

Bill No. LXXX of 2006

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 2006

A

BILL

further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2006.

Short title
and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2 of 1974.

2. In section 2 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), for clauses (w) and (x), the following clauses shall respectively be substituted, namely:—

Amendment
of section 2.

“(w) “summons-case” means a case relating to an offence triable summarily and not being a warrant-case;

(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir;

(x) “warrant-case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding three years;’.

Amendment
of section 24.

3. In section 24 of the principal Act, in sub-section (8), the following proviso shall be inserted, namely:—

“Provided that the Court may permit the victim to engage an advocate of his choice to co-ordinate with the prosecution in consultation with the Central Government or the State Government, as the case may be, under this sub-section.”.

Amendment
of section 26.

4. In section 26 of the principal Act, in clause (a), the following proviso shall be inserted, namely:—

“Provided that any offence under section 376 and sections 376A to 376D of the Indian Penal Code shall be tried as far as practicable by a Court presided over by a woman.”. 45 of 1860.

Amendment
of section 41.

5. In section 41 of the principal Act,—

(i) in sub-section (1), for clauses (a) and (b), the following clauses shall respectively be substituted namely:—

“(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence or for the reason that detention of such person in custody is in the interest of his safety; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) that unless such person is arrested, his presence in the court whenever required cannot be ensured; and

the police officer shall record while making such arrest, his reasons in writing.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;”;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible

information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.”.

6. After section 41 of the principal Act, the following new sections shall be inserted, namely:—

Insertion of new sections 41A, 41B, 41C and 41D.

“41A. (1) Where the case falls under sub-section (1) of section 41, the police officer may, instead of arresting the person concerned, issue to him a notice of appearance requiring him to appear before the police officer issuing the notice or at such other place as may be specified in the notice and to co-operate with the police officer in the investigation of the offence referred to in sub-section (1) of section 41.

Notice of appearance before police officer.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

41B. Every police officer while making an arrest shall—

Procedure of arrest and duties of the officer making arrest.

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

41C. (1) The State Government shall establish a police control room—

Control room at districts.

(a) in every district; and

(b) at State level.

(2) The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests.

(3) The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

41D. When any person is arrested and interrogated by the police, the arrestee shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.”.

Right of arrested person to meet an advocate of his choice during interrogation.

Amendment of section 46. **7.** In section 46 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.”.

Substitution of new section for section 54. **8.** For section 54 of the principal Act, the following section shall be substituted, namely:—

Examination of arrested person by medical practitioner.

“54. (1) When any person is arrested, he shall be examined by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female registered medical practitioner.

(2) The registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical practitioner to the arrested person or the person nominated by such arrested person.”.

Insertion of new section 55A. **9.** After section 55 of the principal Act, the following section shall be inserted, namely:—

Health and safety of arrested person.

“55A. It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.”.

Insertion of new section 60A. **10.** After section 60 of the principal Act, the following section shall be inserted, namely:—

Arrest to be made strictly according to the Code.

“60A. No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.”.

Amendment of section 157. **11.** In section 157 of the principal Act, in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that in relation to an offence of rape, the investigation shall be conducted at the residence of the victim and, as far as practicable by a woman police officer, and if the victim is under eighteen years of age, she should be questioned in the presence of her parents or a social worker of the locality.”.

Amendment of section 161. **12.** In section 161 of the principal Act, in sub-section (3), the following provisos shall be inserted, namely:—

“Provided that statement made under this sub-section may also be recorded by audio-video electronic means:

Provided further that in respect of offences specified in sub-section (1) of section 164B, where such person is required to be forwarded to the nearest Magistrate for recording his statement under that section, his statement to the police officer shall not be reduced into writing under this sub-section:

Provided also that where any statement has been recorded under section 164B, the police officer shall enclose a copy of such statement as part of his police diary recording therein that such person has made such statement before the Metropolitan Magistrate or, as the case may be, the Judicial Magistrate and proceed further investigation in accordance with the provisions of this Code.”.

