

**Bill No. 17 of 2022**

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2022

By

SHRI ARVIND SAWANT, M.P.

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BILL

*further to amend the Indian Penal Code, 1860.*

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

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2022.

Short title and  
commencement.

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

Amendment of Section 166. 2. In section 166 of the Indian Penal Code, 1860, the following provisos shall be added at the end, namely: — 45 of 1860.

“Provided that a public servant disobeying law while arresting, detaining or prosecuting any person without any admissible evidence against him or failing to act in good faith or failing to exercise due care and attention, with intent to cause injury to that person, or knowing it to be likely that injury will thereby be caused to him, shall, where the arrested person is discharged or acquitted by a Court on such grounds, be punished with simple imprisonment for a term which may extend to one year, and also with fine and the person so discharged or acquitted shall be paid compensation from out of the fine for being deprived of his life, liberty and livelihood which shall not be less than rupees one thousand per day of such wrongful detention: 5 10

Provided further that in cases of arrest and detention in which a person is discharged without any charge-sheet being filed, or where he is acquitted by the Court for lack of evidence or inadmissibility of the evidence, or the evidence *prima facie* was tampered or concocted, the Court shall pronounce whether the concerned public servant, including the public servant who accorded previous sanction to disobeying law with intent to cause injury to the person so arrested, detained or prosecuted, or knowing it to be likely that injury will thereby be caused to him: 15 20

Provided also that where a Court pronounces in any case that a public servant has disobeyed law while arresting and detaining or prosecuting a person without due care and attention, and without any admissible evidence, no permission of the Central or State Government to prosecute the concerned public servant or servants shall be required under section 197 of the Code of Criminal Procedure, 1973 and the Court shall make a reference to the Sessions Judge to appoint a public prosecutor from the panel prepared under section 24 of the Code of Criminal Procedure, 1973 and to designate a Court before which the prosecution shall be conducted: 25

Provided also that in case the public servant is a judge or magistrate, the Court shall state the case setting out its opinion and reasons therefor and refer the same for the decision of the High Court and the High Court shall pass such orders thereon as it thinks fit, including the Court before which and the public prosecutor by whom the prosecution shall be conducted.”. 30

## STATEMENT OF OBJECTS AND REASONS

According to section 41 of the Code of Criminal Procedure, 1973, any person may be arrested on the basis of a reasonable complaint or credible information or reasonable suspicion of his being concerned in any cognizable offence. Similar power of arrest are vested in section 151 of the Code of Criminal Procedure, 1973 and several other laws. The discretion to arrest is very wide. However, public servants are required to be reasonable. There are increasing instances when public servants act without due care and attention, and are not reasonable in arresting, detaining or prosecuting people, and when the matter goes to the court, the court often finds that there was no ground and no charge.

According to the latest available statistics from National Crime Records Bureau (NCRB), in 2019, 1226 persons were arrested under the Unlawful Activities (Prevention) Amendment Act, 1967 (UAPA). In that year only nine per cent of those who had been arrested were charge-sheeted. Of those who had been charge-sheeted only 29.2 per cent were convicted in 2019. Thus, on an average, less than 3 per cent (29.2 per cent to 9 per cent) of those arrested under UAPA were convicted. According to NCRB, during the three years from 2016 to 2018, 3974 persons were arrested under UAPA, but only 821 (21 per cent.) were charge-sheeted, In 144 cases charge-sheets were not filed even after one year of arrest and detention. In 41 cases, charge-sheets were not filed even after two years of arrest and detention. In many such cases courts have held that the arrest and prosecution was without any admissible evidence.

According to NCRB conviction rate in arrests and prosecutions in offences relating to sedition under section 124-A of the Indian Penal Code fell to 3.3 per cent in 2019 from 33.3 per cent in 2016. Prosecutions under section 124-A require previous sanction of Central or State Government under section 196(1)(a) of the Code of Criminal Procedure, 1973. Since about 97 per cent prosecutions resulted in acquittal or discharge, previous sanction was obviously accorded unreasonable, *mala fide*, and without due care and attention. Arrests, prosecutions and detentions disobeying law, are in violation of the fundamental right to life and liberty under article 21 of the Constitution.

