

Disclaimer : Text of this Act/Bill/Rules is provided for information only. We undertake no responsibility for any errors/mistakes in the same. Please refer to the Gazette of India for the authentic text.

**The
Code of Criminal Procedure (Amendment) Act, 2005¹**

[No. 25 OF 2005]

[June 23, 2005]

CONTENTS

Sections

1. Short title and commencement
2. Amendment of Section 20
3. Amendment of Section 24
4. Insertion of new Section 25-A
5. Amendment of Section 29
6. Amendment of Section 46
7. Insertion of new Section 50-A
8. Amendment of Section 53
9. Insertion of new Section 53-A
10. Amendment of Section 54
11. Insertion of new Section 54-A
12. Amendment of Section 82
13. Amendment of Section 102
14. Amendment of Section 110
15. Amendment of Section 122
16. Insertion of new Section 144-A
17. Insertion of new Section 164-A
18. Amendment of Section 176
19. Amendment of Section 202
20. Amendment of Section 206
21. Amendment of Section 223
22. Amendment of Section 228
23. Amendment of Section 260
24. Insertion of new Section 291-A
25. Amendment of Section 292
26. Amendment of Section 293
27. Insertion of new Section 311-A
28. Amendment of Section 320
29. Amendment of Section 356
30. Amendment of Section 358
31. Amendment of Section 377
32. Amendment of Section 378
33. Amendment of Section 389
34. Amendment of Section 428
35. Amendment of Section 436
36. Insertion of new Section 436-A
37. Amendment of Section 437
38. Amendment of Section 438
39. Insertion of new Section 441-A
40. Amendment of Section 446
41. Amendment of Section 459
42. Amendment of the First Schedule
43. Amendment of the Second Schedule
44. Amendment of Act 45 of 1860

An Act further to amend the Code of Criminal Procedure, 1973

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

1. Received the assent of the President on June 23, 2005 and published in the Gazette of India, Extra., Part II, Section 1, dated 23rd June, 2005, pp. 1-13, No. 28

1. Short title and commencement.—(1) This Act may be called the **Code of Criminal Procedure (Amendment) Act, 2005**.

(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section 20.—In Section 20 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as the principal Act), after sub-section (4), the following sub-section shall be *inserted*, namely:—

“(4-A) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.”.

3. Amendment of Section 24.—In Section 24 of the principal Act, in sub-section (6), after the proviso, the following Explanation shall be *inserted* and shall be deemed to have been inserted with effect from the 18th day of December, 1978, namely:—

Explanation.—For the purposes of this sub-section,—

- (a) “regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;
- (b) “Prosecuting Officer” means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.’.

4. Insertion of new Section 25-A.—In Chapter II of the principal Act, after Section 25, the following section shall be *inserted*, namely:—

“25-A. *Directorate of Prosecution.*—(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (8), of Section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3), or as the case may be, sub-section (8), of Section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of Section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.”.

5. Amendment of Section 29.—In Section 29 of the principal Act,—

(a) in sub-section (2), for the words “five thousand rupees”, the words “ten thousand rupees” shall be *substituted*;

(b) in sub-section (3) for the words “one thousand rupees”, the words “five thousand rupees” shall be *substituted*.

6. Amendment of Section 46.—In Section 46 of the principal Act, after sub-section (3), the following sub-section shall be *inserted*, namely:—

“(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.”.

7. Insertion of new Section 50-A.—After Section 50 of the principal Act, the following section shall be *inserted*, namely:—

“50-A. *Obligation of person making arrest to inform about the arrest, etc., to a nominated person.*—(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.”.

8. Amendment of Section 53.—In Section 53 of the principal Act, for the Explanation, the following Explanation shall be *substituted*, namely:—

‘*Explanation.*—In this section and in Sections 53-A and 54,—

(a) “examination” shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) “registered medical practitioner” means a medical practitioner who possesses any medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.’

9. Insertion of new Section 53-A.—After Section 53 of the principal Act, the following section shall be *inserted*, namely:—

“53-A. *Examination of person accused of rape by medical practitioner.*—(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:—

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.”.

10. Amendment of Section 54.—Section 54 of the principal Act shall be *renumbered* as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be *inserted*, namely:—

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

11. Insertion of new Section 54-A.—After Section 54 of the principal Act, the following section shall be *inserted*, namely:—

“54-A. *Identification of person arrested.*—Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the court, having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the court may deem fit.”.

12. Amendment of Section 82.—In Section 82 of the principal Act, after sub-section (3), the following sub-sections shall be *inserted*, namely:—

“(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the court under sub-section (4) as they apply to the proclamation published under sub-section (1).”.

13. Amendment of Section 102.—In Section 102 of the principal Act,—

- (a) in sub-section (3), after the words “transported to the court”, the words “or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation” shall be *inserted*;
- (b) after sub-section (3), the following proviso shall be *added* at the end, namely:—

“Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.”

