

Legislative Brief

The Code of Criminal Procedure (Amendment) Bill, 2006

The Bill was introduced in the Rajya Sabha on August 23, 2006.

The Bill has been referred to the Parliamentary Standing Committee on Home Affairs (Chairperson: Smt. Sushma Swaraj).

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March 22, 2007

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December 1, 2006

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Highlights of the Bill

- ◆ The Code of Criminal Procedure (Amendment) Bill, 2006 amends the Code of Criminal Procedure, 1973.
- ◆ The Bill makes it mandatory for a witness to sign statements made to the police. Material witnesses in heinous offences are to be produced before a magistrate for recording of statement.
- ◆ A witness who deviates from his statement given before a magistrate may be tried by a fast-track procedure.
- ◆ The Bill defines a “victim” and provides for a victim compensation scheme. The victim may be permitted to appoint a lawyer to “coordinate” with the prosecution.
- ◆ The Bill increases the number of minor offences which can be tried under a fast track procedure. It provides for speedy investigation and trial of sexual offences against women.
- ◆ A police officer has to specify in writing the reasons for making an arrest in cases of offence punishable with imprisonment up to seven years. In certain cases, the police can also issue a “notice of arrest” rather than arresting a person.

Key Issues and Analysis

- ◆ The Bill introduces provisions related to hostile witnesses which are similar to those contained in the Criminal Law (Amendment) Bill, 2003. These provisions were dropped during the passing of Criminal Law (Amendment) Bill, 2003 in December 2005.
- ◆ The provisions regarding signing of statements by witnesses may not reduce the chances of a witness turning hostile as there is no change in the evidential value.
- ◆ The timeline specified in the Bill for investigation and trial of a sexual offence against women is not mandatory in nature.
- ◆ The role of the lawyer appointed by the victim to “coordinate” with the prosecution is not clear. The mechanism for computing the compensation scheme for victims is not specified.
- ◆ A girl under 18 years of age may be detained during investigation in a remand home or a recognised social institution only. This is already provided in the Juvenile Justice Act, 2000.

PART A: HIGHLIGHTS OF THE BILL¹

Context

In India, the definition of a criminal offence and the quantum of punishment for the same are laid down in the Indian Penal Code, 1860 (IPC). The Code of Criminal Procedure, 1973 (CrPC) provides the procedural mechanism for investigation and trial of offences under the IPC and other laws.

Giving false evidence and/or lying on oath are referred to as perjury. Giving “false evidence” is an offence under IPC². The Supreme Court has observed that, “trial in most of the sensational cases does not start till the witnesses are won over.”³ In its 111th report the Standing Committee on Home Affairs was “made to understand that the conviction rate in criminal cases is as low as ten percent due to perjury.”⁴

A “victim” is a person who has suffered loss or injury by an action of another person. In 1985, the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Some countries have provisions for providing compensation to victims⁵. In India, CrPC has so far not recognised the concept of a “victim”.

This Bill addresses the issues of witnesses turning hostile, and recognition of and compensation to victims. It also provides for fast trial in some cases and amends the process of arrest, investigation and trial.

Key Features

Hostile Witnesses

According to CrPC, during the investigation of a cognizable case* (a) a statement made by a witness to a police officer may be recorded in writing by the officer⁶ and (b) a statement or confession may be recorded on oath in front of a Metropolitan or Judicial magistrate⁷. A statement made to a police officer does not need to be signed by the person making the statement⁸. It cannot be used as evidence in trial except to contradict that witness. A statement given on oath adds to a case but is not sufficient to convict an accused.

- The Bill provides that statements given to police, if written down, shall be signed by the person making the statement. It shall be forwarded without delay to the magistrate empowered to take judicial notice of the case. A copy of the statement shall be provided to the person giving the statement.
- All material witnesses in an offence punishable with death or imprisonment for 10 years or more shall be produced in front of the nearest Metropolitan/Judicial magistrate for recording their statement. The magistrate shall ensure that the statement is not being made under any inducement, threat or promise.
- If a witness deviates from his statement as given before a magistrate and if this is detrimental to the prosecution case he may be tried by a fast track procedure. If he is found guilty he would be punished with imprisonment for a term between three months and two years, and may also be fined.