13. For section 162 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 162.

“162. (1) The statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it and a copy of the statement as recorded shall be given forthwith free of cost by the police officer to the person who made the statement, under acknowledgement.

Statement to police to be signed: Use of statements in evidence.

(2) Every statement referred to in sub-section (1) shall contain the date, time and place as to when and where the statement was recorded and shall, subject to the provisions of sub-section (3) of section 173, be forwarded forthwith by the officer-in-charge of the police station to the Magistrate empowered to take cognizance of the offence upon a police report.

(3) Any statement referred to in sub-section (1) or any record thereof, whether in a police diary or otherwise, or any part of such statement or record shall not be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

1 of 1872.

(4) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 or to affect the provisions of section 27 of that Act.

1 of 1872.

Explanation—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”.

14. In section 164 of the principal Act, in sub-section (1), for the proviso, the following provisos shall be substituted, namely:—

Amendment of section 164.

“Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.”.

15. After section 164A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 164B.

Recording of confessions and statements in certain cases.

“164B. (1) Any police officer not being below the rank of sub-inspector making an investigation of any offence punishable with death or imprisonment for ten years or more, shall, in the course of such investigation, produce all persons whose statement appears to him to be material and essential for proper investigation of the case, to the nearest Metropolitan Magistrate or the Judicial Magistrate, as the case may be, for recording their statements.

(2) Subject to the provisions of sub-section (3), the Magistrate shall record the statements of such persons produced before him under sub-section (1) on oath and shall forward such statements so recorded to the Magistrate by whom the case is to be inquired into or tried.

(3) The Magistrate shall, before recording any statement of a person under sub-section (2), satisfy himself that such person is making the statement voluntarily and not under any inducement, threat or promise.

(4) Copies of such statements shall be furnished to the police officer referred to in sub-section (1).”.

Amendment of section 167.

16. In section 167 of the principal Act, in sub-section (2),—

(a) in the proviso,—

(i) for clause (b), the following clause shall be substituted, namely:—

“(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.”;

(ii) for *Explanation II*, the following *Explanation* shall be substituted, namely:—

“*Explanation II*— If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.”;

(b) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that in case of woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.”.

Amendment of section 172.

17. In section 172 of the principal Act, after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) The statements of witnesses recorded, during the course of investigation, under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (1) shall be a bound volume and duly paginated.”.

Amendment of section 173.

18. In section 173 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station.”;

(b) in sub-section (2), after clause (g), the following clause shall be inserted, namely:—

“(h) whether the report of medical examination of woman has been attached where investigation relates to an offence under sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code.”.

45 of 1860.

19. After section 195 of the principal Act, the following section shall be inserted, namely:—

“195A. A witness or any other person may file complaint in relation to an offence under section 195A of the Indian Penal Code.”.

45 of 1860.

Insertion of new section 195A.

Procedure for witnesses in case of threatening, etc.

Amendment of section 198.

20. In section 198 of the principal Act, in sub-section (6), for the words “fifteen years of age”, the words “eighteen years of age” shall be substituted.

21. In section 242 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that the Magistrate shall in advance supply to the accused, the statement of witnesses recorded during investigation by the police.”.

Amendment of section 242.

22. In the principal Act, Chapter XX of the Code containing sections 251 to 259 shall be omitted.

Omission of sections 251 to 259.

23. For section 260 of the principal Act, the following section shall be substituted, namely:—

“260. (1) Notwithstanding anything contained in this Code, any Court or Magistrate shall try in a summary way all summons-cases.

Substitution of new section for section 260.

Power to try summarily.

(2) When in summons-case, of a summary trial it appears to the Magistrate that the nature of the case is such that it is improper to try the case summarily, the Court or the Magistrate, as the case may be, shall record reasons for not trying the case summarily.”.

24. For section 262 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 262.

“262. (1) When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

Procedure for summary trials.

(2) If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may in his discretion, convict him thereon.

(3) Where a summons has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

(4) If the Magistrate does not convict the accused under sub-sections (2) and (3), the Magistrate shall proceed to record evidence as provided under section 274 and conclude the trial as provided under sections 263 and 264.