14. Amendment of Section 110.—In Section 110 of the principal Act, in clause (f), in sub-clause (i),—

- (i) in item (g), the word “or” shall be *omitted*;
- (ii) after item (g), the following item shall be *inserted*, namely:—
- “(h) the Foreigners Act, 1946 (31 of 1946); or”.

15. Amendment of Section 122.—In Section 122 of the principal Act, in sub-section (1), in clause (b) for the words “bond without sureties”, the words “bond, with or without sureties, shall be *substituted*.”

16. Insertion of new Section 144-A.—In Chapter X of the principal Act, under sub-heading “C.—Urgent cases of nuisance or apprehended danger”, after Section 144, the following section shall be *inserted*, namely:—

‘144-A. *Power to prohibit carrying arms in procession or mass drill or mass training with arms.*—(1) The District Magistrate may, whenever he considers it necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by public notice or by order, prohibit in any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organising or holding of, or taking part in, any mass drill or mass training with arms in any public place.

(2) A public notice issued or an order made under this section may be directed to a particular person or to persons belonging to any community, party or organisation.

(3) No public notice issued or an order made under this section shall remain in force for more than three months from the date on which it is issued or made.

(4) The State Government may, if it considers necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by notification, direct that a public notice issued or order made by the District Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which such public notice or order was issued or made by the District Magistrate would have, but for such direction, expired, as it may specify in the said notification.

(5) The State Government may, subject to such control and directions as it may deem fit to impose, by general or special order, delegate its powers under sub-section (4) to the District Magistrate.

Explanation.—The word “arms” shall have the meaning assigned to it in Section 153-AA of the Indian Penal Code (45 of 1860).’

17. Insertion of new Section 164-A.—After Section 164 of the principal Act, the following section shall be *inserted*, namely:—

‘164-A. *Medical examination of the victim of rape.*—(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:—

- (i) the name and address of the woman and of the person by whom she was brought;
- (ii) the age of the woman;
- (iii) the description of material taken from the person of the woman for DNA profiling;
- (iv) marks of injury, if any, on the person of the woman;
- (v) general mental condition of the woman; and
- (vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in Section 173 as part of the document referred to in clause (a) of sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation.—For the purposes of this section, “examination” and “registered medical practitioner” shall have the same meanings as in Section 53.’.

18. Amendment of Section 176.—In Section 176 of the principal Act,—

- (i) in sub-section (1), the words “where any person dies while in the custody of the police or” shall be *omitted*;
- (ii) after sub-section (1), the following sub-section shall be *inserted*, namely:—

“(1-A) Where,—

- (a) any person dies or disappears, or
- (b) rape is alleged to have been committed on any woman,

while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.”;

- (iii) after sub-section (4), before the *Explanation*, the following sub-section shall be *inserted*, namely:—

“(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1-A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical person appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.”.

19. Amendment of Section 202.—In Section 202 of the principal Act, in sub-section (1), after the words “may, if he thinks fit,” the following shall be *inserted*, namely:—

“and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction.”.

20. Amendment of Section 206.—In Section 206 of the principal Act, in sub-section (1),—

- (a) in the opening paragraph, after the words and figures “under Section 260” the words and figures “or Section 261” shall be *inserted*;
- (b) in the proviso, for the words “one hundred rupees”, the words “one thousand rupees” shall be *substituted*.

21. Amendment of Section 223.—In Section 223 of the principal Act, in the proviso,—

- (a) for the word “Magistrate”, the words “Magistrate or Court of Session” shall be *substituted*;
- (b) for the words “if he is satisfied”, the words “if he or it is satisfied” shall be *substituted*.

22. Amendment of Section 228.—In Section 228 of the principal Act, in sub-section (1), in clause (a), for the words “, and thereupon the Chief Judicial Magistrate”, the words “or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate” shall be *substituted*.

23. Amendment of Section 260.—In Section 260 of the principal Act, in sub-section (1),—

- (a) for the words “two hundred rupees”, wherever they occur, the words “two thousand rupees” shall be *substituted*;
- (b) in clause (vi), for the words “criminal intimidation”, the words “criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both” shall be *substituted*.

24. Insertion of new Section 291-A.—After Section 291 of the principal Act, the following section shall be *inserted*, namely:—

“291-A. *Identification report of Magistrate.*—(1) Any document purporting to be a report of identification under the hand of an Executive Magistrate in respect of a person or property may be used as evidence in any inquiry, trial or other proceeding under this Code, although such Magistrate is not called as a witness :

Provided that where such report contains a statement of any suspect or witness to which the provisions of Section 21, Section 32, Section 33, Section 155 or Section 157, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), apply, such statement shall not be used under this sub-section except in accordance with the provisions of those sections.

