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**PARLIAMENT OF INDIA
RAJYA SABHA**

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

ONE HUNDRED AND FIFTY SEVENTH REPORT

ON

THE ARMS (AMENDMENT) BILL, 2011

**(PRESENTED TO RAJYA SABHA ON 28 MARCH, 2012)
(LAID ON THE TABLE OF LOK SABHA ON 28 MARCH, 2012)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
MARCH 2012/ CHAITRA, 1933 (SAKA)**

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**Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2011)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri Rishang Keishing
3. Dr. N. Janardhana Reddy
4. Shri S.S. Ahluwalia
5. Shri Naresh Chandra Agrawal
6. Shri Prasanta Chatterjee
7. Shri Tariq Anwar
8. Dr. V. Maitreyan
9. Shri D. Raja
10. Shri Javed Akhtar

Lok Sabha

11. Shri L.K. Advani
12. Shri Sansuma Khunggur Bwiswmuthiary
13. Shri Khagen Das
14. Dr. Kakali Ghosh Dastidar
15. Shri Ramen Deka
16. Shri Lagadapati Raja Gopal
17. Shri Mohammad Asrarul Haque
18. Shri Naveen Jindal
19. Shri Jitender Singh Malik
20. Shri Babulal Marandi
21. Shri Baijayant Panda
22. Shri Lalubhai B. Patel
23. Shri Natubhai Gomanbhai Patel
24. Dr. Nilesh N. Rane
25. Shri Navjot Singh Siddhu[#]
26. Shri Adhi Sankar
27. Shri Hamdullah Sayeed
28. Shri Neeraj Shekhar
29. Shri Ravneet Singh
30. Shri Harsh Vardhan
31. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri P.P.K. Ramacharyulu, Joint Secretary
Shri D.K. Mishra, Joint Director
Shri Bhupendra Bhaskar, Assistant Director
Shri Sanjeev Khokhar, Committee Officer
Shri Anurag Ranjan, Committee Officer

[#] Shri Navjot Singh Siddhu nominated w.e.f. 3 January 2012 *vice* Shri Bishnu Pada Ray who was nominated to the Committee on Rural Development.

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 Fifty-seventh Report on the Arms (Amendment) Bill, 2011.

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred* the Arms (Amendment) Bill, 2011 (**Annexure-1**) as introduced on 12th December, 2011 in the Rajya Sabha and pending therein, to the Committee on 13th January, 2012, for examination and report by 31st March, 2012.

3. The Bill seeks to amend sub-section 3 of Section 27 of the Arms Act, 1959 by substituting the words “shall be punishable with death”, with the words “shall be punishable with death or imprisonment for life and shall also be liable to fine” in the said sub-section.

4. The Committee considered the Arms (Amendment) Bill, 2011 in its sitting held on 6th February, 2012, and also heard the presentation of the representatives of the Ministry of Home Affairs on the Bill. As per practice, senior officers of the Legislative Department and the Department of Legal Affairs were also present in that sitting to respond to the queries of the Members.

5. The Committee in its sitting held on 13th March, 2012 considered and adopted this Report.

6. The report is based on the following documents:-

- (i) The Arms (Amendment) Bill, 2011;
- (ii) Detailed background Note on the Bill as received from the Ministry of Home Affairs;
- (iii) The Arms Act, 1959;
- (iv) Oral evidence tendered by the representatives of Ministry of Home Affairs, Law and Justice; and
- (v) Replies received from the Ministry of Home Affairs on the queries raised by the Members.

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

13th March, 2012
New Delhi

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

* vide Rajya Sabha Parliamentary Bulletin Part II No. 49211 dated 16th January, 2012.

REPORT

INTRODUCTION

1.1 According to the background note furnished by the Ministry of Home Affairs, the Arms Act, 1959 and the Arms Rules, 1962 contain provisions regarding acquisition, possession, manufacture, sale, import, export and transfer of arms and ammunition. The Act also provides, inter-alia, for the grant of various types of licences, powers and procedures, production of licence, arrest of persons, punishment for using arms etc.

