

COMMITTEE FOR REFORMS IN CRIMINAL LAWS

FIRST CONSULTATION ON PROCEDURAL CRIMINAL LAW

QUESTIONNAIRE

[Disclaimer: The questions provided herein are not reflective of the position of the Committee upon any issue/question of law in any form or manner. The questions have been formulated after research and examination of – judicial precedents; reports of Committees and Commissions; and, other authoritative treatises. While these Consultations seek to solicit your views, opinions, knowledge, experience and recommendations on these issues/questions of law, the Committee is alive to other issues and questions beyond the questionnaire, and the same maybe addressed through the Open Consultations.]

Part A

Arrest

Q.1. Should s. 41A be modified to -

- a) provide for a time period within which the person concerned should comply with the notice issued against him under this section; and,
- b) empower the police officer concerned to extend this time period? If yes, under what circumstances should such extension be permissible?

Q.2. Should the provisions of the Cr.P.C. be amended to provide for an express obligation on the arresting officer to inform the arrestee of their rights at the time of arrest (such as the right to free legal aid, right against self-incrimination, medical examination etc.)?

Q.3. In what manner should the provisions pertaining to arrest, search and seizure be modified in order to account for the needs of gender and sexual minorities (e.g., gender minorities being provided the right to demand search by a non-male police officer)?

Q.4. In what manner should the provisions pertaining to arrest, search and seizure be modified in order to account for the needs of persons with disabilities (as defined under s. 2(s) the Rights of Persons with Disabilities Act, 2016)?

Q.5. In light of judicial precedents on the issue, should the Cr.P.C. be amended to expressly regulate the use of handcuffs and other forms of restraints?

Q.6. Should s. 41B(c) be modified to provide for the arrestee's lawyer - as named by the arrestee - to be informed of their arrest at the time of arrest (in addition to the relative or friend currently mentioned)?

Q.7. Should s. 41D of the Cr.P.C. be modified to permit the arrestee to consult their advocate -

- a) prior to interrogation; and/or
- b) throughout the entirety of the interrogation?

Q.8. Should an express obligation be placed on the Magistrate before whom the arrestee has been brought to ensure that rights of the arrestee were not violated during the arrest procedure?

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Part B

Bail

Q.1. Should s. 436A be modified to nuance the criteria for the maximum period of detention of an under-trial prisoner:

- a) For offences upto seven years, under trials who have completed one third period of the maximum sentence imposed may be released; and
- b) For offences with punishment more than seven years, under trials who have completed one half period of the maximum sentence imposed may be released.

Q.2. Should s. 437 be modified to:

- a) expand the scope of the first proviso of sub-section (1) to include other categories of persons (such as persons below the age of 21*; pregnant women, etc.)? If yes, please suggest the categories to be included.
- b) lay down a definite period for disposal of bail applications? If yes, what should be the duration of such a time period?

**in line with s.6(1) of the Probation of Offenders Act, 1958*

Q.3. Should s. 437(5) be modified to specify indicative grounds for cancellation of bail? If yes, please suggest the grounds to be specified.

Q.4. Should complainants/victims be provided with an opportunity to be heard in bail proceedings? If yes, please specify the scope of this participation.

Q.5. Should the provisions of the Cr.P.C. be modified to expressly recognise the factors to be taken into account for calculation of monetary bail? If yes, please suggest these factors.

Q.6. Should the first proviso and explanation in s. 436 be extended to s. 437A?

Q.7. In addition to the existing monetary bail system, should alternatives such as conditional release be introduced? If yes,

- a) what kind of non-monetary bail options should be included?
- b) in what circumstances should non-monetary bail be imposed?

Q.8. Should the incapacity to pay the amount of bail bond in non-bailable offences due to reasons such as indigence be recognised as circumstances for reduction/waiver of the bond amount?

Part C

Investigation

Q.1. Should the 'investigative' functions of the Police be separated from their 'law and order' functions?

Q.2. Should the conduct of preliminary inquiry in categories of cases mentioned in *Lalita Kumari v. State of Uttar Pradesh* [(2014) 2 SCC 1] be:

- a) statutorily recognised?; and,
- b) include categories other than ones mentioned in *Lalita Kumari* (supra). If so, what should be the basis for such categorisation?

Q.3. Should a provision pertaining to 'Zero FIR' be expressly incorporated under our statutory framework?

Q.4. Should provisions allowing for court supervised investigations (along the lines of s.157A recommended by the 239th Law Commission Report), be introduced with due regard to the rights of the both complainant/victims and accused to a 'Fair Investigation and Trial'?