(2) The court may, if it thinks fit, and shall, on the application of the prosecution or of the accused, summon and examine such Magistrate as to the subject matter of the said report.”.

25. Amendment of Section 292.—In Section 292 of the principal Act,—

- (a) in sub-section (1), after the words “the Mint”, the words “or of the Currency Note Press or of the Bank Note Press or of the Security Printing Press” shall be *inserted*;
- (b) in sub-section (3), for the words “the Master of the Mint, or the India Security Press”, the words “the General Manager of the Mint or of the Currency Note Press or of the Bank Note Press or of the Security Printing Press or of the India Security Press” shall be *substituted*.

26. Amendment of Section 293.—In Section 293 of the principal Act, in sub-section (4),—

- (a) for clause (b), the following clause shall be *substituted*, namely:—
“(b) the Chief Controller of Explosives;”;
- (b) after clause (f), the following clause shall be *added*, namely:—
“(g) any other Government scientific expert specified by notification, by the Central Government for this purpose.”.

27. Insertion of new Section 311-A.—After Section 311 of the principal Act, the following section shall be *inserted*, namely:—

“311-A. *Power of Magistrate to order person to give specimen signatures or handwriting.*—If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.”.

28. Amendment of Section 320.—In Section 320 of the principal Act, in the Table under sub-section (2),—

- (a) the words “Voluntarily causing hurt by dangerous weapons or means” in Column 1 and the entries relating thereto in Columns 2 and 3 shall be *omitted*;
- (b) in Column 3, for the word “Ditto”, against the entry relating to Section 325, the words “The person to whom the hurt is caused” shall be *substituted*;
- (c) in Column 1, for the words “two hundred and fifty rupees”, wherever they occur, the words “two thousand rupees” shall be *substituted*.

29. Amendment of Section 356.—In Section 356 of the principal Act, in sub-section (1),—

- (a) after the words, figures and letter “or Section 489-D”, the words, figures and brackets” or Section 506 (in so far as it relates to criminal intimidation punishable with imprisonment for a term which may extend to seven years or with fine or with both)” shall be *inserted*;
- (b) after the word and figures “Chapter XII”, the words and figures “or Chapter XVI” shall be *inserted*.

30. Amendment of Section 358.—In Section 358 of the principal Act, in sub-sections (1) and (2), for the words “one hundred rupees”, the words “one thousand rupees” shall be *substituted*.

31. Amendment of Section 377.—In Section 377 of the principal Act,—

- (a) in sub-sections (1) and (2), for the words “an appeal to the High Court against the sentence on the ground of its inadequacy”, the following shall be *substituted*, namely:—
“an appeal against the sentence on the ground of its inadequacy—
(a) to the Court of Session, if the sentence is passed by the Magistrate; and
(b) to the High Court, if the sentence is passed by any other court;”;
- (b) in sub-section (3), for the words “the High Court”, the words “the Court of Session or, as the case may be, the High Court” shall be *substituted*.

32. Amendment of Section 378.—In Section 378 of the principal Act,—

- (i) for sub-section (1), the following sub-section shall be *substituted*, namely:—
“(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—
(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.”;

- (ii) in sub-section (2), for the portion beginning with the words “the Central Government may” and ending with the words “the order of acquittal”, the following shall be *substituted*, namely:—

“the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

- (a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
- (b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision;”;

- (iii) in sub-section (3), for the words “No appeal”, the words “No appeal to the High Court” shall be *substituted*.

33. Amendment of Section 389.—In Section 389 of the principal Act, to sub-section (1), the following provisos shall be *added*, namely:—

“Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.”.

34. Amendment of Section 428.—In Section 428 of the principal Act, the following proviso shall be *added*, namely:—

“Provided that in cases referred to in Section 433-A, such period of detention shall be set off against the period of fourteen years referred to in that section.”.

35. Amendment of Section 436.—In Section 436 of the principal Act, in sub-section (1),—

- (a) in the first proviso, for the words “may, instead of taking bail”, the words “may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail” shall be *substituted*;

- (b) after the first proviso, the following Explanation shall be *inserted*, namely:—

“*Explanation.*—Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the court to presume that he is an indigent person for the purposes of this proviso.”.

36. Insertion of new Section 436-A.—After Section 436 of the principal Act, the following section shall be *inserted*, namely:—

“436-A. *Maximum period for which an undertrial prisoner can be detained.*—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the court on his personal bond with or without sureties:

Provided that the court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”.

37. Amendment of Section 437.—In Section 437 of the principal Act,—

- (i) in sub-section (1),—

- (a) in clause (ii), for the words “a non-bailable and cognizable offence”, the words “a cognizable offence punishable with imprisonment for three years or more but not less than seven years” shall be *substituted*;

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

“Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.”.