Victim Compensation

- The Bill defines a “victim” as a person who has suffered loss or injury by an act of the accused and includes his guardian or legal heir. With the permission of the court, a victim can engage an advocate of his choosing to coordinate with the public prosecutor in charge of the case.
- The Bill proposes a compensation scheme for the victim. On the recommendation of the court, the State/District Legal Services Authority⁹ would decide the quantum of compensation to be awarded. Compensation may be given even in cases where the offender is not traced and no trial takes place.
- The victim has a right to appeal against an order of the court (a) acquitting the accused or (b) convicting the accused for a lesser offence or (c) for imposing inadequate compensation.

Summary Trial

CrPC lays down two different procedures for trial of warrant cases[†] and summons cases.

- The Bill amends the definition of warrant case to include all offences punishable with imprisonment for a term exceeding three years (instead of two years).

* A cognizable case (listed in the First Schedule to CrPC) is one in which a police officer may arrest a person without a warrant. Investigation of a non cognizable case may be carried out only on the order of a magistrate.

† A case of an offence punishable with death or with imprisonment in excess of two years is called a warrant case. All other cases are called summons cases. Summons cases relate to minor offences and may be tried under CrPC by a fast track (summary) procedure.

- The Bill also provides that all summons cases shall be tried in a summary way. Currently the magistrate has the discretion to decide which summons case would be tried in this manner.

Investigation and Trial of Rape Cases

- Investigation in case of a rape shall be conducted at the house of the victim, as far as practicable by a woman police officer. A victim below the age of 18 years shall be questioned in the presence of her parents or a social worker of the locality. Investigation in case of a rape of a child may be completed within three months from the date of registration of the First Information Report. Inquiry or trial in rape cases, as far as possible, shall be completed in two months from the date of the examination of witnesses.
- The trial of rape and custodial rape, so far as practicable, shall be presided over by a woman judge.

Death Sentence

- If a woman sentenced to death is pregnant, the sentence shall be commuted to life imprisonment.

Arrest Procedure

- CrPC does not require the police to state the reasons for arrest for cognizable cases. The Bill amends this by requiring police officers to state the reasons for arrest in case of offences punishable with imprisonment up to seven years. The police may arrest based on credible information only in cases where the offence is punishable with death or imprisonment in excess of seven years.
- Instead of arresting a person, the police officer may issue a “notice of appearance” to the person requiring him to present himself as specified in the notice. On complying with the terms of the notice, a person would not be arrested.
- While making an arrest the police officer should be easily identifiable by name. He shall also prepare a memorandum of arrest which shall be attested by a family member or a respectable member of the locality where the arrest is made. If it is not so attested, the arrested person shall have the right to have a family member or a friend named by him informed of his arrest.
- A male police officer shall not touch a woman while arresting her. After arrest, a woman shall be examined by a woman doctor. During investigation, if a woman below the age of 18 years needs to be detained, she shall be detained in a remand home or a recognised social institution.
- An arrested person is entitled to meet his advocate during interrogation but not have his advocate present throughout the interrogation. An arrested person would be examined by a doctor. A copy of the medical report shall be furnished to the arrested person or to a person nominated by him.
- The Bill makes it mandatory for a person having custody of an accused person to take reasonable care of the health and safety of the accused person.
- Police control rooms shall be established at the state and the district level. Notice boards kept outside district control rooms shall display the name and addresses of all arrested persons and the name and designation of the police officers making the arrests.

Recording of Statement

- The Bill provides that all statements/confessions made before a police officer/magistrate may be recorded by audio-video electronic means. An accused person may also be produced before a magistrate by means of a video link rather than being produced in person.

Compoundable offences

- The Bill brings makes more offences¹⁰ compoundable*. All these offences have been recommended by the 154th report of the Law Commission¹¹.

Trial of person of unsound mind

- In case of a person of unsound mind, the trial would be postponed for the time required for the treatment of the accused. In a case where the accused person is incapable of pleading guilty or not guilty by reason of unsoundness of mind or mental retardation, such a person shall be released on bail.

