iii) Victim shall have a right to prefer an appeal against any adverse order passed by the court (Clause 38).

## **VIEWS OF THE COMMITTEE**

7.1 The Committee is of the view that consultation with the Central Government or the State Government, provided in Clause 3 of the Bill, may cause delay and defeat the very purpose of allowing the victim the facility of engaging an advocate of his choice. The Government too agreed to the deletion of this stipulation. The Committee also finds that details like the stage when the victim is allowed to engage advocate of his choice, his responsibilities, his relationship with the Public Prosecutor and situations wherein there is more than one victim etc., are not provided in the Bill. This aspect needs to be looked into so that this facility is availed of by the victim without any hitch.

7.2 The Committee also visualises a scenario wherein there is a conflict in the approach to the case between the Public Prosecutor and the advocate engaged by the victim. The issue as to how that conflict would be resolved needs to be addressed in the Bill.

## **8. CHANGES IN THE LAW RELATING TO ARREST**

- (a) Power of arrest must be exercised after reasonable care and justification (clauses 5 and 6).
- (b) Arrested persons to have right of having his advocate present during investigation (clause 6).
- (c) Notice of appearance to be issued for investigation instead of arresting the person (clause 6).
- (d) Avoiding touching of the body of the female accused by male police officers (clause 7).
- (e) Arrested person to be examined by medical practitioner soon after the arrest (clause 8).
- (f) Health and safety of the arrested person to be the duty of person having his custody (clause 9).
- (g) Arrest to be made strictly according to the code (clause 10).
- (h) Case diary to contain statement of witnesses (clause 17).

## **VIEWS OF THE COMMITTEE**

8.1 The Committee is of the view that detention of a person in custody in the interest of his own safety, provided in Clause 5 (ii)(b), is totally unacceptable as personal liberty is the most treasured freedom of an individual. This provision should be deleted. The Government also agrees to the said deletion.

8.2 The Committee is of the view that the words ‘or a reasonable complaint has been received’ as provided in sub section 1(b) of section 41 of Code should be retained besides ‘credible information’ as proposed in Clause 5(i)(b) of the Bill.

8.3 The Committee also feels that the rank of the police officer who can effect arrest mentioned in Clause 5(i)(a) should be specified.

## **9. WITNESS TURNING HOSTILE – MEASURES TO CURB**

(i) The statement made by a person to police during investigation to be signed by the person making it and to be recorded by audio-video electronic means (clause 12).

(ii) Material witnesses in crimes having punishment of more than 10 years imprisonment to be produced before the Magistrate for recording of statement (clause 15).

(iii) Summary trial of witnesses deposing contrary to statement made under Section 164B and punishment up to 2 years for the offence (clause 36).

## **VIEWS OF THE COMMITTEE**

9.1 The Committee wishes to reiterate its earlier recommendations made in its One Hundred and Eleventh Report on the Criminal Law (Amendment) Bill, 2003 wherein it had expressed the view that evidentiary value of the recorded statement before Police Officer does not change even after it is signed by the witness. In the present Bill the statement is proposed to be recorded by audio-video electronic means. Even that does not change the evidentiary value of the statement. Therefore its earlier recommendation that in a given situation it may violate the Fundamental Right of a person enshrined under Article 20(3) as some of the potential witnesses can be accused

also and thus there is an apprehension that the provision can be misused by the police which could increase corruption, still holds good. The Committee is also of the view that presence of an advocate of the accused of an offence while recording confession by audio-video electronic means is likely to expose him as a witness in the trial and thus may cause breach of professional ethics which prescribe that an advocate should not accept a brief where he is likely witness. On the issue of recording of statement before the Magistrate, under section 164B and limiting the offences punishable with imprisonment for ten years or more in the Bill the Committee still feels that the Magistrates are already overburdened and by making the recording of statement mandatory will increase their burden.

9.2 The Committee once again deliberated on this aspect and came to the conclusion that there were no compelling circumstances that warrant a review of the recommendation made by the Committee in its One Hundred and Eleventh Report. Hence, the Committee opposes the provision again, as it is not a workable proposition.

## **10. COMPOUNDING OF OFFENCES (CLAUSE 30) (procedural simplification)**

- (i) 24 more IPC offences to come under Table 1 of Section 320 of CrPC so that parties can compound the offence without intervention of the court. (Sections 324, 335, 343, 344, 346, 379, 403, 406, 407, 411, 414, 417, 419, 421, 422, 423, 424, 428, 429, 430, 451, 482, 483 & 486). This totals up to 45.
- (ii) One more offence being made compoundable under Table 2 (Section 312).
- (iii) If an offence is compoundable, its abatement or an attempt to commit it will also be compoundable.

