



146

PARLIAMENT OF INDIA RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS

ONE HUNDRED AND FORTY SIXTH REPORT

ON

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 2010

(PRESENTED TO HON'BLE CHAIRMAN, RAJYA SABHA ON 23 JUNE, 2010)
(FORWARDED TO HON'BLE SPEAKER, LOK SABHA ON 23 JUNE, 2010)

(PRESENTED TO RAJYA SABHA ON 30 JULY, 2010)
(LAID ON THE TABLE OF LOK SABHA ON 30 JULY, 2010)

RAJYA SABHA SECRETARIAT
NEW DELHI
....., 2010/....., 1932 (SAKA)

PARLIAMENT OF INDIA
RAJYA SABHA

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

ONE HUNDRED AND FORTY SIXTH REPORT

ON

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 2010

(PRESENTED TO HON'BLE CHAIRMAN, RAJYA SABHA ON 23 JUNE, 2010)
(FORWARDED TO HON'BLE SPEAKER, LOK SABHA ON 23 JUNE, 2010)

(PRESENTED TO RAJYA SABHA ON 30 JULY, 2010)
(LAID ON THE TABLE OF LOK SABHA ON 30 JULY, 2010)



**RAJYA SABHA SECRETARIAT
NEW DELHI**

....., 2010/PHALGUNA, 1932 (SAKA)

CONTENTS

	PAGES
COMPOSITION OF THE COMMITTEE	(i)
PREFACE	(ii) - (iii)
REPORT	
CHAPTER- I	1 - 6
INTRODUCTION	
CHAPTER - II	7 -9
CLAUSE-BY-CLAUSE CONSIDERATION OF BILL AND OBSERVATIONS/CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTE	
* RELEVANT MINUTES OF MEETINGS OF COMMITTEE	
ANNEXURE	
The Code of Criminal Procedure (Amendment) Bill, 2010;	

COMPOSITION OF THE COMMITTEE
(Constituted on 31st August, 2009)

1. Shri M. Venkaiah Naidu - Chairman

Rajya Sabha

2. Vacant[⊕]
3. Shri Rishang Keishing
4. Shri S.S. Ahluwalia
5. Shri Prasanta Chatterjee
6. Vacant*
7. Shri Brijesh Pathak
8. Dr. V. Maitreyan
9. Shri Tariq Anwar
10. Shri D. Raja

Lok Sabha

11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Dr. Kakoli Ghosh Dastidar
14. Shri Ramen Deka
15. Shri Mohd. Asrarul Haque
16. Shri Naveen Jindal
17. Shri Jitender Singh Malik (Sonapat)
18. Shri Lalubhai Babubhai Patel
19. Shri Natubhai Gomanbhai Patel
20. Shri L. Rajagopal
21. Shri Nilesh Narayan Rane
22. Shri Bishnu Pada Ray
23. Shri A. Sampath
24. Shri Hamdullah Sayeed
25. Dr. Raghuvansh Prasad Singh
26. Shri Ravneet Singh
27. Shrimati Seema Upadhyay
28. Shri Harsh Vardhan
29. Shri Bhausahab Rajaram Wakchaure
30. Shri Neeraj Shekhar¹
31. Shri Dinesh Chandra Yadav

SECRETARIAT

1. Shri Tapan Chatterjee, Joint Secretary
2. Shri P.P.K. Ramacharyulu, Director
3. Shri D.K. Mishra, Joint Director
4. Shri Bhupendra Bhaskar, Assistant Director
5. Shri Sanjeev Khokhar, Committee Officer

[⊕] Dr. N. Janardhana Reddy, ceased to be member of the Committee consequent upon his retirement from Rajya Sabha w.e.f. 21 June 2010.

* Due to demise of Shri Janeshwar Mishra, Member, Rajya Sabha on 22nd January 2010.

¹ Nominated w.e.f. 14 October 2009 *vice* Shri Akhilesh Yadav who was nominated to the Committee on Science and Technology, Environment and Forest..

PREFACE

I, the Chairman 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 Forty-sixth Report on the Code of Criminal Procedure (Amendment) Bill 2010.

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred* the Code of Criminal Procedure (Amendment) Bill 2010 (**Annexure**) as introduced in the Lok Sabha on 15th March, 2010 and pending therein, to the Committee on 5th April, 2010 for examination and report within three months i.e. by 4th July, 2010.

3. The Committee considered the Code of Criminal Procedure (Amendment) Bill, 2010 in its sittings held on 28th May and 11th June, 2010. The Committee heard the official presentation of the representatives of the Ministry of Home Affairs on 28th May 2010 on the Bill. The Committee considered the Bill clause-by-clause in its sitting held on 11th June 2010. The Committee authorized its Chairman to finalise the report on the Bill and present the same to Hon'ble Chairman since the House was not in Session. As per practice, the Secretaries and senior officers of the Legislative Department and the Department of Legal Affairs were also present in those sittings to respond to the queries of the Members.

