

PARLIAMENT OF INDIA

RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS

ONE HUNDRED AND THIRTY NINTH REPORT
ON
THE PRIVATE DETECTIVE AGENCIES (REGULATION) BILL, 2007

(PRESENTED TO RAJYA SABHA ON 13 FEBRUARY, 2009)
(LAID ON THE TABLE OF LOK SABHA ON 13 FEBRUARY, 2009)

RAJYA SABHA SECRETARIAT
NEW DELHI
FEBRUARY, 2009/MAGHA, 1930 (SAKA)

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COMMITTEE ON HOME AFFAIRS
(Constituted on 5 August 2007)

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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

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12. Dr. Rattan Singh Ajnala
13. Shri Ilyas Azmi
14. Km. Mamata Banerjee
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16. Shri Biren Singh Engti
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19. Shri Naveen Jindal
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21. Prof. K.M. Kader Mohideen
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23. Shri Ramchandra Paswan
24. Shri Sachin Pilot
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26. Shri G. Karunakara Reddy
27. Shri Mekapati Rajamohan Reddy
28. Shri Baju Ban Riyan
29. Choudhary Bijendra Singh
30. Shri Brij Bhushan Sharan Singh
31. Shri Mohan Singh

* Nominated w.e.f. 12 December 2007 *vice* Shri T.K. Hamza who was nominated to Standing Committee on Commerce.

COMMITTEE ON HOME AFFAIRS
(Constituted on 5 August 2008)

- | | | | |
|----|--------------------|---|-------------|
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RAJYA SABHA

2. Shri Rama Chandra Khuntia
3. Shri Rishang Keishing
4. Shri R.K. Dhawan
5. Shri S.S. Ahluwalia
6. Shri Janeshwar Mishra
7. Shri Prasanta Chatterjee
8. Shri Satish Chandra Misra
9. Shri Sanjay Raut
10. Shri Tiruchi Siva

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16. Shri Biren Singh Engti
17. Shri Tapir Gao
18. Shri T.K. Hamza
19. Shri Naveen Jindal
20. Prof. K.M. Kadermohideen
21. Shri Hemant Khandelwal

22. Shri Ram Chandra Paswan
23. Shri Sachin Pilot
24. Shri Ashok Kumar Pradhan
25. Shri M. Raja Mohan Reddy
26. Shri Bajju Ban Riyan
27. Choudhary Bijendra Singh
28. *Ms. Agatha K. Sangma
29. @ Vacant
30. # Vacant
31. Vacant

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
 Shri. P.P.K. Ramacharyulu, Director
 Shri D.K. Mishra, Deputy Director
 Shri Bhupendra Bhaskar, Committee Officer

* nominated as a Member of the Committee w.e.f. 1st December, 2008.

@ Consequent upon change in nomination as Member and appointment as the Chairman of DRPSC on Agriculture, Shri Mohan Singh ceased to be a Member of the Committee w.e.f. 5 December, 2008.

Consequent upon vacation of his seat in Lok Sabha as a result of his election to Legislative Assembly of Chhattisgarh, Shri Ajit Jogi ceased to be a Member of the Committee w.e.f. 26 December, 2008.

PREFACE

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 Thirty Ninth Report on the Private Detective Agencies (Regulation) Bill, 2007 (**Annexure I**).

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, K the Chairman, Rajya Sabha, referred the Private Detective Agencies (Regulation) Bill, 2007 as introduced in the Rajya Sabha on 13th August 2007 and pending therein, to the Committee on 17th August, 2007 for examination and report within three months. Due to preoccupation of the Committee with other urgent and pressing legislative business, the Chairman, Rajya Sabha, granted extensions of time to it thrice, for presentation of the Report, the last being upto 15 March 2009 .

3. The Private Detective Agencies (Regulation) Bill, 2007 provides for regulating the private detective agencies through constitution of a Central Board at the Central level and State Boards at State level, for the purpose of grant of licences and also to make holding of licences mandatory for carrying on the business of private detective agencies and other related matters.

4. The Committee issued a Press Communiqué (**Annexure II**) on the Bill on 13th September 2007

inviting memoranda from individuals/organizations. In response thereto, several memoranda were received by the Committee (List at **Annexure III**). The Committee also sought views/suggestions of the State Govts./UTs on the said Bill, after obtaining the permission of the Hon'ble Chairman, Rajya Sabha. Some of the States and UTs responded (List at **Annexure-IV**).

5. The Committee considered the Bill in four sittings held on 18th September 2007, 13th June and 4th December, 2008 and 16th January 2009.

5.1 The Committee in its meeting held on 18th September 2007, heard the presentation of the officials of the Ministry of Home Affairs on the Bill and held preliminary discussion thereon. However the deliberations remained inconclusive. The Committee again heard the Home Secretary on 13th June, 2008. In response to certain issues, particularly some policy issues, the Ministry vide its letter dated 15 September 2008 informed that it had constituted an Expert Group to examine the policy issues and the final replies would be furnished after the receipt and examination of the Expert Groups' report.

5.2 The Committee in its sitting held on 4th December decided to await the report of the Group constituted by the Ministry to consider the policy issues concerning the Bill, and the final comments on the various queries raised by the Members.