## **VIEWS OF THE COMMITTEE**

10.1 The Committee reiterates its observations made in the One Hundred and Eleventh Report regarding Section 498A IPC wherein it had recommended that express provisions may be made in Section 320 of CrPC to reflect the availability of compounding of offence to the relatives of the husband. The Committee also feels that offence under section 498 need be made compoundable by the woman concerned in addition to the husband of the woman.

## **11. ADJOURNMENTS - AVOIDANCE OF**

No adjournment to be granted at the request of the party unless circumstances are beyond the control of that party (clause 28).

## **VIEWS OF THE COMMITTEE**

11.1 The Committee feels that this provision, particularly sub-clause (c) may cause practical difficulties in its implementation. Engaging another advocate/pleader for a particular hearing is difficult not only for the party applying for adjournment but even for courts. Because all papers of the case etc. may not be available with the new advocate engaged and thus might be of no help/assistance to the court.

## **12. PROTECTION OF WOMEN**

- (i) All rape cases shall be tried in the court of a woman judge as far as practicable (clause 4).
- (ii) If an arrested person is a woman, the medical examination will be made only by or under supervision of a female RMP (Clause 8).
- (iii) In rape cases investigation shall be conducted at the residence of the victim as far as practicable by a woman police officer and if victim is less than 18 years her parents or a social worker may be present during investigation (Clause 11).
- (iv) Investigation of child rape cases may be completed within three months (Clause 18A).
- (v) In-camera trial of sexual offence cases shall be conducted as far as practicable by woman judge. (clause 31).
- (vi) Death sentence of a pregnant woman shall be mandatorily commuted to life imprisonment. (clause 39).

## **VIEWS OF THE COMMITTEE**

12.1 In view of the suggestions by various witnesses before the Committee, proviso to Clause 11 needs to be amended. The reformulation may read as follows:-

“Provided further that in relation to an offence of rape, the recording of statement shall be conducted at the residence of victim or place of her choice and, as far as practicable by a woman police officer, and she should be questioned in the presence of her parents or near relatives or a social worker of the locality.” The Government agreed to the revised formulation and also to substitute the word ‘questioned’ by an appropriate word.

### **13. USE OF TECHNOLOGY**

(i) Video linkages to be used for production of accused in judicial custody before the Magistrate (Clause 16).

(ii) Enabling provision for video recording of statement of witnesses before police and Magistrates (Clauses 12, 14 & 27).

### **VIEWS OF THE COMMITTEE**

13.1 Even though video linkages are to be used only for extending judicial custody, the Committee has its apprehensions that ill treatment and atrocities committed on the accused in jail may not be shown/manifested to the judge as it would have been if the accused had been presented physically before him. Since there would be physical gap of space between the accused, who will be in jail and his advocate, who will be in court, effective communication between them may not take place in such a situation.

### **14. INQUIRY AND TRIAL OF PERSONS OF UNSOUND MIND**

An accused incapable of depending himself due to unsoundness of mind to be given a fair trial. He may be discharged or released on bail also. Psychiatrist or clinical psychologist may be consulted in such cases (Clause 32 to 34).

### **VIEWS OF THE COMMITTEE**

14.1 The Committee is of the view that a proviso may be added to sub-clause (a) of clause 33 of the Bill to the effect that any party being aggrieved by the report of the psychologist or clinical psychiatrist for care and treatment may appeal to a medical board and that the composition of the Board be provided in the proviso itself. The Government agreed to the suggestion.

## **15. BAIL BOND: (IN CASE OF ACQUITTALS)**

All criminal courts to take bail bond before the conclusion of the trial or disposal of the appeal, requiring the accused to appear before the next Appellate Court. (Clauses 40 & 41)

**15.1 The Committee does not have any objection to the said clauses.**

## **RECOMMENDATION**

16. The Committee recommends to the Government to have a relook at the entire Bill in the light of its observations/recommendations made in the previous paragraphs. The Committee in this context would like to reiterate its recommendations made in the One Hundred and Eleventh Report that Government should attempt to bring forward a comprehensive Bill for revamping the criminal justice system.



To be inserted at printing stage.



vide Rajya Sabha Parliamentary Bulletin Part II No. 43429 dated 29 August, 2006.

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