

Bill No. 29 of 2021

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT)
BILL, 2021

By

SHRI ANUBHAV MOHANTY, M.P.

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BILL

further to amend the Code of Criminal Procedure, 1973.

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

1. (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2021.

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.

2 of 1974

2. In section 41 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), after sub-section (2), the following sub-sections shall be inserted, namely:—

Amendment of
section 41.

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“(3) No arrest under this section shall be made unless the police Officer has—

(a) made the relevant entry including reasons of arrest in the case diary and the daily diary register;

(b) obtained written approval of the officer in charge of the police station; and

(c) provided the information regarding bailable or non-bailable nature of offence to the person against whom complaint has been made.”. 5

Amendment
of section
309.

3. In section 309 of the Code, in sub-section (2), for the words “and may by a warrant remand the accused if in custody:”, the words “and shall, upon such postponement or adjournment, release the accused on bail if in custody or, for reasons to be recorded in writing, remand such accused to further custody:” shall be substituted. 10

STATEMENT OF OBJECTS AND REASONS

The right to life and liberty is a sacred and fundamental right mentioned in article 21 of the Constitution but it has been hampered by the police while exercising vast powers under the Code of Criminal Procedure, 1973. A widely discussed and contentious issue has been constant abuse of personal liberty and constitutional rights by the law enforcing agencies of the Government in the name 'protection of the public'.

The Supreme Court has laid down several guidelines in various cases regarding arrest. In *Arnesh Kumar vs State of Bihar and Anr.* (Cr. Appeal No. 1277 of 2014), the Court has said that arrest should not be made as matter of course and laid down several guidelines to ensure the same. In order to safeguard against the arbitrary exercise of power to arrest under section 41 of Code of Criminal Procedure, it is desirable that an addition be made to that effect and checks and balances be ensured under the Code.

With regard to remands, it has come to the notice that, in practice, Magistrates authorize detention in a routine and casual manner. With regard to section 309(2) of the Code of Criminal Procedure, this provision deals with remand of an person accused of an offence after cognizance of the offence has been taken by the court. Where the trial is postponed or adjourned, the Court may remand such accused if he is in custody. The provision does not mention that the Magistrate may also release the person from custody. As a result, the section appears to suggest that remand under the provision is the only outcome.

To ensure that remand does not take place in a mechanical manner and the court should consider both the continuing need, if any, for the person to remain in custody, as well as the length of under trial incarceration undergone by him, in determining whether the person should be released or sent to remand. An amendment to this effect is required to be provided in section 309(2) of the Code of Criminal Procedure, 1973.

Hence this Bill.

NEW DELHI;
January 22, 2021.

ANUBHAV MOHANTY

ANNEXURE

EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE, 1973

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When police
may arrest
without
warrant.

41. (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

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

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or 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 such complaint, information, or suspicion 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

(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) as 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:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(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;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(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.

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309. (1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Power to postpone or adjourn proceedings.

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

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 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.

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

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further to amend the Code of Criminal Procedure, 1973.

(Shri Anubhav Mohanty, M.P.)