5.3 The Ministry of Home Affairs vide its letter dated 6th January, 2009 informed the Committee that the Expert Group was an internal arrangement. As no consensus among the members of the Expert Group emerged, the formal report on the subject was not submitted. The Ministry of Home Affairs took the view that the replies furnished by the Ministry may be treated as their considered response.

5.4 In this background, the Committee in its sitting held on 16th January 2009, termed the reply of the Ministry as self-contradictory and felt that the policy issues raised by the Members of the Committee remained unaddressed. The Committee, therefore, decided not to take up the clause-by-clause consideration of the Bill and present the report containing its views and recommendations.

6. The Committee considered the draft Report in its sitting held on 10th February, 2009 and adopted the same.

7. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in Chapter-V of the Report.

8. 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 the process of examining the Bill.

Sushma Swaraj
Chairperson

New Delhi
February, 2009

Department-related Parliamentary
Standing Committee on Home Affairs

REPORT
Chapter-I
Introduction

1.0 The Private Detective Agencies (Regulation) Bill, 2007 provides for regulation of the private detective agencies through constitution of the Central Board at the Central and State Boards at the State level, for the purpose of grant of licenses and also to make holding of licenses mandatory, for carrying on the business of private detective agencies and other related matters.

Salient features of the Bill

1.1 The salient features of the Private Detective Agencies (Regulation) Bill, 2007 are briefly as under:-

(i) The constitution of Central and State Regulatory Boards. The Central Board would be responsible for granting all-India licences for operating in more than one State, whereas the State Boards would be authorized to grant licence for operating in that State. Both the Central and State Boards would also have powers to cancel/suspend or revoke licences granted in their respective jurisdiction (s) on the grounds specified.

(ii) No person shall engage in the business of private detective agency unless he/she holds a licence issued by the concerned licensing authority. The licence will be valid for Five years and may be renewed from time to time after the expiry of five years, on payment of such fee as may be prescribed. Any existing private detective agency, which has been operating before commencement of this Act, shall also obtain a licence within a period of 180 days from the date of such commencement.

(iii) A person shall not be considered for issue or renewal of a licence under this Act, if he/she has been:-

(a) convicted by a competent court for an offence and sentenced in respect thereof to imprisonment for not less than two years; or

- (b) keeping links with any organization or association which is banned under any law on account of their activities prejudicial to national security or public order; or
- (c) indulging in activities which are prejudicial to national security or public order; or
- (d) dismissed or removed from Government service.

(iv) A company, firm or an association of persons shall not be considered for issue of a licence under this Act, if, it is not registered in India, or having a proprietor or a majority shareholder, partner or director, who is not a citizen of India.

(v) Imparting of training, as may be prescribed by the Central Government, is mandatory for the agency to its detective agents with a view to ensuring a reasonable level of skill/quality in the profession.

(vi) Private detective agents are not to be engaged without due verification of character/antecedents; should be citizen of India; should have minimum requirement of the age of 21 years; physical standards and should have completed the prescribed detective training successfully.

(vii) Any person who contravenes the provisions of the Bill under clause 7 (which prohibits any persons(s) or private detective agency from carrying on or commencing the business of private detective agency without a licence), in the first instance, shall be liable to penalty by the Board which may extend to two lakh rupees; and on persistent violation of the said Section, shall be punishable by the competent court, with imprisonment for a term which may extend to two years and also with fine which may extend to five lakh rupees.

(xii) The right of an individual to privacy and freedom is safeguarded and any violation is punishable with imprisonment and monetary penalty and may invite suspension/cancellation of licence.

(xiii) The Central Government is vested with powers to relax the requirement of qualification for employing or engaging any person as private detective agent or the requirement of licensing for performing private detective work in certain cases, for the reasons to be recorded in writing, in respect of a private detective agent or a private detective agency, if such agent or agency is recognized or registered under the law of any country. This provision has been made to give some legal scope for foreign operators to operate in India for a specified period and for a declared purpose.

Background of the Bill

1.2 Explaining the necessity of the Bill, the Ministry, in their background note made the following submissions:

(i) There are many private detective agencies presently functioning in the country and in fact, some of the private security agencies are also engaged in the work of detective agencies. They are engaged in multifarious activities ranging from individual espionage such as matrimonial matters, adultery of spouses, love affairs of children, to the matters of patent, R&D, credit card frauds, etc. Thus, there is likelihood of such detective agencies invading and encroaching upon the privacy of individuals by their

actions. It is also possible that these private detective agencies could interfere into the functional domain of police and other investigative agencies of the Government.

- (ii) Due to increase in the number of private detective agencies which did not care for the right of privacy of others and also keeping in view the functioning of these agencies, a need was felt to evolve or enforce proper norms for functioning of these private detective agencies and also to ensure closing down of the business of agencies, with dubious style of functioning, instead of proliferating. It was also felt necessary to demarcate the areas of operations between the police and such private detective agencies.
- (iii) The need for regulating the functioning of the private detectives operating on agency basis has been felt since long. All India Police Science Congress in the year 1974 suggested that there should be a legislation to regulate the functioning of private detective agencies in India. Subsequently, the Bureau of Police Research & Development conducted a detailed study in 1975. The study suggested a common Act to regulate the private security and detective agencies. The objective of regulation was to enlist the agencies by licensing, bring about some sense of responsibility by inspection and audit of work and introduce quality by setting standards. A study by a Group of Officers at Sardar Vallabhbhai Patel National Police Academy, Hyderabad in 1976 came out with ten point modalities for legislating on the subject of private security/detective agencies.