Q.5. As regards s. 161(3), should:

- a) the verbatim recording of statements made by all material witnesses be mandatory rather than discretionary (use of the term 'shall' in place of 'may') for all/some offences; and/or,
- b) all statements so recorded under the section be read out to the witness and/or be signed accordingly; and/or,
- c) be forwarded to the Magistrate immediately; and/or,
- d) the evidentiary value of statement under s. 161 (vis-a-vis s. 162) be modified, provided that the statements are recorded; read out to the witness; and/or, are signed by them?

Q.6. Should the completion of investigation and filing of final-report under the chapter be explicitly time-bound rather than resorting to an indirect constraint through s. 167(2)? If yes, what should be the time frame?

Q.7. Should there be a time limit as to filing of a supplementary charge sheet? If yes, what should be the time limit?

Q.8. In the interest of justice for victims of crime, should:

- a) the officer-in-charge of the police station be required to periodically inform the victim/informant as regards the progress of the investigation, without prejudicing fair investigation?

- b) the victim be informed upon the arrest of the accused as well as their release on bail? If yes, on whom should the obligation to provide this information be placed?
- c) the victim be informed of their right to access support services for legal, material, medical, psychological aids etc.? If yes, on whom should the obligation to provide this information be placed?
- d) the presence of a support person be ensured while recording statements in matters relating to vulnerable witnesses/victims, upon a request to this effect being made?

Q.9. In light of the drawbacks of the current mechanism (under ss. 154(3) and 156(3)) in place to inquire into and if need be, take suitable action, against any misconduct by the police officer vis-a-vis the complainant/victim, please suggest a viable and practicable complaint mechanism.

Q.10. In light of the drawbacks of the current mechanism in place to inquire into and if need be, take suitable action, against any misconduct by the police officer vis-a-vis the accused, please suggest a viable and practicable complaint mechanism.

Part D

Prosecution

- Q.1.** Should the mode of appointment for public prosecutors under s. 24 be modified?
- Q.2.** Should the victim be provided with an opportunity to be heard if the prosecutor moves to withdraw the case under s. 321?
- Q.3.** What mechanisms can be introduced to improve the coordination between the police and the prosecution at the pre-trial stage, without compromising the independence of either?
- Q.4.** In the light of the issue of ineffective victim representation, should the victim (whether on their own or through a pleader) be given a greater role in the prosecution of offences, without prejudice to the rights of the accused?
- Q.5.** What safeguards can be put in place to ensure effective coordination between the victim's advocate and the public prosecutor, without prejudice to the rights of the accused?
- Q.6.** Should the accountability mechanisms to check the powers and functions of the public prosecutors be strengthened (e.g., complaint mechanisms for the victim, etc.)? If so, please suggest what mechanisms should be put in place?

Part E

Initiation / Commencement of Proceedings

Q.1. Should 'protest petition' be expressly defined under the Cr.P.C.? If yes, what should be the framework for it?

Q.2. In the interest of speedy disposal of cases, how can the existing mechanism for cases relating to offences only punishable with fine and not imprisonment be improved?

Q.3. Should statutory provisions (such as ss. 207 and 173) be modified to provide for 'Fair Disclosure' of material (whether inculpatory, exculpatory or otherwise) by the Police and Prosecution to all parties?

Committee for Reforms in Criminal Laws

Part F

Law and Order

I. Security for Keeping the Peace and for Good Behaviour

Q.1. Should s. 106 be modified to:

- a) include or exclude any offences in sub-section (2)(a)?
- b) define the phrase 'breach of the peace' referred to in sub-section (2)(d)? If yes, how should it be defined?

Q.2. What should be the threshold for determining the credibility of the information received by an Executive Magistrate in ss. 107 (1), 108 (1), 109 and 110?

Q.3. a) Should the powers granted under ss. 107-110 be exercised by a Judicial Magistrate instead of an Executive Magistrate?

b) If not, should the power to conduct inquiries under s. 116, under the current scheme, be exercisable exclusively by a Judicial Magistrate?

Q.4. Should a new sub-section be added to s. 117 specifying that every order made under this section shall contain the point(s) of determination, the decision thereon and the reasons for the decision?

II. Maintenance of Public Order and Tranquillity

Q.5. Should ss.129-132 be modified to introduce safeguards for the use of force, having due regard to fundamental rights? If yes, what should such safeguards be?

Q.6. Should s. 144 be modified to redefine its scope and applicability in a manner that adequately balances individual rights and national security? If yes, how should it be modified?