1.2 According to the Statement of Objects and Reasons of the Arms (Amendment) Bill, 2011, existing provisions contained in section 7 of the Arms Act, 1959, *inter alia*, prohibits acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition unless one has been specially authorised by the Central Government in this regard. It further mentions that Sub-section (3) of Section 27 of the Arms Act, 1959 provides that whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act results in the death of any other person, shall be punishable with death. Therefore, the provisions contained in sub-section (3) of aforesaid section 27 of the Arms Act, 1959 provides imposition of mandatory sentence of death.

1.3 The Arms (Amendment) Bill, 2011 seeks to amend sub-section 3 of Section 27 of the Arms Act, 1959 by substituting the words “shall be punishable with death”, with the words “shall be punishable with death or imprisonment for life and shall also be liable to fine” in the said sub-section.

1.4 The Statement of Objects and Reasons further reads as under:
“The constitutional validity of sub-section (3) of aforesaid section 27 of the Arms Act, 1959 has been challenged before the Hon’ble Supreme Court in the State of Punjab vs. Dalbir Singh (Criminal Appeal No. 117 of 2006) and is pending before the Hon’ble Supreme Court. Earlier, the Hon’ble Supreme Court in Mithu vs. State of Punjab (1983/2 Supreme Court Cases 277) while adjudicating the constitutional validity of section 303 of the Indian Penal Code (which provided mandatory punishment of death to a person who being under sentence of imprisonment for life commits murder) held that imposition of mandatory sentence of death on commission of murder while undergoing life imprisonment in jail or outside jail when on parole, without giving any scope for application of judicial discretion considering facts and circumstances of each case, was, harsh, oppressive and unjust.”

1.5 In view of the above sub-section (3) of aforesaid section 27 of the Arms Act, 1959 is proposed to be amended.

BACKGROUND

1.6 The Ministry of Home Affairs in its background note informed the Committee that there was a case before Supreme Court in which a Central Reserve Police Force (CRPF) Constable had allegedly used his self-loading rifle to kill a superior officer. During the course of hearing in the Supreme Court, constitutional validity of Section 27(3) of the Arms Act, 1959 was challenged. The constable had been convicted by an Additional Session Judge but acquitted by the High Court. It was further stated that the matter later was brought before the Supreme Court of India in the form of an appeal by the State of Punjab and the applicability of the Arms Act 27(3) was put in issue because he had been convicted under this provision only. If applied strictly, as per the statute, the Hon'ble Supreme Court or the High Court have no discretion as per the Act and the only sentence to be awarded was the death sentence. The Ministry stated that such a provision, according to the Learned Additional Solicitor General, is unconstitutional and it is not desirable to keep such a provision in the statute-book.

1.7 The Committee was further informed that a similar provision in the Indian Penal Code (IPC) has also been declared as unconstitutional by the Supreme Court. Section 303, of IPC provides for punishment for murder by life-convict which reads as : "Whoever, being under sentence of [imprisonment for life], commits murder, shall be punished with death".

1.8 The Constitution Bench of the Supreme Court in *Mithu Vs. State of Punjab* (1983)2 SCC 277 ruled as under:

"Judged in the light shed by Maneka Gandhi and Bachan Singh, it is impossible to uphold Section 303 as valid. Section 303 excludes judicial discretion. The scales of justice are removed from the hands of the Judge so soon as he pronounces the accused guilty of the offence. So final, so irrevocable and so irremittable [sic irresuscitable] is the sentence of death that no law which provides for it without involvement of the judicial mind can be said to be fair, just and reasonable. Such a law must necessarily be stigmatised as arbitrary and oppressive. Section 303 is such a law and it must go the way of all bad laws. I agree with my Lord Chief Justice that Section 303, Indian Penal Code, must be struck down as unconstitutional".

1.9 The Ministry in the background note also stated that the Hon'ble Supreme Court while commenting on the Statement of Objects and Reasons in *Subhash Ramkumar Bind vs. State of Maharashtra* (2003) 1 SCC 506 made following observation:-

"The punishment provided stands to be the severe-most one and under the general law of the land it is only in the rarest of the rare cases that such a punishment can be inflicted on to an accused. Obviously, the intent of the legislature as appears from the Statement of Objects and Reasons cannot possibly be decried by reason of the situation prevalent during the period in question. In more than one State of the country it was rather a dismal picture.