Courts, including High Courts and the Supreme Court, while acquitting the persons arrested, have held in many cases, that the arrest was made and the bail was unreasonably refused even though “there was no evidence whatsoever, neither direct, nor circumstantial, nor forensic” (Ref: High Court of Delhi, Justice Suresh Kumar Kait, Feb. 19 2021, while dealing with the arrest of three persons in connection with the death of one, Shahid, in North East Delhi riots in 2020). There are a number of cases in which courts have found that the arrest, detention and prosecution was based on tampered or concocted evidence.

According to NCRB, as on 31.12.2019, about 3.3 lakh persons who constitute about 70 per cent of persons in jails in India, were either under investigation or under prosecution, but not convicted by any court. Charge-sheeting rate in 2019 was 67.2 per cent. Conviction rate from out of those who had been charge-sheeted, for Indian Penal Code offences, was 50.4 per cent. Thus, about 33 per cent (100-67.2) of 3.3 lakh persons (about 1.09 lakh Persons) arrested and detained in jails are likely to be those who were not even charge-sheeted, and were, obviously, innocent. About 1.09 lakh innocent persons in jails, as on 31.12.2019, were thus unreasonably deprived of their life, liberty and livelihood, and also denied their valuable right to vote. Unjust and unfair detention in jail of lakhs of persons who are innocent, year after year, creates a very large disaffected and alienated citizenry.

*Mala fide* arrest and prosecutions of innocent persons are increasing because there is no effective provision in the law for ensuring punishment to public servants acting *mala fide*

without due care and attention. Section 166 of the Indian Penal Code relating to a public servant knowingly disobeying law with intent to cause injury to any person provides for imprisonment up to one year or with fine or both. But prosecution of a public servant requires previous sanction of the Government under section 197 of the Code of Criminal Procedure, 1973, and the protection extends even to *mala fide* actions of public servants without due care and attention. Section 197 of the Code of Criminal Procedure, 1973 dates back to when India was a British colony. Few, if any, public servants have been convicted for *mala fide* arrests and detentions of lakh of innocent citizens, year after year, because the protection under section 197 of the Code of Criminal Procedure, 1973 covers even *mala fide* action of the public servant.

In order to prevent *mala fide* arrests and detentions, without due care and attention, it is necessary to have an effective provision in the Indian Penal Code, to provide for prosecution of the concerned public servant if the court discharging a person so arrested and detained finds while discharging that person that he was arrested *mala fide* without due care and attention, disobeying law with intent to cause injury; and to simultaneously provide compensation to the innocent persons arrested and detained *mala fide*.

There is no public interest in protecting public servants who do not act in good faith, and act without due care and attention.

The Bill, therefore, seeks to amend section 166 of the Indian Penal Code, 1860 with a view to provide for punishment to public servant making *mala fide* arrest and detention, disobeying law with intent to cause injury to any person without having any previous sanction of Central Government or the State Government, as the case may be.

Hence this Bill.

NEW DELHI;  
15 December, 2021

ARVIND SAWANT

ANNEXURE

EXTRACT FROM THE INDIAN PENAL CODE, 1860  
(Act No. 45 OF 1860)

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**166.** Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both

Public servant disobeying law, with intent to cause injury to any person.

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EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE, 1973  
(Act No. 2 OF 1974)

\* \* \* \* \*

**197. (1)** When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction:—

Prosecution of Judges and public servants.

- (a) \* \* \* \* \*
- (b) \* \* \* \* \*
- (2) \* \* \* \* \*
- (3) \* \* \* \* \*
- (4) \* \* \* \* \*
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*(Shri Arvind Sawant, M.P.)*