* Compounding refers to a procedure where the two sides agree to stop legal proceedings, and settle out of court.

PART B: KEY ISSUES AND ANALYSIS

Comparison with Criminal Law Amendment Bill, 2003

The provisions related to hostile witnesses were first introduced in Parliament in the Criminal Law (Amendment) Bill, 2003¹². The 2003 Bill was referred to the Standing Committee on Home Affairs¹³. The Committee recommended the deletion of all the provisions amending CrPC aimed at preventing witnesses from turning hostile.

The 2003 Bill was first debated in the Rajya Sabha during the Winter Session 2005. During the debate, the government dropped the provisions related to hostile witnesses. The modified Bill was thereafter passed by both Houses of Parliament. The 2006 Bill introduces provisions similar to those that were dropped in December 2005.

Hostile Witnesses

During trial in court, the prosecution and the defense are entitled to call for witnesses. The party calling the witness is entitled to examine him¹⁴. However, it cannot cross examine its own witness. If a witness deviates from his previous statement, the party examining the witness, with the permission of the court, is entitled to cross examine the witness. If a witness deviates from the statement given before the magistrate, the witness commits the offence of perjury and can be punished for the same.

The 178th Report of the Law Commission addressed the issue of hostile witnesses¹⁵. This Bill incorporates all its recommendations on this subject except one. The Law Commission recommended that the statement of a witness recorded before a magistrate, in an offence punishable with death or imprisonment for 10 years or more, be treated as evidence, subject to the (a) witness being produced and examined in court, (b) discretion of the court and (c) provisions of the Evidence Act. This recommendation is not included in this Bill.

The following table explains the impact of the different provisions of CrPC compared to that of the Bill.

Section	CrPC	Effect	The Bill	Effect
162	Statements given to police by a witness not to be signed	Statement does not have evidentiary value, except for contradicting the witness	Statements given to police by a witness to be signed	Statement does not have evidentiary value, except for contradicting the witness
164 (CrPC) / 164 B (The Bill)	Police may produce a witness before a magistrate and have the statement recorded in front of a magistrate.	<ul style="list-style-type: none"> – Discretion of a police officer to produce or not to produce a witness for recording of statement. – Statement is admissible as evidence. – Increase in the work load of magistrate. 	Police shall produce all material witness compulsorily in front of a magistrate for recording of statement in cases of offences punishable with death or imprisonment for 10 years or more.	<ul style="list-style-type: none"> – Discretion of the police officer as to which witness is material in a case. – Statement is admissible as evidence. – Increases the work load on a magistrate.
195A (The Bill)			A witness or any other person can file a complaint under Section 195A IPC (threatening or inducing a witness to give false evidence)	
344 (CrPC) / 344 A (The Bill)	Summary procedure for trial for giving false evidence	Imprisonment for a maximum period of three months with fine	Summary procedure for giving false evidence subsequent to giving statement to a magistrate under Section 164B	Imprisonment for maximum two years and minimum three months with fine

Section 193 of IPC makes giving false evidence an offence punishable with imprisonment up to seven years with fine.

Sources: CrPC, the Bill and IPC.

Both CrPC and IPC deal with the issue of giving false evidence. Under CrPC (Section 344) the trial judge can initiate summary proceedings for giving false evidence.

To initiate proceedings under IPC for punishing a witness for perjury, a trial judge or an authorized officer of the court is required to file a complaint and sign the same. This means that the trial judge or authorised

officer is required to be present at every stage of trial for perjury. Also, this is a warrant trial, and is a longer process. Thus, the CrPC route is simpler for the trial judge (though it carries a lesser penalty).

While discussing the 2003 Bill having similar provisions, the Standing Committee on Home Affairs in its 111th report⁷ observed that (i) the evidential value of the recorded statement before police officer does not change even after getting it signed by the witness, (ii) in some situations it may violate the fundamental right of a person under Article 20(3) as some of the potential witnesses can also be accused¹⁶, (iii) since the investigating officer has the discretion to decide who would be a material witness in a criminal case, the professional/fictitious witnesses available in police station can be turned as material witness by the police, which may increase corruption, and (iv) the mandatory recording of statements by the magistrate would increase the burden of the already overburdened magistrates. The Committee also expressed its apprehension that the provisions related to signing of statement could be misused by the police resulting in corruption.