* vide Rajya Sabha Parliamentary Bulletin Part II No. 47110 dated 5th April, 2010.

4. The Committee has made use of the following documents in finalising the Report:-
- (i) The Code of Criminal Procedure, 1973 (2 of 1974);
 - (ii) 111th Report of the Committee on Criminal Law (Amendment) Bill, 2003;
 - (iii) 128th Report of the Committee on Code of Criminal Procedure (Amendment) Bill, 2006;
 - (iv) Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009);
 - (v) Background note on the Code of Criminal Procedure (Amendment) Bill, 2010;
 - (vi) Oral evidence tendered before the Committee.
5. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

M. Venkaiah Naidu
Chairman
Department-related Parliamentary
Standing Committee on Home Affairs

..... June, 2010/New Delhi

REPORT

Chapter-1

INTRODUCTION

1.0 The Code of Criminal Procedure (Amendment) Bill, 2010, seeks to further amend Section 41(1)(b), [as amended by Code of Criminal Procedure (Amendment) Act, 2008 (Section 5)] and Section 41A [as inserted by Section 6 of the said Amendment Act] of CrPC 1973.

1.1.1 The Ministry, in the background note, stated that the Code of Criminal Procedure (Amendment) Bill, 2006 passed by the Rajya Sabha on 18 December, 2008 and by the Lok Sabha on 23 December, 2008, received the assent of the President on 7 January, 2009. Accordingly, the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009) was published in the Gazette of India Extraordinary, Part II, Section I dated 9.1.2009.

1.1.2 The Ministry further stated that before the Act could be enforced through official notification (as provided for under Section 1 (2) of the Act), a number of representations were received from all over the country, particularly from the Lawyers' Associations and the Bar Associations against some of the provisions of the Act. To address the misgiving of the lawyers and others, the Home Minister wrote a letter to the Chairman, Law Commission on 22.06.2009 to take initiative and to hold "consultation" with very select number of persons representing the premier Bar Associations to bring about a consensus on the two issues that seemed to be agitating the minds of lawyers.

1.1.3 It was also stated that the Chairman, Law Commission of India called a meeting on 20 August, 2009 for discussion/consultation with all concerned in respect of the amendments in the Code of Criminal Procedure, 1973 brought about by the Code of Criminal Procedure (Amendment) Act, 2008, especially the provisions amending Section 41 of the Code, at which the Chairman, Bar Council of India and the Chairman, Bar Councils of Maharashtra and Goa were also present.

1.1.4 The Ministry informed the Committee that after a lot of deliberation, the meeting ended with a general consensus on the following:

- (a) to accept both the suggestions made by the Chairman in his note:
 - (i) That in Section 41A, the word "may" be substituted by the word "shall";
 - (ii) That in case of issuance of notice under Section 41A, if a person who is not arrested and to whom a notice will be issued is unwilling to identify himself, that could be a ground for his arrest.

(b) The police officer be obliged to record his reasons not only for making an arrest under Section 41, but also for not making an arrest under that Section.

1.1.5 The Ministry further informed the Committee that the Code of Criminal Procedure (Amendment) Bill, 2010 had been prepared on the basis of the recommendations of Law Commission of India and introduced in the Lok Sabha on 15 April 2010.

1.2 PREVIOUS COMMITTEE'S RECOMMENDATIONS ON EARLIER AMENDMENT BILLS

1.2.1 It is relevant to mention that the previous Department -related Parliamentary Standing Committee on Home Affairs had considered the Criminal Law (Amendment) Bill, 2003 and the Code of Criminal Procedure (Amendment) Bill, 2006 and presented its 111th and 128th Reports thereon, respectively.

1.2.2 The Committee in the 111th Report, after considering the Criminal Law(Amendment) Bill, 2003, clause-by-clause, had recommended that Government should come forward with a comprehensive Bill, particularly in the light of reports of various commissions, committees and studies on criminal justice system.

1.2.3 In regard to Code of Criminal Procedure (Amendment) Bill, 2006, the previous Committee, in its 128th Report, observed that some of the new definitions/concepts/provisions introduced in the Bill, which sought to introduce fundamental changes in the Criminal Law of the country, seemed to be not well thought of and they were 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 those provisions. The Committee felt 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 recommended to the Government to have a re-look at the entire Bill and to attempt to bring forward a comprehensive Bill for

revamping the criminal justice system. In spite of this, the Government went ahead with the enactment of the Code of Criminal Procedure (Amendment) Bill, 2006, although some of the objections of the Committee on certain provisions were considered by the Government and agreed to and appropriate amendments were moved by the Home Minister in the Rajya Sabha at the time of consideration and passage of the Bill.

1.3 SALIENT FEATURES OF THE BILL

1.3.1 The salient features of the Code of Criminal Procedure (Amendment) Bill, 2010 are briefly as under:-

(i) Clause 2 of the Bill aims to amend Section 41(1) (b) of the Code of Criminal Procedure, 1973, as amended by the Code of Criminal Procedure (Amendment) Act, 2008, to make it compulsory for the police to record the reasons not only for making an arrest, but also for not making an arrest under Section 41.