(5) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summon to any witness directing him to attend or to produce

any document or other thing and may require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

(6) (a) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto on which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.

(b) The provisions of clause (a) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

(7) If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

(8) In any summons-case instituted otherwise than upon complaint, the Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case release the accused, and such release shall have the effect of discharge.

(9) No sentence of imprisonment for a term exceeding six months or fine up to rupees three thousand or both shall be passed in case of any conviction under this Chapter.”.

Amendment
of section
263.

25. In section 263 of the principal Act, clause (f) shall be omitted.

Amendment
of section
274.

26. In section 274 of the principal Act, in sub-section (1), after the words "summons-cases tried", the word "summarily" shall be inserted.

Amendment
of section
275.

27. In section 275 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.”.

Amendment
of section
309.

28. In section 309 of the principal Act,—

(a) In sub-section (1), the following proviso shall be inserted, namely:—

“Provided that when the inquiry or trial relates to an offence under sections 376 to 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.”. 45 of 1860.

(b) in sub-section (2), after the third proviso and before *Explanation 1*, the following proviso shall be inserted, namely:— 45 of 1860.

“Provided also that—

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournments, the Court shall not grant the adjournment unless it is satisfied that the party applying the adjournment could not have engaged another pleader in time;

(d) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

29. In section 313 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amendment of section 313.

"(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section."

30. In section 320 of the principal Act,—

Amendment of section 320.

(i) in sub-section (1), for the TABLE, the following TABLE shall be substituted, namely:—

“TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Voluntarily causing hurt.	323	The person to whom the hurt is caused.
Voluntarily causing hurt by dangerous weapons or means.	324	Ditto.
Voluntarily causing hurt on provocation.	334	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Wrongfully confining a person for three days or more	343	The person confined.
Wrongfully confining a person for ten days or more.	344	Ditto.
Wrongfully confining a person in secret.	346	Ditto.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.

1	2	3
Theft.	379	The owner of the property stolen.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Criminal breach of trust.	406	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a carrier, wharfinger, etc.	407	Ditto.
Dishonestly receiving stolen property knowing it to be stolen.	411	The owner of the property stolen.
Assisting in the concealment or disposal of stolen property, knowing it to be stolen.	414	Ditto.
Cheating.	417	The person cheated.
Cheating by personation.	419	Ditto.
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Mischief by killing or maiming animal.	428	The owner of the animal.
Mischief by killing or maiming cattle, etc.	429	The owner of the cattle or animal.
Mischief by injury to works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person.	430	The person to whom the loss or damage is caused.

1	2	3
Criminal trespass.	447	The person in possession of the property trespassed upon.
House-trespass.	448	Ditto.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person to whom loss or injury is caused by such use.
Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark.	486	Ditto.
Criminal breach of contract of service.	491	The person with whom the offender has contracted.
Adultery.	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	Ditto.
Defamation, except such cases as are specified against section 500 of the Indian Penal Code in column 1 of the Table under sub-section (2).	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	501	Ditto.
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	Ditto.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation.	506	The person intimidated.
Inducing person to believe himself an object of divine displeasure.	508	The person induced.”;

(ii) in sub-section (2), for the TABLE the following TABLE shall be substituted, namely:—

“TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Causing miscarriage.	312	The woman to whom miscarriage is caused.
Voluntarily causing grievous hurt.	325	The person to whom hurt is caused.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Assault or criminal force to woman with intent to outrage her modesty.	354	The woman assaulted to whom the criminal force was used.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Theft, by clerk or servant of property in possession of master.	381	The owner of the property stolen.
Criminal breach of trust by a clerk or servant.	408	The owner of the property in respect of which the breach of trust has been committed.
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	418	The person cheated.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	The person cheated.
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his public functions when instituted upon a complaint made by the Public Prosecutor.	500	The person defamed.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it was intended to insult or whose privacy was intruded upon.”;

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under sections 34 or 149 of the Indian Penal Code may be compounded in like manner."

45 of 1860.

31. In section 327 of the principle Act,—

Amendment
of section
327.