The use of prohibited arms and deadly weapons turned out to be a regular feature and the existing State of Law was not in a position to subvert these moves by the anti-national elements and in the event of incorporation in the statute-book of a legislation which stands engrafted therein to protect the society from these unruly elements, it is a bounden obligation of the law courts to attribute its widest-possible amplitude to the words used in (sic by) the legislature and interpret the legislation in accordance therewith. Question of there being a restrictive meaning to be attributed thus would not arise.”

1.10 According to the Ministry of Home Affairs during the course of arguments in the Supreme Court in March, 2011 the Bench also indicated that the Government may consider substituting/ amending Section 27(3) retrospectively so that there is no doubt that the pending cases are covered. To a specific query the Additional Solicitor General has suggested that the appropriate date for retrospective amendment would be 27-05-1988 i.e. the date on which the ordinance came into effect. It was further stated that in this context, the Supreme Court made the following ruling:

“The Hon’ble Supreme Court has clarified in ‘State of Punjab Vs. Gian Singh’ (1999) 9 SCC 312 as followed in ‘Superintendent, Narcotics Control Bureau Vs. Parash Singh’, (2008) 13 SCC 499 that if a subsequent legislation downgrades the harshness of the sentence for the same offence, it would be a salutary principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence”.

1.11 With regard to retrospective date for effecting the amendment, the Ministry of Home Affairs informed the Committee that the Ministry of Law and Justice has furnished the following advice/ opinion:-

“The proposed amendment of Section 27 (3) of the Arms Act, 1959 can be brought into force from retrospective date as it does not violate Article 20(1) and is in consonance with the settled legal position laid down by various Supreme Court’s judgments”.

PRESENTATION/ORAL EVIDENCE

1.12 The Home Secretary made a presentation on the Bill before the Committee on 6th February, 2012. During the presentation reiterating what is in the background note justified the proposed amendment by saying that the existing provision was held unconstitutional by Supreme Court on 15th March, 2011 and Supreme Court also suggested the government to amend it.

1.13 Outlining the reasons behind the proposed Bill, the following submissions were made during the course of presentation:-

- The courts have no discretion as to the sentence to be awarded under section 27(3) as the only sentence provided is death penalty
- A similar provision of mandatory death penalty under section 303 of the IPC has been struck down by the Honourable Supreme Court
- Honourable Supreme Court has held, in its judgment dated 01.02.2012 in criminal appeal no 117 of 2006 i.e. State of Punjab vs. Dalbir Singh that Section 27(3) is ultra-vires and void as it is repugnant to article 14 and 21 of the constitution
- No single conviction has been finally sustained under this provision during last 23 years

1.14 The Home Secretary further stated that the proposed amendment is meant to incorporate the option of awarding life imprisonment and fine along with the existing option of awarding death penalty.

1.15 During the course of presentation, the Members of the Committee raised some issues pertaining to the provisions and the implications of the proposed amendments in the Bill.

1.16 Some Members sought to know (i) whether Government wants to keep the death sentence also; (ii) When the Government in principle propose to remove the capital punishment and convert the capital punishment to life imprisonment; (iii) what is the purpose of keeping capital punishment; and (iv) whether India is a signatory to the U.N. Covenant against Capital Punishment, and whether India has not ratified it, but is a signatory to it.

1.17 Responding to the queries, the Home Secretary submitted that he was not aware of India being signatory to U.N. Covenant against Capital Punishment and he assured the Committee to get it crosschecked. He further clarified that the Government was not intending to remove the death penalty. He submitted that the Supreme Court held categorically that providing for a mandatory death penalty was unconstitutional and that providing for a mandatory death penalty takes away judicial discretion and therefore, there must be an alternative, either to prescribe death penalty or life imprisonment, depending upon the circumstances of each case.

1.18 The Home Secretary further added that during the course of the arguments in Supreme Court in March 2011 the Bench also indicated that the Government may consider substituting/amending section 27(3) retrospectively so that there is no doubt that the pending cases are covered. He also submitted that in response to a specific query, the Solicitor General has suggested that appropriate date for retrospective amendment would be 27.5.1988, that is, the date on which the Ordinance came into effect. He stated that because of this, the Bill has been brought.