(iv) Besides, during discussions on the Private Security Agencies (Regulation) Bill, 2005 in the Rajya Sabha on 10th May, 2005, some members had suggested for enactment of a separate law to regulate private detective agencies also. In response, the Home Minister had stated as under:-

“One of the most important suggestions made by one or two Members here related to the law to regulate the detective agencies. This is the law which is being framed to regulate the security agencies. It is suggested that let us have a law to regulate the detective agencies also. I think it is a very good suggestion, and, may I say on the floor of the House, we will look into it, and may be, very soon, will come to this House with a law for this purpose”.

1.3 The Ministry accordingly stated that for regulating the functioning of the private detective agencies, making them work within legal framework and accountable to a regulatory authority, it had been decided to enact a legislation which would provide for constitution of a Central Board at the Central level and State Boards at the State level for the purpose of grant of licenses and also to make holding of licenses mandatory for carrying on the business of private detective agencies and other related matters. According to the Ministry, the main purpose of the legislation was to ensure that the private detective agencies worked within the ambit of law and were accountable to a regulatory mechanism.

Chapter-II

Presentation on the Bill

2.0 The Committee in its sitting held on 18th September, 2007 heard the presentation of the representatives of the Ministry of Home Affairs. The Additional Secretary explaining the reasons behind bringing the Bill, stated that during the course of discussion in Rajya Sabha on the 10th May,

2005 on the Private Security Agencies Bill 2005, some members had suggested for enactment of a law to regulate private detective agencies also and the then Home Minister had assured the House that a Bill to regulate the private detective agencies would be introduced. She further added that due to increase in the number of private detective agencies which did not care for the right of privacy of others and also keeping in view the functioning of these agencies, a need was felt to evolve or enforce proper norms for functioning of these private detective agencies and also to ensure that agencies with dubious style of functioning closed down their business instead of proliferating.

2.1 The Joint Secretary, MHA, while making a power-point presentation on the Bill, dwelt on the main provisions of the Bill, which inter-alia included the procedure pertaining to giving licences to detective agencies; evolving or enforcing proper norms for their functioning; verifying the antecedents of the personnel employed; ensuring the closure of the detective agencies of dubious character and prohibiting their proliferation. The Committee was apprised that the Lok Nayak Jayaprakash Narayan National Institute of Criminology and Forensic Science, (LNJN NICFS) in consultation with the experts and various stakeholders prepared the preliminary draft of the Bill. The Committee was further informed that a Committee under the Chairmanship of Additional Secretary, Ministry of Home Affairs with members from 1B, BPR&D, LNJN, NICFS, Delhi Police and the States held deliberations on the draft Bill, and felt that the profession of private detective agencies should be broadly self-regulatory on the lines of the regulatory bodies dealing with chartered accountants, cost accountants, company secretaries and architects, etc.

2.1.1 Member raised several issues/queries during the course of the presentation on the Bill. The Committee not being satisfied with the replies given, decided to hear the Home Secretary later.

Oral evidence of Home Secretary

2.2 The Committee took the oral evidence of the Home Secretary on the Bill on 13th June, 2008. The Home Secretary giving a detailed background to the Bill, stated that it provides for verification of the antecedents of the agencies and the personnel employed by them as private detective agents; safeguard the right to privacy and freedom of an individual; lay down the standards of training for the profession; prescribe the code of ethics for conduct of private detective agency and the private detective agents and above all to ensure that private detective agencies of dubious reputation close down their business and do not proliferate.

2.2.1 During the course of the Home Secretary's oral evidence, a brief presentation was made giving details of the Bill. During the presentation, he dwelt on the following issues.

(i) The proposed Bill ensures the induction of the right kind of persons in the business; that a private detective agency shall not employ or engage any person as a private detective agent unless he is a citizen of India; having minimum age of 21 years; satisfies the agencies about his character and antecedents in such manner as may be prescribed.

(ii) The private detective agency shall furnish such information, which is relevant to the issue under

enquiry and which relates to the lawful objective for which the enquiry was undertaken, only to the client or to his authorized representative.

- (iii) If commission of any cognizable offence is noticed by any private detective agent during the course of discharge of his duties, he shall bring it to the notice of his superior who in turn shall forthwith inform the police either through his employer or agency or on his own. [Clause 26(1)]
- (iv) The respective Boards are empowered to cancel/suspend the licence on the basis of misrepresentation or suppression of material facts for obtaining licence, use of false documents or photographs, violation of any provision of acts/rules, impersonation, passing on information obtained during the discharge of his duties to other persons. However, reasonable opportunity will be given to the licence holder to present his case before his licence is cancelled (Clause 16)
- (v) The provision of offences and penalties are provided in the Bill viz. (i) Operation without licence: fine upto Rs.2 lakh in the first instance, imprisonment for two year and fine of Rs.5 lakh in case of persistent violation; (ii) Violation of training requirement (under clause 12); (iii) Employment of an ineligible person as agent (clause 13); and (iv) non-disclosure of information to the Board (clause 15), fine upto Rs.50,000 in addition to suspension/cancellation of license (clause 27(2)). Moreover, in case of violation of the rights of an individual to privacy and freedom, imprisonment upto six months and fine upto Rs.50,000/- would be imposed.