Most of the provisions in the Bill to prevent witnesses turning hostile are already present in CrPC.

Victims

The rights of an accused person in a criminal proceeding are protected by CrPC. However the concept of a victim is not recognized as the crime is considered to be against the State. The Bill defines a “victim” and provides that a victim can appoint a lawyer to coordinate with the prosecution. This is subject to the discretion of the court. The word “coordinate” is ambiguous. The Bill does not explicitly entitle the victim to appoint a lawyer to protect his rights and interests in court.

The compensation scheme proposed in the Bill is not very clear. As per the Bill, on a recommendation of the court the District Legal Services Authority shall decide the quantum of compensation to be paid. In cases where a trial does not take place the District Legal Services Authority after conducting an inquiry would award “adequate” compensation. The Bill does not specify the mechanism for computing the quantum of compensation to a victim.

Redundancy

The Bill specifies that, during investigation, any girl below the age of 18 may be detained only in the custody of a remand home or a recognised social institution. This provision may be redundant. Section 10 of The Juvenile Justice Act, (Care and Protection of Children) Act, 2000 specifies that “... in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.” That Act defines any person below the age of 18 years as a juvenile.

Investigation and Trial of Rape Cases: Non-mandatory Provisions

The Bill puts a time line of two months in which trial in rape cases may be completed. The Bill also provides that the investigation in a rape case of a child may be completed within three months from the date of registration of FIR. However neither of these time lines are mandatory.

The Bill also provides for investigation of rape cases to be done by a woman police officer, if practicable. However, the provision is not mandatory, and male police officers may also investigate the offence of rape. Similarly the provision that the trial in such cases be presided by a woman judge is not mandatory.

Notes

1. This Brief has been developed on the basis of the Code of Criminal Procedure (Amendment) Bill, 2006 introduced in the Rajya Sabha on August 23, 2006. The Bill has been referred to the Parliamentary Standing Committee on Home Affairs (Chairperson: Smt. Sushma Swaraj).
2. Section 191, IPC. It is punishable with imprisonment up to seven years.
3. Order dated August 8, 2003, in W.P(CrL) No. 109/2003 (National Human Rights Commission v. State of Gujarat)
4. Department related Parliamentary Standing Committee on Home Affairs, 111th report on Criminal Law (Amendment) Bill, 2003. The report was presented to the Rajya Sabha on March 02, 2005 and laid on the table of the Lok Sabha on March 04, 2005.
5. United Kingdom has enacted the Criminal Injuries Compensation Act, 1995.
6. Section 161(3), CrPC.
7. Section 164(1), CrPC.
8. Section 162(1), CrPC.

9. A State/ District Legal Services authority is established as per the provisions of the Legal Services Authority Act, 1987.
10. The list of sections of IPC, offences under which are compoundable is given in two tables under Section 320 of CrPC. 25 sections of IPC have been added to the earlier list of 33 sections. The new sections of IPC are: 324, 335, 343, 344, 346, 379, 403, 406, 407, 411, 414, 417, 419, 421, 422, 423, 424, 428, 429, 430, 451, 482, 483, 486 and 312.
11. Submitted on 22 August, 1996. Available at <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>.
12. The Bill was introduced in the Rajya Sabha on August 22, 2003.
13. It was referred to the Committee on Home Affairs in January 2004 but lapsed with the dissolution of Thirteenth Lok Sabha in February 2004. It was referred to the Committee on Home Affairs again on 17 August 2004 (Chairman: Smt. Sushma Swaraj).
14. Section 137, The Indian Evidence Act, 1872.
15. Submitted on December 14, 2001. Available at <http://lawcommissionofindia.nic.in/reports/178rptp1.pdf>.
16. No person accused of any offence shall be compelled to be a witness against himself.

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