- (ii) in sub-section (3), for the portion beginning with the words “the court may impose”, and ending with the words “the interests of justice”, the following shall be *substituted*, namely:—

“the court shall impose the conditions,—

- (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

- (b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and
- (c) that such person shall not directly or indirectly make 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 any police officer or tamper with the evidence,

and may also impose, in the interests of justice, such other conditions as it considers necessary.”.

38. Amendment of Section 438.—In Section 438 of the principal Act, for sub-section (1), the following sub-sections shall be *substituted*, namely:—

“(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:—

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the court.

(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the court, if on an application made to it by the Public Prosecutor, the court considers such presence necessary in the interest of justice.”.

39. Insertion of new Section 441-A.—After Section 441 of the principal Act, the following section shall be *inserted*, namely:—

“441-A. *Declaration by sureties.*—Every person standing surety to an accused person for his release on bail, shall make a declaration before the court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.”.

40. Amendment of Section 446.—In Section 446 of the principal Act, in sub-section (3), for the words “at its discretion”, the words “after recording its reasons for doing so” shall be *substituted*.

41. Amendment of Section 459.—In Section 459 of the principal Act, for the words “less than ten rupees”, the words “less than five hundred rupees” shall be *substituted*.

42. Amendment of the First Schedule.—In the First Schedule to the principal Act, under the heading “I. Offences under the Indian Penal Code”,—

(a) after the entries relating to Section 153-A, the following entries shall be *inserted*, namely:—

1	2	3	4	5	6
“153-AA	Knowingly carrying arms in any procession or organising or holding or taking part in any mass drill or mass training with arms	Imprisonment for 6 months and fine of 2000 rupees	Ditto	Ditto	Any Magistrate”;

(b) in the 6th column, in the entries relating to Section 153-B, for the word “Ditto”, the words “Magistrate of the first class” shall be *substituted*;

(c) after the entries relating to Section 174, the following entries shall be *inserted*, namely:—

1	2	3	4	5	6
“174-A	Failure to appear at specified place and specified time as required by a proclamation published under sub-section (1) of Section 82 of this	Imprisonment for 3 years or with fine or with both	Cognizable	Non-bailable	Magistrate of the first class

Code

In a case where declaration Imprisonment Ditto Ditto Ditto";
has been made under sub- for 7 years
section (4) of Section 82 of and fine
this Code pronouncing a
person as proclaimed
offender

(d) in the entries relating to Section 175,—

(i) in the 4th column, for the word "Ditto", the word "Non-cognizable"; and

(ii) in the 5th column, for the word "Ditto" the word "Bailable", shall be *substituted*;

(e) after the entries relating to Section 229, the following entries shall be *inserted*, namely:—

1	2	3	4	5	6
"229-A	Failure by person released on bail or bond to appear in Court.	Imprisonment for 1 year, or fine or both	Cognizable	Non-bailable	Any Magistrate.";

(f) in the 5th column, in the entries relating to—

(i) Section 274, for the word "Ditto", the word "Non-bailable" shall be *substituted*;

(ii) Section 275, for the word "Ditto", the word "Bailable" shall be *substituted*;

(iii) Section 324, for the word "Ditto", the word "Non-bailable" shall be *substituted*;

(iv) Section 325, for the word "Ditto", the word "Bailable" shall be *substituted*;

(v) Section 332, for the word "Bailable", the word "Ditto" shall be *substituted*;

(vi) Section 333, for the word "Non-bailable", the word "Ditto" shall be *substituted*;

(vii) Section 353, for the word "Ditto", the word "Non-bailable" shall be *substituted*;

(viii) Section 354, for the word "Ditto", the word "Bailable" shall be *substituted*.

43. Amendment of the Second Schedule.—In the Second Schedule to the principal Act, in Form No. 45, after the words and figures "See Section 436", the figures and letter "436-A," shall be *inserted*.

44. Amendment of Act 45 of 1860.—In the Indian Penal Code,—

(a) after Section 153-A, the following section shall be *inserted*, namely:—

'153-AA. *Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms.*—Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under Section 144-A of the Code of Criminal Procedure, 1973 (2 of 1974) shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

Explanation.—"Arms" means articles of any description designed or adapted as weapons for offence or defence and includes firearms, sharp edged weapons, lathis, *dandas* and sticks.';

(b) after Section 174, the following section shall be *inserted*, namely:—

"174-A. *Non-appearance in response to a proclamation under Section 82 of Act 2 of 1974.*—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of Section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.";

(c) after Section 229, the following section shall be *inserted*, namely:—

"229-A. *Failure by person released on bail or bond to appear in court.*—Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation.—The punishment under this section is—

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the court to order forfeiture of the bond.”