2.2.2 The Home Secretary further stated that the Bill had been drafted by Lok Nayak Jayprakash Narayan National Institute of Criminology & Forensic Science (LNJN NICFS). A Committee under the chairmanship of Additional Secretary, Ministry of Home Affairs including representatives from Intelligence Bureau, Bureau of Police Research & Development, LNJN NICFS, MHA, Delhi Police and the States had deliberated on the draft Bill. Copies of the Bill were also forwarded to other agencies such as Directorate of Revenue Intelligence, Financial Intelligence Unit, Research & Analysis Wing, Central Board of Excise & Customs, Department of Industrial Policy & Promotion, Enforcement Directorate, Department of Economic Affairs, Department of Legal Affairs for comments. He stated that based on the comments received from various agencies, the proposed Private Detective (Regulation) Bill 2007 had been framed.

2.2.3 It was further submitted that similar laws of USA, Australia, Canada and Singapore were also studied. In USA and Australia, there were different legislations in different States. Canada had one law. The City State of Singapore had a powerful regulatory regime which included carrying out search and arrest by the police/licencing officer. In most of these laws, there was provision for punishment on violations, by imposition of fine of varying amounts.

2.2.4 According to the Home Secretary, no State Government had expressed any reservations in respect of the proposed legislation. He further clarified that the State Police was not seeking the help of the Private Detective Agencies. However, in Tamil Nadu, in some cases, the evidence collected by the Private Detective Agencies had been filed as exhibits before the court of law.

Chapter-III

Views/suggestions of States/Union Territories, Private Detective Agencies/ individuals

Views/suggestions/ received from States/Union Territories

3.0 The Committee invited suggestions from the State Governments/Union Territories Administrations on the provisions of the Bill. Some States/UTs have responded (List of those States/UTs is at Annexure-IV).

3.1 The important suggestions of State Governments and Union Territories Administrations, have been summarized as under:-

- (i) As per the definition under clause 2 of the Bill, “Private Detection Work” means “collection of information in a lawful manner” but the Bill does not define “lawful manner”;
- (ii) Two representatives from central security/intelligence agencies (e.g. Intelligence Bureau, Special Branch, Local Police, etc.) and one member with legal background (e.g. an officer from Ministry of Law or from the Department of Law of the State Government) be nominated by the Central Government on Central Private Detective Regulatory Board;
- (iii) Chairperson of the Central Board/State Board should be a Police Officer not below the rank of Inspector General of Police;
- (iv) An Officer of the rank of Secretary may be Chairman of the State Private Detective Regulatory Board in place of Joint Secretary of State Government. Further, out of three members not more than one and in case of five members not more than two, as the case may be, shall be from the recognized chambers of trade and commerce and the private detective agency, to be nominated by the State Government;
- (v) In view of shortage of officers of the rank of Joint Secretaries in the U.T.s, appointment of any Class I officer from the Administration as the chairperson and other members of the State Board, may be considered.
- (vi) An appropriate provision in the Bill be incorporated which could bind the detective agencies to bring to notice of the Police any matter, relevant to internal security which comes to their notice during the detective work;
- (vii) Representative from Private Detective Agency in the State Board is not desirable and may be avoided;
- (viii) A representative of Special Branch of the State may be in the State Board which would help provide inputs to that Board regarding the applicants and desirability of allotting

them the licence;

(ix) The punishment for contravention of the provisions of clause 7, may be enhanced in Clause 27 which should be minimum imprisonment of three years which may extend upto five years.

(x) Verification of antecedents of Private Detectives may be entrusted to the SB-CID at the State level and the Intelligence Bureau at the national level;

(xi) The functioning of Private Detective Agencies may affect privacy of an individual or an institution or any company/firm/body, etc;

(xii) Procedure for issuing license to the Private Detective Agencies (clauses 8 to 10) be made more stringent so that only genuine agencies with good credentials, are issued the licence;

(xiii) Under no circumstances, the foreign agencies or agents should be allowed to act as Private Detective Agencies. No Private Detective Agencies of the country should be allowed to enter into any collaboration with a foreign detective agency;

(xiv) Though Clause 9 mentions that a convicted person with an imprisonment of not less than two years, becomes ineligible for issue or renewal of licence, it does not mention about the person facing a criminal charge. This needs to be considered. Similar provision needs to be considered under Clause 13 (2). It may not be desirable/agreeable to make eligible, a person who was convicted, irrespective of period of imprisonment, for private detective agency in addition to the condition stipulated in the Bill.

