

Bill No. 85 of 2023

THE CRIMINAL LAW (AMENDMENT) BILL, 2023

By

SHRI ABDUL KHALEQUE, M.P.

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BILL

*further to amend the Indian Penal Code, 1860 and
the Code of Criminal Procedure, 1973.*

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

CHAPTER I

PRELIMINARY

- 5 1. (1) This Act may be called as the Criminal Law (Amendment) Act, 2023. Short title and
 (2) It shall come into force on such date as the Central Government may, by commencement.
notification in the Official Gazette, appoint.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE, 1860

Amendment of section 99.	2. In section 99 of the Indian Penal Code, 1860, hereinafter referred to as the Penal Code, after para 3, the following para shall be inserted, namely:— “There is no right of private defence for a police officer or other person authorized in this behalf making an arrest of a person in an unprovoked situation which does not reasonably cause the apprehension of death or injury.”	45 of 1860. 5
Insertion of new section 308A.	3. After section 308 of the Penal Code, the following section shall be substituted, namely:—	
Extra -Judicial killing.	“308A. If a police officer or such other person while making an arrest of a person causes death of the person to be arrested without any reason sufficient to cause death, such police officer or other person shall be guilty of offence of extra-judicial killing and tried accordingly and shall be punished with death or imprisonment for life.”	10

CHAPTER III

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AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment of section 46.	4. In section 46 of the Criminal Procedure Code, 1973,— (a) in sub-section (2), for the words “use all means necessary to effect the arrest”, the words “use all means except causing death of the person to effect the arrest” shall be substituted; (b) after sub-section (2), the following proviso shall be inserted, namely:— “Provided that if the police officer or other person causes death of the person to be arrested, such police officer or other person shall be tried accordingly.”; and (c) sub-section (3) shall be omitted.	2 of 1974. 20 25
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STATEMENT OF OBJECTS AND REASONS

The menace of extra-judicial killings has taken a brutal turn over the last few decades. The extra-judicial killings, what is also known commonly as fake encounters has become a mean for the security forces to eliminate alleged criminals even before judgement is delivered by the judiciary. Police encounters are the violation of the human rights of the person who is actually until not proven guilty cannot be called as offender or criminal. India is not a rogue State. Nor it is ruled by any kind of dictatorship. These kinds of killings existed centuries back primarily during the times of Kings and Emperors. However, such a system cannot prevail in a democracy like ours where rule of law exists.

These extra-judicial killings have become means of settling, at times personal rivalry and more so in today's date it has become a tool to silence political opponents. We are experiencing the situation across many States in India. Under the garb of section 46 of the Criminal Procedure Code, 1973 and section 96 of Indian Penal Code, 1860 security forces indulge in such acts of fake encounters. Many a times, even unarmed person, women and child became victims of extra-judicial killings and the persons responsible for such killings walked away. So, it is time that the law be tweaked so that Human Rights of people are not violated.

All encounter killings must be investigated with the utmost diligence as such killings affect the credibility of the rule of law. Rule of law must be ensured at all costs in every case across the country. It is the duty of the State Government to adhere to the rule of law and work in accordance with the rule of law. There is a need to train the police officials in such a way that they are able to handle every unforeseen situation and protect the accused in police custody. As encounter killings are increasing day by day, resulting in human rights violations. Thus, there is a need to instill the importance of human rights in the minds of the police officers executing these unlawful killings.

Hence this Bill.

NEW DELHI;

ABDUL KHALEQUE

March 14, 2023.

ANNEXURE

[EXTRACT FROM THE INDIAN PENAL CODE, 1860]

(45 OF 1860)

[EXTRACT FROM THE CRIMINAL PROCEDURE CODE, 1973]

(2 OF 1974)

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THE INDIAN PENAL CODE, 1860

Things done in private defence. **96.** Nothing is an offence which is done in the exercise of the right of private defence.

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Acts against which there is no right of private defence. **99.** There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.

Extent to which the right may be exercised. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

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THE CRIMINAL PROCEDURE CODE, 1973

Arrest how made. **46. (1)** In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action:

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.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

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the Code of Criminal Procedure, 1973.

(Shri Abdul Khaleque, M.P.)