



दिल्ली विधिज्ञ परिषद्  
**BAR COUNCIL OF DELHI**  
(Statutory Body Constituted under the Advocates Act, 1961)  
2/6, Siri Fort Institutional Area, Khel Gaon Marg, New Delhi-110 049

Ref. No. : .....

Dated : 18<sup>th</sup> March 2024  
27.03.24

To,

**Hon'ble Union Home Minister**  
Government of India  
Ministry of Home Affairs  
North Block  
New Delhi - 110001

Sub:- **Regarding amendments in 3 Criminal Laws and their implications on the Criminal Justice System and Legal Profession.**

Respected Sir,

Your kind attention is invited to amendments in 3 Criminal Laws namely, Cr.P.C., I.P.C. and Evidence Act, carried out recently by the Government and made applicable from 01<sup>st</sup> July, 2024.

Perhaps, the legal community across the country was waiting for major Police Reforms in view of repeated directions by the Hon'ble Supreme Court of India to conduct fair and proper investigations, as an Independent body. This is essential, since every criminal case depends on the quality of investigation, which would also help in reducing pendency in the Court to obviate false and motivated cases, which are adding to the pendency.

It is a matter of record that during Atal Bihari Vajpayee Ji's time "Justice Malinath Committee" was constituted for this purpose, which made extensive recommendations for conduct of fair and independent investigations for expeditious disposal of cases. It is also a matter of record that the Committee did recommend for partial introduction of "INQUISITORIAL SYSTEM" for dispensation of criminal justice to the people. As a successive Government, it was expected of your government to keep in mind and focus on them, on priority and bring comprehensive amendments in larger public interest. Apparently, all that has been completely overlooked while drafting these amendments, as they are oppressive.

It may be noted that the mix of Hindi and English, deletion or change of sections of some of the offences, which over the years have gone so deep into the System where the Judges, Lawyers and Police Officials, even public will be

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required to have a fresh study from grassroot level, to learn basics of the New Laws and their incorporations. It will lead to more chaotic situations daily in the Courts to follow and apply.

Surprisingly, the Legal Education is still in English. It appears, the whole issue has been examined in a very narrow compass, ignoring basic well-known principles and difficulties.

**Some of the issues are as under:**

**1. Police Remand period enlarged from 15 to 90/60 day:**

Giving Police such long rope is atrocious and most dangerous, making them more authoritative to conduct custodial violence. It has serious evil consequences. Every lawyer and public understand, as it gives police 4to6 times long period of custody to subject a person arrested, to harass and commit atrocities and an instrument in the hands of unscrupulous police officials to commit atrocities and custodial torture. It's against Fundamental Rule of Civil Liberty and Human Rights. The remand period under the old Cr.P.C. was restricted to 15 days to avoid harassment and expeditious investigation by Police and check arbitrary functioning of investigating agencies. The police can't be made to assume such powers under criminal justice system.

ii. As a consequence of the extension of the remand period, it will deprive grant of Bail during this period of investigation/remand. The persons accused will keep on languishing in the Police Custody, thereby causing mental harassment.

iii. It will change police attitude and lead to more unfair and corrupt practice and substantially dilute the checks and balances by the Courts. With the intervention of the Courts, 3<sup>rd</sup> Degree, methods of investigation, has been given a go-bye but the continuous custody for long hours and more days, by itself is mental torture worst than British Era 3<sup>rd</sup> Degree methodology. It vitiates the fundamental rights under Article 21 of the Constitution, including right to life, dignity, physical and mental state of a person. This sends a wrong signal to





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the public about law enforcing agencies, and is a form of legislative terrorism contrary to D.K. Basu's guidelines.

**2. Handcuffing of Accused:**

Under Section 43 (3) of the new Code, the handcuffing of an accused has been permitted in certain class of cases. The Handcuffing was held to be inhuman, unreasonable and against the Constitution in case of Sunil Batra and Prem Shankar Shukla (1980). It will change police attitude and increase accused vulnerability for extortion of confession and other fabricated evidence.

Giving such powers to handcuff without the permission of Court will be detrimental and another act of legislative atrocities, if not an act of authoritative terrorism.

**3. Solitary Confinement in Jail:**

Under the old Code, Solitary Confinement of a prisoner was held to be barbaric and uncivilized by the Apex Court in the case of, Sunil Batra Versus Delhi Administration, but under Section 11 of the new Code, this has been provided, which is totally unconstitutional and excessive.

**4. Community Service as a punishment:**

Under Section 4 (f) of the new Code, Community Service has been introduced as one of the punishments, such as **theft of low value goods of Rs.5,000 (under Section 303), Defamation (under Section 356(2)) and Public Misconduct (under Section 355).**

Note: - Community Service as a punishment for an offence is arbitrary, unregulated and unspecific, apart from being impracticable. Under the new Code, Community Service has not been clearly defined, which will lead to a very dangerous trend by imposing punishment arbitrarily and in an undignified manner. Take for example, cleaning of Public Toilets or cleaning streets etc. This is totally against the human dignity.



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**5. Organised Crime:**

This is an offence under the Special Law and introducing in new Code, under section (111) for organised crimes. It's a special law under MACOCA. In the face of an existing law, there is no need. The punishment includes death penalty. It will be misused and people will be harassed. Any Special Law has to be dealt with under the provisions of Special Law, not under the General Local Laws.