(xv) Private Detective Agency may be precluded from conducting inquiry into a cognizable offence, by providing a separate section in the Bill;

(xvi) Clause 25 should appropriately be modified to make it mandatory for a Private Detective Agency to divulge certain information in its possession to the police as the same is extremely helpful in prevention, detection and investigation of crime and also in the maintenance of law and order;

(xvii) The information collected by the private detective agency or any member thereof bears no authenticity and hence difficult to be used as evidence in the court of law even if the private detective agency or any member thereof may appear as witness;

(xviii) There is possibility of private detective agencies becoming parallel to the state investigating agencies;

(xix) Clause 10 (1) needs to be appropriately amended by incorporating a proviso

viz. “Provided that Central Board, before taking final decision on an application seeking license to operate in two or more states, shall call for the viewpoint of the concerned State and consider the same”;

(xx) the words “or by the police on duty” may be substituted by “or by any police personnel on duty”, in sub-clause 3 (a) of clause 20;

(xxi) Clause 35 empowers the Central Government to relax the requirement of qualifications for employing or engaging any person as private detective agent or the requirement of licensing for performing private detective work in certain cases. There should be no relaxation in qualification as such agencies would be handling sensitive cases;

3.1.1 The comments of the Ministry on each suggestion/views of the State Governments/UT Administrations are placed at Annexure -V:

Views/suggestions from private detective agencies and individuals

3.2 In response to a Press Release inviting memoranda from individuals/organizations on the Bill, the Committee received several suggestions/ memoranda.

3.2.1 The suggestions/memoranda are as under:-

- (i) Relaxation offered by Clause 35 could be exploited by foreign agencies to infiltrate the Indian market to the disadvantage of Indian companies and endanger the security of the country;
- (ii) The prescribed fees for licence and its renewal should be reduced as most of the agencies cannot afford such huge amount;
- (iii) Under clause 17 there should be provision of appeal, in case of State Board to High Court of that State and in case of Central Board to the Supreme Court of India. Further, there has to be a provision of appeal to Supreme Court against the order of High Court.
- (iv) Conditions like minimum qualifying physical standards under sub-clause (e), completion of prescribed detective training successfully under sub-clause (d) and other conditions as prescribed in sub-clause (f) of clause 13, are onerous as there are very few detective training institutions in the country;
- (v) The Bill must contain provisions for safeguarding interest of the detective agencies from the Inspector of Police or person authorized by Board, as clause 19 violates the right of privacy. There should also be a provision for safeguarding the interests of the agencies, in case of financial predicament;

- (vi) There is no mention of educational qualification, experience, for a detective agent in the Bill;
- (vii) Detectives may be permitted to work in the entire country because some cases naturally get connected to other parts of the country and one should apply directly to Central Board and get licence for it;
- (viii) The period of licence may be increased from 5 to 10 years and accordingly fees may be fixed for 10 years ;
- (ix) Under clause 11(3), 'no objection certificate' may be obtained from the Central Agency (IB) instead of from the police;
- (x) In clause 16(1) (K), instead of "Assistance to police", the words "co-operation to the police" would be better so that the work can be done without any prejudices and detective and police can jointly and honestly reach near the truth;
- (xi) The work/activities of the detective agencies should be reported upon and reviewed by IB ;
- (xii) In the interest of private detective agencies, there should be provision in the Bill that after discussion with association of detectives, Government should make nominations on the Board;
- (xiii) Under clause 13 of the Bill a private detective agency shall engage a person who has completed the prescribed detective training norms successfully and he has also to fulfill other conditions which may be provided in the Bill, itself;
- (xiv) Under clause 11 (1), for renewal of license, late fee can be imposed in case of delay in renewal of license. The period of limitation of 120 days for applying for renewal may be removed and late fee system may be in effect ;
- (xv) Under Clause 30 of the Bill , the right to legal proceeding should be given to Private detective Agency(ies) as there is no provision in the Bill regarding the powers of Private Detective after getting the Licence from Government of India;
- (xvi) Private Detectives encroach upon the right to citizens to privacy and Private Detectives are used for blackmailing purpose and extract the confidential information of the company by rival companies;

3.2.2 The suggestions and comments received from the Ministry of Home Affairs are placed at Annexure - VI

Chapter-IV

Issues raised by Committee and comments of Ministry thereon

4.0 The Committee, during the course of oral evidence of the Home Secretary, raised certain policy issues. The Committee not being satisfied with the oral replies of the Home Secretary directed him to examine the issues thoroughly and after application of mind, send written replies thereon. The Ministry of Home Affairs *vide* its letter dated 15th September, 2008 informed the Committee that for considering the policy issues identified by the Committee, a group had been constituted by the Ministry consisting of Dr. Sharada Prasad, DGP (Vigilance and Anti-Corruption), Assam, Shri D.M. Mitra, Director, NICFS, Shri R.C. Arora, Director (R&D), BPR&D and Shri S.N. Singh, Joint Director (IB). It was also stated that after receiving the report from the group and after its due examination, the Ministry would send the final replies on the policy issues. Later the Ministry *vide* its letter dated 14th October, 2008 furnished its replies to the policy issues. The issues identified by the Committee and the written replies furnished by the Ministry, are as under:-

ISSUE

(i) **Definition of ‘lawful objective’ and ‘lawful manner’**

4.1 The definition of ‘private detective work’ means ‘collection of information in a lawful manner for such an objective by a licensed private detective agency’. Have the ‘lawful objective’ and ‘lawful manner’ been defined in the Bill?