III. Preventive Action of the Police

Q.7. Should s. 149 be modified to clearly identify its scope and limit the possibility of misuse/abuse? If yes, how should it be modified?

Q.8. Should the scope of s. 151 be modified to limit the circumstances in which it can be invoked (e.g., limiting it to certain types of offences) in order to minimise abuses and strengthen accountability? If yes, how should it be modified?

PART G

Sentencing

Q.1. Should sentencing guidelines be framed to control disparity and bias in sentencing in India? What should be the constitution, powers, and framework for the authority which would frame such guidelines?

Q.2. Should greater emphasis be laid upon sentencing hearings within the criminal justice process? Should it be mandatory to adjourn the sentencing hearing to a separate date after the conviction? Please give suggestions to make sentencing hearings more effective.

Q.3. a) Should pre-sentencing reports be used by courts while determining the quantum of sentences? What information should be included in such reports?

b) What factors should be taken into account while evaluating pre-sentencing reports?

Q.4. Should Victim-Impact Statements be considered at the time of sentencing?

Q.5. What should be the guiding factors for determining whether a convict should be given consecutive or concurrent sentences? Should these factors be codified within the Cr.P.C. or by sentencing guidelines?

Q.6. Is life imprisonment (extending to the natural life of the convict) without the possibility of remission at odds with the penological justification of rehabilitation?

Q.7. Should s. 30 of the Cr.P.C. (imprisonment in default of payment of fines) be modified/ repealed so as to ensure that imprisonment does not penalise indigency?

Q.8. Should Chapter XXXII of the Cr.P.C. be modified so as to:

- a) Specify the grounds which may be considered for suspension, remission or commutation of sentences? If yes, please specify what grounds may be included therein.
- b) Specify further grounds for cancellation of remission or suspension under s. 432? If yes, please specify the grounds which may be included therein.
- c) Allow for involvement of the complainant/victim and/or the public prosecutor, at the stage of consideration of the convict's case for suspension, remission or commutation (or cancellation thereof)?

COMMITTEE FOR REFORMS IN CRIMINAL LAWS

SECOND CONSULTATION ON PROCEDURAL CRIMINAL LAW

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Part A

Trials before a Court of Sessions, Trials of Warrant Cases and Trials of Summons Cases

Q.1. Should the provisions of the Cr.P.C. be modified to prescribe a time frame for the stages of the trial and/or the conclusion of the trial in:

- a) Trials before the Court of Sessions
- b) Trials in Warrant Cases
- c) Trials in Summons Cases

If yes, please suggest an appropriate time frame for each.

Q.2. Should the classification of summons and warrants' cases be modified so that summons cases include cases involving offences punishable by imprisonment up to *three* years? If no, please suggest any other appropriate limit.

Q.3. Should s. 251 of the Cr.P.C. be modified to allow for discharge of the accused?

Q.4. Should the provisions of the Cr.P.C. be modified to allow the accused to present material of sterling quality and of unimpeachable character towards their discharge?

Q.5. Should the provisions of the Cr.P.C. be modified to prescribe a timeframe for the disposal of discharge applications? If yes, please suggest an appropriate time frame.

Q.6. a) Should provisions for permanent exemption from appearance of the accused be incorporated in the Cr.P.C.?

b) What should be the relevant criteria to be considered while granting permanent exemptions? Should these be different for summons cases, warrants cases, and sessions trials?

c) Should the complainant have a right to be heard while deciding such exemption applications?

Q.7.a) What should be the relevant criteria for consideration of applications for grant of non-permanent exemptions (exemptions from appearance for any particular day or fixed time period)?

b) Should the complainant have a right to be heard while deciding such non-permanent exemption applications?

Q.8. Should Trial Courts themselves have the power to restore summons and warrants cases which have been dismissed in default under ss. 256 and 249 of the Cr.P.C.? If yes, please suggest the appropriate period of limitation for filing such restoration applications.

Q.9. Should s. 237 be modified to:

a) remove the upper limit of Rs. 1,000/- on the compensation that can be awarded under sub-section (4)? If yes, please suggest how the quantum may be decided thereafter.

b) allow release of compensation until the appeal is decided?

Q.10. Should s. 250 of the Cr.P.C. be modified so as to include alternative forms of redressal for accusations without reasonable cause?

Q.11. Should s. 256(2) be modified to allow for substitution of the complainant, in case of their death, by their legal heirs or representatives? If yes, should there be any exceptions to this rule?