(a) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that *in camera* trial shall be conducted as far as practicable by a woman Judge or Magistrate.";

(b) in sub-section (3), the following proviso shall be inserted, namely:—

"Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties."

32. In section 328 of the principal Act,—

Amendment
of section
328.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) If the civil surgeon finds the accused to be of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or mental retardation.";

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) If such Magistrate is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if he finds that no *prima facie* case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate finds that a *prima facie* case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 330.

(4) If such Magistrate is informed that the person referred to in sub-section (1A) is a person with mental retardation, the Magistrate shall further determine whether the mental retardation renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 330."

33. In section 329 of the principal Act,—

Amendment
of section
329.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or

clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind.";

(b) for sub-section (2), the following sub-sections shall be substituted, namely:—

"(2) If such Magistrate or Court is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no *prima facie* case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate or Court finds that a *prima facie* case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(3) If the Magistrate or Court finds that a *prima facie* case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330."

34. For section 330 of the principal Act, the following section shall be substituted, namely:—

"330. (1) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1987.

(3) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or mental retardation, further determine if the release of the accused can be ordered:

Provided that—

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 328 or section 329, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

Substitution of new section for section 330.

Release of person of unsound mind pending investigation or trial.

(b) if the Magistrate or Court, as the case may be, is of opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons of unsound mind or mental retardation may be ordered wherein the accused may be provided care and appropriate education and training."

35. In section 344 of the principal Act, in sub-section (1), after the words "such evidence should be used in such proceeding", the words, figures and letter "then, subject to the provisions of section 344A" shall be inserted.

Amendment of section 344.

36. After section 344 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 344A.

"344A. (1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that, any witness, whose statement recorded under sub-section (2) of section 164B in respect of an offence referred to in sub-section (2) of section 221, had subsequently retracted his statement in material particulars by stating inconsistent facts or had changed his version by narrating new facts which were destructive of the prosecution case, and the Court of Session or a Magistrate of the first class is satisfied that such retraction, contradiction or change of version is of such a nature that the witness is guilty of knowingly or wilfully giving false evidence or fabricating false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offence summarily, and notwithstanding anything contained in the provisions of this Code, sentence him to imprisonment for a term which shall not be less than three months but which may extend to two years and shall also be liable to fine:

Procedure for trial of witnesses deposing contrary to statement made in section 164B.

Provided that the provisions of this section shall apply only where the giving or fabrication of false evidence relates to the conduct of the witness subsequent to the recording of his statement under sub-section (2) of section 164B:

Provided further that the prosecution may apply to the Court or Magistrate to initiate proceedings under this section against a witness who has retracted from his statement.

(2) The provisions of sub-sections (2), (3) and (4) of section 344 shall apply for trial of an offence under this section as they apply to the summary trial of an offence referred to in sub-section (1) of that section."

37. After section 357 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 357A.

"357A. (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

Victim compensation scheme.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such

rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order immediate first-aid facility or for medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

Amendment of section 372.

38. In section 372 of the principal Act, the following proviso shall be inserted, namely:—

"Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

Amendment of section 416.

39. In section 416 of the principal Act, the words "order the execution of the sentence to be postponed, and may, if it thinks fit" shall be omitted.

Insertion of new section 437A.

40. After section 437 of the principal Act, the following section shall be inserted, namely:—

"437A. (1) Before conclusion of the trial and before disposal of the appeal, the trial Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

Bail to require accused to appear before next appellate Court.

(2) If such accused fails to appear, the bond stands forfeited and the procedure under section 446 shall be applicable."

Amendment of Form 45.

41. In the Second Schedule to the principal Act, in Form No. 45, after the figures "437", the figures and letter "437A" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The need to amend the Code of Criminal Procedure, 1973 to ensure fair and speedy justice and to tone up the criminal justice system has been felt for quite sometime. The Law Commission has undertaken a comprehensive review of the Code of Criminal Procedure in its 154th report and its recommendations have been found very appropriate, particularly those relating to provisions concerning arrest, custody and remand, procedure for summons and warrant-cases, compounding of offences, victimology, special protection in respect of women and inquiry and trial of persons of unsound mind. Also, as per the Law Commission's 177th report relating to arrest, it has been found necessary to revise the law to maintain a balance between the liberty of the citizens and the society's interest in maintenance of peace as well as law and order.