GOVERNMENT’S RESPONSE

4.1.1 As per clause 2(g) of the Bill, the definition of “private detective work” means collection of information in a lawful manner for such an objective, by a licensed private detective agency. The PDAs can collect the information for lawful objective in a lawful manner. The private detective agencies cannot carry on such work which is forbidden by law and cannot breach the law of the country while collecting information. Therefore, there is, no need to define the meanings of ‘lawful objective’ and ‘lawful manner’ as these are well understood.

ISSUE

(ii) **Jurisdiction of Private Detective Agencies__**

4.2 The activities of private detectives have not been defined in clause 2 (1) (g). The areas of operation of private detective agencies should be specified in the Bill.

GOVERNMENT’S RESPONSE

4.2.1 The issue was examined at the time of formulation of the Bill and a view was taken that it would not be practicable and feasible to enumerate all the activities that can be carried out by the private

detective agencies. Further, it was felt that since no legal right or legal immunity is envisaged for private detective agencies/agents, there is no need to specify all the activities. Section 2(g) specifies that the private detective agencies shall act in a lawful manner and for a lawful objective, and it is felt that this should be sufficient.

ISSUE

(iii) **Conflict between Private and State Investigating Agencies**

4.3 There are possibilities that the information collected by private detective agency may be contrary to the information being provided by the state agencies and this may lead to contradiction between the two. A parallel institution should not be established which could lead to conflict between the State investigating agency and the private detective agency.

GOVERNMENT'S RESPONSE

4.3.1 There is no possibility of any conflict between the state investigating agencies on the one hand and private detective agencies, as their functional territories are different. The investigating agencies get the mandate from the various procedural, substantive and criminal laws such as Cr.P.C. 1973, Indian Evidence Act, 1872, I.P.C., Police Act and other special legislations. Thus, the powers vested on State investigating agencies are not available to private detective agencies. In any case, the evidentiary value of the information collected by a PDA shall be regulated by the different provisions of the Indian Evidence Act, 1872 in the same way as the court (Criminal and Civil) deals with the evidence adduced before it by the prosecution/defence and parties to the litigation.

ISSUE

(iv) **Legal Sanctity to Private Detective Agencies**

4.4 The Bill is aimed to regularize or recognize the private detective agencies and to give them some power. The Private Detective Agencies would need license to operate. Will this Bill not give legal sanctity to the agencies which they do not have today?

GOVERNMENT'S RESPONSE

4.4.1 As per Article 19(1) of the Constitution, a citizen has right to practice any profession or carry on any occupation, trade or business. The private detective agencies are thus carrying out a business or profession. However, with the enactment of the Bill, it is expected that there will be some regulation of the activities done by the private detective agencies, who would be working within the legal parameters, and would be accountable to a regulatory authority. Of course, since these agencies would be regulated through the Act and would need licence to operate, it would give recognition to the agencies under the law but there would be *prima facie*, no issue of regularisation involved. The Bill provides for conditions to be eligible to be a private detective agent which include the physical fitness and completion of

successful detective training by a individual. In addition, the agency is required to verify the character and antecedents of the private detective agent whom they seek to employ. Thus, the induction of agents shall be streamlined and only trained individuals shall be employed as private detective agents. There is also a provision that if these conditions are not satisfied, the licence of the agency is liable to be cancelled. Under the circumstances, the working of the private detective agencies could be expected to improve. The Bill does not confer any legal sanctity on the report and findings of the private detective agencies.

ISSUE

(v) **Foreign Detective Agencies in India**

4.5 As per Clause 9(2) of the Bill a company, firm or an association or persons shall not be considered for issue of a license, if it is not registered in India, or having a proprietor or a majority shareholder, partner or director, who is not a citizen of India. It could mean that minority foreign shareholders may be allowed to operate in the country.

GOVERNMENT'S RESPONSE

4.5.1 The aim of the Government is that control over such companies or agencies should be in Indian hands. The issue of pattern of share-holding had been considered when the Bill was formulated. It was observed that this activity was not included in the sectors where FDI is prohibited or any sectoral caps are stipulated, thus making 100% FDI through automatic route possible. Therefore, a decision was taken to impose a condition as indicated in clause 9(2) of the Bill.

ISSUE

(vi) **Multi-national corporations in Detective Business in India**

4.6 If any multi-national corporation wants to work in the country, it has to be registered in India. The requirement of registration will not create any barrier for them. This point has to be taken care of in the Bill.

GOVERNMENT'S RESPONSE

4.6.1 The registration clause has been kept so that those companies which are registered outside, may not operate directly, but should do so through a company registered in India, which will be accountable to the laws of the country.

ISSUE

(vii) **Jurisdiction of MHA on the subject-matter of the Bill**

4.7 As per the provisions of the Bill, “Private Detective Agency means a person or a body of persons or firm or a company holding a valid license to carry out a detective work for remuneration or reward on agency basis for other persons. So, it is customer vis-a-vis the agency. How does this come within the purview of the Home Ministry? It should be dealt with by the Consumer Affairs Ministry because the consumer is involved. In the United States, this subject is under the Department of Consumer Affairs, instead of Department of Homeland Security.