1.19 Some Members drew the attention to the options already available in Section 27 of Arms Act, 1959 which reads as follows:-

(1) whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable for to fine;

(2) whoever uses any prohibited arms and prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine; and

(3) whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such an act results in the death of any other person shall be punishable with death.

1.20 The Home Secretary while replying, made following observations:

“..... section 27 (1) provides for use of arms and ammunition in contravention of section 5. If you go back to section 5, '.....any firearms of such class or description as may be prescribed or any ammunition...' It means he does not have a licence; he will be punished with a term not less than three years but which may extend to seven years or be liable to fine. Clause 2 talks about prohibited arms and ammunition in contravention of section 7. Whoever uses in any manner any arms or ammunition which is prohibited, the punishment is slightly higher. Clause 3 deals with using prohibited arms and ammunition to kill somebody. There the punishment is death.”

1.21 The Special Secretary (Internal Security) further added as under:

“These offences are covered under the Indian Penal Code also. Murder, that is, deliberately causing death, has a penalty of death or life imprisonment. This option is available in murder. Then there is a lesser offence under 304, culpable homicide not amounting to murder in which life imprisonment is provided. But the section 27(3) does not talk of murder, does not talk of culpable homicide, it talks of death under any circumstances. So, the mandatory punishment of death is very harsh. So, there should be some discretion. Even for murder, if they are giving for discretion, there should be discretion available to the courts for this also.”

1.22 A Member referring the operative part of sub-clause 2 and 3 of the Section 27 of Arms Act, 1959, stated that there was no difference. The only difference is in sub-clause 3, which talks about acts resulting in death. He felt that the terrorists who are behind bars may have used prohibited arms in contravention of Section 7. If they have killed people and if their sentence is converted from death to life after 14 years they are set free. They may be already in jail for ten years or 12 years or 13 years and their sentence can be reduced under commutation. Then, this section is going to give benefit to a person who has used prohibited arms and ammunitions in contravention of section 7. He, therefore, felt that his is a fit case to be referred to the Law Commission for a thread bare discussion and come out with a report as to whether Section 27(3) should be amended or not.

1.23 Another Member stated that there is a huge demand in the country for taking a decision to say no to capital punishment. He sought to know that stand of the government on the capital punishment.

1.24 The Home Secretary replying to the queries stated as under:-

“.....Section 27(3) deals with any use of prohibited arms or ammunitions. The punishment prescribed is seven years. That means if anybody holds or uses it in any manner he will be punished for seven years. Section 27(3) is for use which results in death but it is so wide that death may not be a result of conscious mala fide, planned action. It may be even happening in an inadvertent fashion. For that reason we believe that there may be circumstances where the courts may seek fit to impose a death penalty. So, we are not removing the death penalty. We are only providing an alternative so that the courts can judge whether there are circumstances for not mandatorily giving death penalty. On the view of the Government as regards the death penalty, Sir, right now we are not examining any proposal to do away with the death penalty. We are not examining any proposal at present to remove death penalty.”

1.25 Another Member of the Committee sought to know the effect of the proposed amendment on the mercy petitions. He referred to the Article 72 of the Indian Constitution which gives powers to President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases.

1.26 He also felt that mercy petitions are first examined in the Union Home Ministry before submission to the President. The Home Ministry processes the file and the Home Ministry recommends about fate of mercy petitions. While recommending, they are guided by the law of the land such as Indian Penal code and CrPc. There are many mercy petitions pending before the President. He further felt that, if the Bill is passed, it will affect the mercy petitions also.

OBSERVATION/RECOMMENDATION OF THE COMMITTEE

1.27 The Members, while taking into account the background of the Arms (Amendment) Bill, 2011 and judgments by High Court and the Supreme Court, were of the unanimous view that the matter is a fit case to be referred to the Law Commission of India to examine threadbare on the issue and come out with a report. The Members also unanimously felt that the Committee should not go ahead with the clause-by-clause consideration of the Bill. The Committee, in view of the above, decided not to go ahead with the clause-by-clause consideration of the Bill.

1.28 The Committee, therefore, recommends that the proposed Bill may be referred to the Law Commission for detailed examination of the issues involved therein and to give its report. The Government, after receipt of report, may bring forward the Bill before the

Parliament, if necessary a fresh Bill, in the light of the recommendations of the Law Commission.