2. The need has also been felt to include measures for preventing the growing tendency of witnesses being induced or threatened to turn hostile by the accused parties who are influential, rich and powerful. At present, the victims are the worst sufferers in a crime and they don't have much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system. The application of technology in investigation, inquiry and trial is expected to reduce delays, help in gathering credible evidences, minimise the risk of escape of the remand prisoners during transit and also facilitate utilisation of police personnel for other duties. There is an urgent need to provide relief to women, particularly victims of sexual offences, and provide fair-trial to persons of unsound mind who are not able to defend themselves. To expedite the trial of minor offences, definition of warrant-case and summons-case are to be changed so that more cases can be disposed of in a summary manner.

3. The Code of Criminal Procedure (Amendment) Bill, 2006 seeks to achieve the above objectives.

NEW DELHI;
The 14th August, 2006.

SHIVRAJ V. PATIL.

Notes on Clauses

Clause 2 amends the definition of "summons-case" and "warrant-case". It defines summons-case as a case triable summarily and not being a warrant-case, and warrant-case as a case punishable with death, imprisonment for life or imprisonment for a term exceeding three years. This clause introduces a definition of "Victim" to confer certain rights on the guardians and legal heirs of the victim.

Clause 3 amends section 24 relating to appointment of Public Prosecutors. A proviso is added to sub-section (8) so as to empower the Court to permit the victim to engage an advocate of his choice to co-ordinate with the prosecution in consultation with the Central or the State Government, as the case may be.

Clause 4 amends section 26 relating to Courts by which offences are triable. A proviso is inserted in clause (a) of the said section so as to provide that any offence under section 376 and sections 376A to 376D of the Indian Penal Code, 1860 shall be tried as far as particable by a Court presided over by a woman.

Clause 5 amends section 41 relating to power of police to arrest without warrant. It amends clauses (a) and (b) of sub-section (1) so as to provide that the powers of arrest conferred upon the police officer must be exercised after reasonable care and justification and that such arrest is necessary and required under the section. Amendment is also made in sub-section (2) of section 41 so as to provide that subject to the provisions of section 42 relating to arrest on refusal to give name and residence, no person shall be arrested in a non-cognizable offence except under a warrant or order of a Magistrate.

Clause 6 inserts new sections 41A, 41B, 41C and 41D. Section 41A provides that where a case falls under sub-section (1) of section 41, the police officer may, instead of arresting the person concerned, issue to him a notice of appearance requiring him to appear before the police officer. Section 41B lays down the procedure of arrest and duties of officer making arrest. Section 41C requires the State Government to establish a police control room in every district and at the State level, where the names and addresses of the persons arrested, nature of offences with which they are charged, and the name and designation of the police officers who made the arrest are to be displayed. Section 41D makes provisions for right of the arrested persons to meet an advocate of his choice during the interrogation, though not throughout interrogation.

Clause 7 amends section 46 relating to how arrest is to be made. A proviso is added to sub-section (1) so as to provide that where a woman is to be arrested, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman to arrest her.

Clause 8 substitutes section 54 relating to examination of the arrested person by medical practitioner. The proposed amendment makes it obligatory on the part of the State to have the arrested person examined by a registered medical practitioner soon after the arrest is made. It also provides that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female registered medical practitioner.

Clause 9 inserts a new section 55A so as to make it obligatory on the part of the person having the custody of the accused to take reasonable care of the health and safety of the accused.

Clause 10 inserts a new section 60A with a view to prohibiting arrest except in accordance with the Code or any other law for the time being in force providing for arrest.

Clause 11 amends section 157 relating to procedure for investigation. A proviso is added to sub-section (1) so as to provide that in relation to an offence of rape,

the investigation shall be conducted at the residence of the victim and, so far as practicable by a woman police officer. It also makes provision for a victim under eighteen years of age to be questioned in the presence of her parents or a social worker of the locality.