GOVERNMENT’S RESPONSE

4.7.1 The main objective of the Bill is to regulate the functioning of PDAs, and towards that end providing the licensing regime which inter alia would enable a check on antecedents of companies/ persons engaged in private detective work, as also on their activities. All this would have a relationship with security and related matters. Merely because this involves the rendering of a service to consumers would not make the subject come under the purview of the Department of Consumer Affairs, the activities of which are generic in nature.

ISSUE

(viii) **Infringement of Privacy of Individual**

4.8 In the absence of any privacy law in our country, who will protect a person from the infringement on his civil liberty, privacy, by a private detective agency?

GOVERNMENT’S RESPONSE

4.8.1 There is no privacy law in the country. In the absence of any privacy law, protection of privacy of persons is covered under the Constitution. Clause 28 is specifically drafted to take care of this issue. Any complaints on this score can be addressed under various provisions of the law.

ISSUE

(ix) **Qualification or the background of the Board members**

4.9 What would be the qualification or the background of the Board members? The Bill or the rules to be framed thereunder, should throw some light on this.

GOVERNMENT’S RESPONSE

4.9.1 The Ministry has taken note of the suggestion of the Committee in respect of making provisions under the rules regarding background etc. of the Board members.

ISSUE

(x) **Demarcation of areas of cognizable offence**

4.10 The scope of cognizable offence which is required to be reported by the Private Detective Agencies to the Police, which it may come across, during the course of investigation, needs to be specified.

GOVERNMENT'S RESPONSE

4.10.1 The clause 26(1) of the Bill relating to cognizable offence, prescribes that if the commission of any cognizable offence is noticed by any private detective agent during the course of discharge of his duties, he shall bring it to the notice of his superior immediately who in turn shall forthwith inform the police either through his employer or agency or on his own.”

As far as specifying the offences to be covered under this Clause, no such exercise has been carried out since the intent was to cast a duty upon the detective agencies. The present law, vide Section 39 of Cr.P. C. also enjoins on any member of the public, the duty of giving information in respect of offences listed therein. Any suggestion/advice of the Committee in this regard, in so far as detective agencies are concerned, will be duly considered.

ISSUE

(xi) **Evidentiary value of reports of private detective agencies_**

4.11 Like the Commissions of Inquiry Act, there should be provision in the Bill to say that the reports of private detective agencies should not be cited as evidence, and if necessary, Evidence Act, 1872 may be suitably amended.

GOVERNMENT'S RESPONSE

4.11.1 The Ministry of Law and Justice was consulted in the matter and they have mentioned that it does not appear to be a legal issue. In the view of MHA, it does not appear to be necessary to make a provision in the Act as the evidentiary value of the information collected by PDA shall be regulated by the provisions of the Indian Evidence Act 1872 in the same way as the court deals with the evidence adduced before it by the prosecution/defence and parties to the litigation. No amendment in Evidence Act is contemplated with reference to the present Bill.

Besides the above policy issues, the following issues were also raised by the Committee upon which the Ministry furnished its comments:-

ISSUE

(i) **Taking cognizance and recording of information provided by PDA**

4.12 Clause 26(1) of the Bill envisages the private detective to be duty bound to report to the police forthwith if he notices any cognizable offence having been committed. This again is a matter which falls under the purview of the Evidence Act. Under what provision of law the police authority would be eligible to take cognizance and record such information when provided by a private detective service provider since the Criminal Procedure Code denies admissibility of evidence like confessional statements etc. when obtained by Police itself? Whether Government is contemplating amendment of Cr.P.C. in order to make the provision of clause 26(1) consistent with Cr.P.C?

GOVERNMENT'S RESPONSE

4.12.1 As far as specifying the offences to be covered under this Clause, no such exercise has been carried out since the intent was to cast a duty upon the detective agencies. The present law, vide Section 39 of Cr.P.C, also enjoins on any member of the public, the duty of giving information in respect of offences listed therein. Any suggestion/advice of the Committee in this regard, in so far as detective agencies are concerned, will be duly considered. With reference to the procedural aspects, no amendment of Cr.P.C. is contemplated.

ISSUE

(ii) **Contradiction between clauses 9 and 35**

4.13 Clause 35 of the Bill seeks to provide discretionary authority to Government to relax the requirements for grant of private detective agencies licence to any individual or to a private detective service provider company etc., whereas clause 9(1) and (2) categorically stipulate the conditions in the absence of which, persons and companies, firm etc. respectively "shall not" be granted licence. The reasons for incorporating the 'relaxation' provisions in clause 35 even though it contradicts clause 9 (1) and (2)?