**6. Mob Lynching:**

A new Section 103(2) has been added in addition to the punishment for Murder under Section 103 (1). What is the Modus Operandi to add this Section, because in any case, it would constitute an offence punishable in the category of murder? Unlawful Assembly u/S 189 of new Code, where assembly of 5 or more persons constitute an Unlawful Assembly. However, this section 103 (2) provides for separate punishment for mob lynching by a group of 5 or more persons, causing death, which in fact, Police can register case u/S 103 (1) read with 120B IPC. Providing a separate offence may have a chilling effect on holding peaceful rally and procession. **The message seems to curb peaceful rallies and processions, which is a fundamental right.**

**7. Terrorist Act:**

Originally TADA and POTA were the Special Law, to combat terrorism but had to be repealed. The offence for Terrorist Act now introduced u/s 113, with life imprisonment, gives arbitrary powers to Police to implicate persons. The special law, which was repealed is sought to be introduced in New Code to penalise and confer jurisdiction in hands of local police is beyond comprehension.

**8. Causing Accidents:**

Recently, the truck drivers have protested against it and the government may have given some assurances. The enhancement of punishment in case of rash and negligent death from 2 years to 5 years is excessive.





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However, Section 106(2) provides for punishment for a term extendable to 10 years and fine, in case the driver of the vehicle escapes without reporting to the police or magistrate. This is impracticable and imposes punishment on the ground of self-incriminating. Where are the proper arrangement for information? The punishments for 5 years as well as 10 years are harsh.

Note: - Some of the causes of accidents are due to failure to regularly and properly maintain the roads. Similarly, lack of adequate measures and planning for road safety and rail safety, which are essential to avoid accidents, but that does not happen. They would also be equally responsible. **Expressways cause more death by accident, which should be a matter of great concern. These amendments will not help to deal with hit and run cases.**

**9. Endangering sovereignty, unity and Integrity of India.**

New Section 152 has been added which has much wider and enlarged implications. It's scope and area of offensive activities compared to Section 124 A (Sedition) under earlier Code, has been widened. It includes Electronic Communication also as evidence. Punishment is 7 years. This is again a provision, which will give police unbridled and unregulated powers. **This is an enlarged revised version of Section 124A IPC.**

**10. False or misleading publications of information:**

It is a substitute of Section 153B IPC (Imputations, assertions prejudicial to national integration) with addition of Section 197 (d) which state about making or publishing false or misleading information jeopardizing the Sovereignty, Unity and Integrity or security of India. An addition has been made under Section 197(1)(d), according to which any words either spoken or written or by signs or by visible representations or through electronic communication or otherwise makes or publishes false or misleading information, jeopardising the sovereignty, unity and integrity or security of India, is punishable with three years. No doubt, sovereignty, unity and integrity or security of India cannot be compromised. This will give ample opportunity to the police to misuse.



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**11. Punishment enhanced:**

- I. Under the old IPC, there were 11 sections, under which death sentence could be imposed, whereas now there are 16 sections.
- II. Under the old IPC, there were 34 sections permitting life imprisonment, whereas now there are 72 sections. We are afraid this will help in combating crime.

**12. Video Trials:**

Video trial in criminal cases is impracticable and would hamper the fair trials in the Courts since in the absence of accused/client, an Advocate will not get proper instructions to defend in the Court. In the absence of proper instructions to the Advocate, with free access between the Advocate and the Client, will hamper presentation of the cases in the Court or to conduct the cross examination or take appropriate steps that may be permissible in the eyes of law.

**13. Admissibility of Documentary Evidence:**

This is a very delicate issue, since in law evidence is important, as a document cannot lie but if the document is fake, forged and not genuine, it has to be proved, to arrive at the truth.

Under the present amendment, all digital and electronic communications have been included in the definition of document and made admissible in Court, without adequate measures to prove it being genuine. It has been made primary evidence.

When the law has accepted a copy of electronic evidence on a certificate of a device owner, how would law ensure the copy which is so produced by the device as authentic. On the basis of this certificate a copy of electronic evidence is treated as primary evidence and admitted which means other party will be required to make full efforts to disprove the evidence which is doubtful from its origin. Law doesn't provide any procedure for its authentication before



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admission and its certification which is a mere formality. It will open pandora box for fake and forged evidence being made admissible.

**Essentially, the Rule of Law is prosecution not persecution based on fair and independent investigations; we are afraid that this is going to be the biggest casualty under the amended laws. In any civilization, the Police cannot be given such free hand and wide powers, since it may lead to a Police Raj rather than a rule of law as per the Constitution of India.**

You are, therefore requested not to implement these amended laws and to reexamine the viability of the same.

With regards,

(Sanjeev Nasiar)  
Vice Chairman  
Bar Council of Delhi

(K.C. Mittal)  
Former Chairman,  
& Member, BCD

(Himal Akhtar)  
Ex-Vice Chairman,  
& Member, BCD

(Kumar Mukesh)  
Hony. Secretary,  
Bar Council of Delhi

**Copy to:-**

1. Hon'ble the Chief Justice of India,  
Supreme Court of India, New Delhi
2. The Hon'ble Chairman,  
National Human Rights Commission, New Delhi
3. All Members of the Bar