Clause 12 amends section 161 relating to examination of witnesses by police. Three provisos are added to sub-section (3). The first proviso provides for recording of statement of witnesses by police by audio-video electronic means. The second proviso provides that in respect of offences specified in sub-section (1) of section 164B where such person is required to be forwarded to the nearest Magistrate for recording his statement under that section, his statement to the police officer shall not be reduced into writing under this sub-section. The third proviso provides that where any statement has been recorded under section 164B, the police officer shall enclose a copy of such statement as part of his police diary recording therein that such person has made such statement before the Metropolitan Magistrate or the Judicial Magistrate, as the case may be.

Clause 13 substitutes section 162 to provide that the statement made by any person to a police officer in the course of an investigation under Chapter XII shall, if reduced into writing, be signed by the person making it and copy of the statement as recorded shall be given forthwith free of cost by the police officer to the person who made the statement under acknowledgement.

Clause 14 amends section 164 relating to recording of confessions and statements. It provides that any confession or statement made may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence.

Clause 15 inserts a new section 164B to require any police officer not below the rank of sub-inspector, in the course of investigation of any offence punishable with death or imprisonment for ten years or more, to produce all persons whose statement appears to him to be material and essential for proper investigation of the case, to the nearest Metropolitan Magistrate or Judicial Magistrate, as the case may be, for recording their statements.

Clause 16 amends section 167 relating to procedure when investigation cannot be completed in twenty-four hours. It amends proviso to sub-section (2) of section 167 in order to make provision for the Magistrate to extend further detention in judicial custody of the accused also through the medium of electronic video linkage except for the first time where the production of the accused in person is required. The clause also inserts a further proviso to the said sub-section (2) to provide that in the case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

Clause 17 amends section 172, relating to diary of proceedings in investigation. Two new sub-sections (IA) and (IB) are inserted so as to provide that the statements of witnesses recorded during the course of investigation under section 161 shall be recorded in the case diary and that such diary shall be a bound volume and duly paginated.

Clause 18 amends section 173 relating to report of police officer on completion of investigation. A new sub-section (IA) is inserted with a view to provide that the investigation of the offence of rape of a child shall be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station. A new clause (h) is added to sub-section (2) of section 173 to ensure that the police report in cases of rape and custodial rape includes the report of medical examination where investigation relates to an offence under sections 376, 376A to 376D of the Indian Penal Code.

Clause 19 inserts a new section 195A in the Code to make provision for a witness or any other person on his behalf to file complaints in relation to an offence under section 195A of the Indian Penal Code.

Clause 20 amends section 198 relating to prosecution for offences against marriage. It amends sub-section (6) so as to raise the age limit of the wife from 15 years to 18 years to provide that no Court shall take cognizance of an offence under section 376 of the

Indian Penal Code where such offence is alleged by a man's own wife being under eighteen years of age.

Clause 21 amends section 242 relating to evidence for prosecution. A proviso is added to sub-section (1) so as to provide that in the evidence for prosecution the Magistrate shall, in advance, supply to the accused, the statement of witnesses recorded during investigation by the police.

Clause 22 omits Chapter XX of the Code containing sections 251 to 259 relating to trial of summons-cases by Magistrates.

Clause 23 substitutes section 260 so as to provide that all summons-cases shall be tried in a summary way instead of making such summary trial discretionary.

Clause 24 substitutes section 262 in order to lay down the procedure for trying summons-cases summarily.

Clause 25 amends section 263 relating to record in summary trials. Clause (f), which refers to records to be maintained by Magistrate in summary trials is omitted. The proposed amendment is consequential in nature.

Clause 26 amends section 274 of the Code as a consequential amendment of all summons-cases being summarily tried.

Clause 27 amends section 275 of the Code relating to record in warrant cases. Sub-section (1) relates to taking of evidence of each witness. A proviso is proposed in the said sub-section so as to provide that evidence of a witness may also be recorded by audio-video electronic means in the presence of the advocate of the accused.

