



महाराष्ट्र शासन राजपत्र असाधारण भाग आठ

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असाधारण क्रमांक ७७

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Code of Criminal Procedure (Maharashtra Amendment) Bill, 2015 (L. C. Bill No. XIII of 2015), introduced in the Maharashtra Legislative Council on the 17th July 2015, is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

DR. MANGALA THOMBARE,
I/c. Draftsman-cum-Joint Secretary
to Government,
Law and Judiciary Department.

L. C. BILL No. XIII OF 2015.

A BILL

further to amend the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra.

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra; it is hereby enacted in the Sixty-sixth Year of the Republic of India as follows :—

1. (1) This Act may be called the Code of Criminal Procedure (Maharashtra Amendment) Act, 2015.

Short title
and
commencement.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Amendment
of section 156
of Act 2 of
1974.

2. In section 156 of the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra (hereinafter referred to as “the said Code”), after sub-section (3), the following provisos shall be added, namely :—

2 of
1974.

“ Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 or under any law for the time being in force :

2 of
1974.

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority.”.

Amendment
of section 190
of Act 2 of
1974.

3. In section 190 of the said Code, in sub-section (1), after clause (c), following provisos shall be added, namely :—

“ Provided that, no Magistrate shall take cognizance of any offence alleged to have been committed by any person who is or was a public servant as defined under any other law for the time being in force, while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 or under any law for the time being in force :

2 of
1974.

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority.”.

STATEMENT OF OBJECTS AND REASONS.

The Code of Criminal Procedure, 1973 (2 of 1974), provides the procedure to be followed in all criminal proceedings.

2. Section 156 of the said Code provides that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII of the said Code which deals with the jurisdiction of the Criminal Courts in inquiries and trials.

When a private complaint alleging the offence under the penal law is filed before the Magistrate, the Magistrate may take cognizance of the offence under the provisions of section 190 of the Code of Criminal Procedure or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance of the complaint, without taking cognizance under the said section 190 of the said Code, who may direct an investigation of the complaint under sub-section (3) of section 156 of the said Code.

3. In several cases in connection with the public servants, it is observed that the power under sub-section (3) of section 156 of the said Code has been exercised by the Magistrate in a mechanical or causal manner. It is also observed that, in the private complaints filed against the public servants wherein allegation of misconduct and commission of offences during performance of their official duties are made, particularly, in the alleged offences under the Prevention of Corruption Act, 1988 (49 of 1988), the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) and the Indian Penal Code, 1860 (45 of 1860), some mischievous elements in the society are using such complaints as a tool to harass and demoralize the public servants.

It is settled law that, when a complaint under section 190 is moved before the Magistrate, making allegations against the public servant, that too in the discharge of his official duties, it is incumbent on the part of the Magistrate to ensure necessity of legal sanction as contemplated under section 197 of the Code of Criminal Procedure, 1973, as well as under the other relevant provisions of any other law for the time being in force. However, it is observed that the mandate of sanction for prosecution of the public servant has not been followed scrupulously by the concerned Magistrate. Hence, it is necessary to protect the public servant who acted in good faith while performing his duties; otherwise it would not be possible for a public servant to discharge his duties without fear and favour. Therefore, the Government of Maharashtra considers it expedient to make express provisions regarding previous sanction for prosecution of public servant by suitably amending sections 156 and 190 of the Code of Criminal Procedure, 1973 (2 of 1974).

4. The Bill is intended to achieve the above objectives.

Mumbai,
Dated the 10th July 2015.

DEVENDRA FADNAVIS,
Chief Minister.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. The Bill involves the following proposal for delegation of legislative power, namely :—

Clause 1(2).—Under this clause, power is taken to the State Government, to appoint, by notification in the *Official Gazette*, the date on which the Act shall come into force.

2. The above-mentioned proposal for delegation of legislative power is of normal character.