(ii) clause 3 seeks to amend Section 41A of the Code by substituting the word 'may' by 'shall' in sub-section (1) and also substituting sub-section (4) by the following:

“(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

1.4 ORAL EVIDENCE OF HOME SECRETARY

1.4.1 When the Home Secretary, during the course of his oral deposition before the Committee, was asked to comment on the suggestions made by the Committee in its earlier Reports, *i.e.*, 111th and 128th Reports, that the Government should bring forward a comprehensive Bill to reform the criminal law, stated that Prof. N.R. Madhava Menon had submitted a draft National Policy on Criminal Justice to the Government. Since the ‘administration of the criminal justice system’ is the responsibility of both the Centre and the States, comments and views of the State Governments have been sought on the Report of Prof. Madhava Menon. However, the same have been received from a few States only. He also stated that after the receipt of the comments from all the States, the Government would take a view and bring forward a comprehensive legislation on the subject. The Home Secretary also told the Committee that given the fact that comprehensive amendments would have to be brought in the criminal law, it would take at least one year before the proposal could be brought before the Cabinet and then in Parliament.

1.4.2 Explaining about the background to the present Bill, the Special Secretary in the Ministry of Home Affairs stated that a number of representations were received from individuals and associations after the enactment of the Code of Criminal Procedure (Amendment) Act, 2008. The basic objections came from the Bar Councils and Lawyer Associations, who were against Section 41, which is the law of arrest, and Section 309, which is on adjournments in courts. She further stated that the main objection of the Associations was that the mandatory provision of arrest had been taken away from the Police and that they had been given total discretion to arrest or not to arrest in cognizable offences where

punishment was less than seven years. The Special Secretary further stated that the second objection was on the provision giving notice for non-arrest, according to which if the Police does not want to arrest, it will first have to give a notice to a person to come to the police station. Apprehensions of possible misuse of this provision were expressed. She informed the Committee that keeping in view the widespread agitation of the Bar Councils, the Home Minister wrote to the Chairman of the Law Commission on 22nd June, 2009 to take the initiative and hold discussions with the select number of persons, who represented the Bar Councils and to bring about some sort of consensus. The Chairman, Law Commission, held a meeting on 20th August, 2009, which was attended by Bar Council of India and Bar Councils of Maharashtra and Goa. She further stated that the Law Commission recommended for amendment of Sections 41 and 41A, which had been accepted by the Government and the present Code of Criminal Procedure (Amendment) Bill, 2010 had been prepared on the basis of the recommendations of the Law Commission.

CHAPTER- II

CLAUSE-BY-CLAUSE CONSIDERATION

2.1.1 The Committee took up clause-by-consideration of the Bill, in its sitting held on 11 June, 2010. The observations/recommendations of the Committee on the various clauses are given in the succeeding paragraphs.

Clause 2

2.2.1 The clause provides for amendment in Section 41 of the Code of Criminal Procedure, 1973 {as amended by Section 5 of the Code of Criminal Procedure (Amendment) Act, 2008}.

2.2.2 The clause is adopted without any change.

Clause 3

2.3.1 The clause provides for amendment in Section 41A of the Code of Criminal Procedure, 1973 {as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008}.

2.3.2 The clause is adopted without any change.

Clause 1, Enacting Formula and Title

2.4.1. Clause 1, Enacting Formula and Title are adopted without any change.

2.5.1 Since the recommendations of the Law Commission have been incorporated in the Bill and there appears to be unanimity amongst the legal community on the proposed amendment, the Committee recommends that the Bill be passed.

2.5.2 The Committee notes that the Code of Criminal Procedure, 1973, has been amended ten times so far. The present Bill is eleventh in the series. Adhocism of the Government in the matter of reforming the Criminal Justice System is self-evident. In this context the Committee recounts the observations/recommendations made by it in its 111th and 128th Reports on the Criminal Law (Amendment) Bill 2003 and the Code of Criminal Procedure (Amendment) Bill 2006, respectively, to the effect that there is an imperative need to reform and rationalize the criminal law of the country by introducing a comprehensive legislation in Parliament instead of bring amendment bills in piecemeal. The Committee would like to reiterate the observations/ recommendations made by it in its cited reports and urges upon the Government not to bring forward amendments in bits and pieces. In this context the Committee is happy to note that Prof. N.R. Madhava Menon has submitted a report to the Government containing a draft National Policy on Criminal Justice. The Committee would like the Ministry of Home Affairs to act upon the draft policy with expedition in consultation with the State Governments, legal fraternity and other stakeholders. The Committee also advises the Ministry to circulate the draft policy amongst the Members of this Committee as well so as to set in motion a debate on the subject inside and outside Parliament thereby facilitating wide consultations across the board and helping Government to finalise the National Policy and

thereafter to lay it on the Table of both the Houses, followed by introduction of a composite draft legislation for revamping of the Criminal Justice System in the country.