Clause 28 amends section 309 of the Code relating to power to postpone or adjourn proceedings. The clause inserts a proviso to sub-section (1) in order to prevent trials in rape cases including child rape cases, from being unduly delayed by providing that the inquiry or trial in such cases shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses. This clause inserts another proviso to sub-section (2) specifying the circumstances where adjournment shall not be granted by the Court.

Clause 29 amends section 313 of the Code relating to power of the Court to examine the accused. The clause inserts a new sub-section (5) to the said section so as to eliminate delay in trial, by providing that the Court may take help of Prosecutor and Defence Counsel in preparing relevant questions to be put to the accused.

Clause 30 amends section 320 relating to compounding of offences punishable under sections of the Indian Penal Code specified in the Table provided under the section. It substitutes the tables in sub-sections (1) and (2) in order to bring more offences under the category of offences compoundable by the parties themselves without the intervention of the Court.

Clause 31 amends section 327 of the Code which deems Criminal Court to be an open Court. Sub-section (2) of the said section relates to *in camera* trials in case of certain offences. The clause seeks to provide that *in camera* trial under sub-section (2) of the said section shall be conducted as far as practicable by a woman Judge or Magistrate. A proviso is also added to sub-section (3) of the said section so as to lift the ban on printing or publication of trial proceedings in relation to an offence of rape, subject to maintaining confidentiality as to identity of the parties.

Clauses 32 and 33 amend sections 328 and 329 related to procedure of enquiry and trial in case of person of unsound mind. The clauses provide that if the Magistrate finds that the accused is incapable of making his defence due to unsoundness of mind, to refer such a person for appropriate medical treatment in accordance with section 330.

Clause 34 substitutes section 330 which provides for medical treatment of an accused person of unsound mind pending the trial. It also provides that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1982.

Clause 35 amends section 344 of the Code relating to summary procedure for trial for giving false evidence. Amendment is made in sub-section (1) of section 344, consequential to insertion of a new section 344A relating to procedure for trial of witnesses deposing contrary to statement made in section 164B.

Clause 36 inserts a new section 344A so as to provide summary procedure for trial of witnesses deposing contrary to the statement recorded under sub-section (2) of section 164B. The punishment for perjury has been increased to imprisonment for a term which shall not be less than three months but which may extend to two years and shall also be liable to fine. It also provides the Court or Magistrate to initiate proceedings under this section against a witness who has retracted from his statement.

Clause 37 inserts a new section 357A in order to provide for the State Government to prepare, in coordination with the Central Government, a scheme called "victim compensation scheme" for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of the crime.

Clause 38 amends section 372 of the Code relating to appeals from judgment or order of a Criminal Court. It gives to the victim the right to prefer an appeal against any adverse order passed by the trial Court.

Clause 39 amends section 416 of the Code relating to postponement of capital sentence to pregnant woman. It provides for the High Court to postpone execution of the sentence and also to commute the sentence to imprisonment for life in case a woman accused to death is found to be pregnant.

Clause 40 inserts a new section 437A to provide for the Court to require accused to execute bail bonds with sureties to appear before the higher Court as and when such Court issues notice in respect of an appeal against the judgment of the respective Court.

Clause 41 amends Form 45 of the Second Schedule to the Code. This amendment is consequential to the insertion of a new section 437A.

FINANCIAL MEMORANDUM

Clause 37 of the Bill provides for preparation of a Scheme for providing funds for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation. Every State Government will prepare the Scheme in coordination with the Central Government. The Scheme also provides for immediate first-aid or any other interim relief as deemed fit. The State Governments themselves would bear the expenditure on execution of the Scheme. The Central Government would have to bear the expenditure in respect of operation of the Scheme in those Union territories which do not have a Consolidated Fund of their own. Provision for such expenditure would be made in the appropriate budget for the Union territory concerned as and when the Scheme is finalised and made operational. It is, therefore, not possible to give an estimate of the expenditure involved (recurring and non-recurring) in this behalf at this stage. However, the proposal for execution of the Scheme in Union territories would be processed in consultation with the Ministry of Finance (Department of Expenditure).