GOVERNMENT'S RESPONSE

4.13.1 The clause 9 contains grounds on which a person shall not be considered for issue or renewal of licence to carry on the business of private detective work. In clause 35, it is mentioned that the Central Government may relax the requirement of qualifications for employing or engaging any person as private detective agent or the requirement of licensing for performing private detective work in certain cases, for the reasons to be recorded in writing, in respect of a private detective agent or a private detective agency, if such agent or agency is recognized or registered under the law of any country. This is only an enabling provision for any contingency. The Central Govt. will use this provision with due care

ISSUE

(iii) **Need for a separate law for PDAs**

4.14 Countries with much older private detective laws, e.g. Canada, Singapore, California, etc. have a common law to govern both the private security service and private detective service whereas in India we have enacted a separate law for private security services and a separate law is proposed for private detective services. The Committee wanted to know the rationale behind not having a common law for the both?

GOVERNMENT'S RESPONSE

4.14.1 Unlike some foreign countries who have common law to govern security and detective services, the Private Security Agencies (Regulation) Act, 2005 (29 of 2005) was enacted for the first time in the country. Now the proposal is to make a separate law to regulate the activities of Detective Agencies. We are not in favour of a common law as the work of security guards and detective agents are different.

Chapter-V

Observations/conclusions and recommendations of Committee

5.0 As already stated elsewhere in this report, several policy issues were raised by the Members of the Committee during the course of the oral evidence of the Home Secretary on the 13 June, 2008. The Committee not being satisfied with the oral replies given by the Home Secretary, it directed him to examine the issues thoroughly and send written replies. The Ministry of Home Affairs later, vide its letter dated 15 September, 2008, informed the Committee that for considering the policy issues, a Group was constituted by the Ministry consisting of representatives of various agencies and that the Group was expected to finalise its report and submit the same to the Ministry. It was further stated that after receiving the report of the Group and after its due examination, final replies on the policy issues would be sent to the Committee.

5.1 The Ministry, vide its letter dated 14 October, 2008, sent the replies to the issues raised by the Committee. The issues raised and the replies of the Ministry have already been dealt with in Chapter - III. The Committee, in its sitting held on 4 December, 2008, observed that although the Ministry had send its responses, *inter alia*, on the policy issues, it appeared that the Group constituted by the Ministry had not finalized its report and in that backdrop, came to the conclusion that it would be advisable to await the report of the Group based on which the Ministry could communicate their final comments on various queries raised by the Members. Accordingly, the Ministry of Home Affairs was requested to expedite their final responses on the policy issues and also to submit copies of the Report of the Group, for circulation amongst the members of the Committee.

5.2 The Ministry of Home Affairs, responding to the communication of the Rajya Sabha Secretariat, vide its d.o.letter dated 6 January, 2009, stated as under:

"I may mention here that the said internal Group consisting of officers of NICFS,


BPR&D, IB and DGP (Assam) was constituted to deliberate on the eleven policy issues/ observations raised by the Parliamentary Standing Committee, so as to facilitate this Ministry to firm up its response to the queries/observations of the Hon'ble Parliamentary Standing Committee. There was, however, no consensus among the Members of this Group and as such the Group did not present a Report in the matter.

Keeping in view the position mentioned above, the matter had been discussed in meetings in the Ministry, in which the Members of the Group had also been invited. The replies of the Ministry in respect of the policy issues raised by the Committee with regard to the Private Detective Agencies (Regulation) Bill were framed after considering all aspects.


I would, therefore, state that the replies furnished by the Ministry of Home Affairs to the Rajya Sabha Secretariat on the policy issues raised on the Bill, vide this Ministry's O.M. dated 14 October, 2008, reflect the considered views of the Ministry and may be treated as our final reply. Further, we do not have any formal Report of the internal Group of MHA to share with the Hon'ble Committee." (emphasis added)

5.3 The Committee, in its sitting held on 16 January, 2009, took up the Bill for further consideration. The Committee also took note of the contents of the communication dated 6 January, 2009 received from the Ministry of Home Affairs and felt that the communication received from the Ministry was self-contradictory. On the one hand, it was mentioned that the Group could not reach any consensus, and on the other, the Ministry had mentioned that the replies were final and were framed considering all aspects. It appeared to the Committee that the Ministry had sent the replies for the sake of disposing of the matter. The Committee was not satisfied and convinced by the so-called 'final reply' received from the Ministry. As a matter of fact, despite several rounds of oral evidence and discussions with the officers of the Ministry of Home Affairs, the Ministry could not convince the Committee about the *sine-qua-non* of the Bill. The Committee, accordingly, decided not to proceed with the clause-by-clause consideration of the Bill and to request the Ministry to have a re-look at the Bill in the light of the issues flagged by it.

5.4 The Committee is constrained to observe that the Ministry of Home Affairs have finalized the replies on the important policy issues raised by the Committee, in a perfunctory manner. The responses of the Ministry appeared to the Committee to be laboured explanations. The replies framed by the Ministry were not acceptable to the Committee, when the Group constituted by the Ministry itself could not arrive at a consensus on important policy issues. The Committee is of the considered view that the issues need to be thoroughly examined in consultation with all the concerned Departments, agencies. The Committee, therefore, recommends that the Ministry may have a re-look at the provisions of the Bill in the light of the issues raised and suggestions made by it.

 To be inserted at printing stage.

 see Rajya Sabha Bulletin Part II No 44351 dated 20th August, 2007.

 see Rajya Sabha Parliamentary Bulletin Part II No 45628. dated 19 December, 2008.

(iii)