Q.12. In summons cases, should the presence of the accused, as a general rule, be ensured only by personal bond? In what circumstances should the accused be required to submit a monetary bond or surety in addition to a personal bond?

Q.13. Should there be certain categories of complaint cases wherein examination-in-chief may be allowed through affidavit for:

a) Pre-summoning evidence under s. 200; and/or,

b) Post-summoning evidence under s. 254?

Q.14. Should the complainant/ victim be expressly provided the right to be heard at all appropriate stages during any/ all trials and other proceedings arising therefrom, without prejudice to the rights of the accused? If yes, please suggest the appropriate stages of the trial where such a right can be granted.

Q.15. Should the complainant/victim's advocate be allowed to:

- a) act independently of the prosecution; and/ or
- b) present oral arguments; and/ or
- c) present witnesses; and/ or,
- d) cross-examine witnesses?

Q.16. Should the victim's advocate be permitted to conduct the prosecution of the case before the Court of Sessions? If yes, in what circumstances should this be permitted?

Q.17. Should (all or any) trial courts be given inherent powers along the lines of s. 482 of the Cr.P.C.?

Committee for Reforms in Criminal Laws

Part B

Summary Trials

Q.1. Should s. 260 be modified so as to make it mandatory for Magistrates to try cases summarily, with due exceptions? If yes,

- a) What classes of cases should be tried summarily?
- b) What should be the maximum punishment which can result after summary procedure?
- c) What should be the due exceptions, using which it may be open to a court, either *suo motu* or on application, to discard summary procedure and resort to the regular procedure under the Cr.P.C.?

Q.2. Should the provisions of the Cr.P.C. be modified to prescribe a time frame for the conclusion of Summary Trials? If yes, please suggest an appropriate time frame.

Q.3. Having due regard for the rights of the accused, please suggest an appropriate procedure for summary trials as well amendments to ss. 262-264 that may be required to implement the same.

Committee for Reforms in Criminal Laws

Part C

General Provisions as to Inquiries and Trials

Q.1. Should ss. 306 and 307 be amended to expressly provide for the Magistrate to, before tendering pardon, take into account:

- a) the recommendations of the prosecutor; and / or,
- b) the victim impact statement?

Q.2. Should s. 306(4)(b) be modified to remove the mandatory requirement of detention until the termination of trial, unless the approver is already on bail?

Q.3. Having due regard to the rights of the accused as well as the victim, please provide suggestions for curtailing the practice of frequent and mechanical grant of adjournments under s. 309 of the Cr.P.C.

Q.4. Should s. 309(1) Proviso be modified to include additional offences? If yes, what should be the appropriate time-limits for the trial of such offences?

Q.5. Should s. 311A of the Cr.P.C. be modified to allow for:

- a) Collection of voice samples and alpha-numeric/ Face ID/ Touch ID passwords to electronic devices and other biometric identifiers? If yes, what should be the safeguards in place to protect the right to privacy of the individuals concerned?
- b) collection of specimen signatures or handwriting of individuals or other information mentioned above who have not previously been arrested in connection with such investigation or proceeding? If yes, which individuals should be included under this provision and what safeguards should be in place to protect their right to privacy?

Q.6. a) Should s. 320 be modified to add or delete any offences that may be compounded? If yes, please specify.

b) If any offences are to be added, by whom should such offences be compounded?

Q.7. Should it be permissible for the Court, under s. 156(3) (in cognizable offences), to decline prayers for police investigation and direct the complainant to proceed with the case as if it were a private complaint under s. 200?

Q.8. Please suggest safeguards to ensure the protection of the rights of the accused and the victim/witnesses when recording statements *via* audio-video electronic means by the police in the course of all inquiries and/or investigations.

Q.9. Should provisions of the Cr.P.C. be modified to provide for the use of audio-video electronic means for recording of examination in chief and cross-examination by Courts? Should there be real-time transcription of cross-examinations or *post-facto* transcriptions from the audio-visual record?

Q.10. Should s. 280 be modified to enable applications by the prosecution or defence counsel for recording the demeanour of a witness?

Committee for Reforms in Criminal Laws

Part D

Plea Bargaining

Q.1. Please provide your considered opinion as to the cause(s) of ineffective implementation of the plea bargaining mechanism in India.

Q.2. Please suggest viable modifications to increase the efficacy of the plea bargaining system.

Q.3. Should a separate authority (such as the one suggested by the 142nd Law Commission Report or in any other form) be constituted for the conduct/ supervision of plea bargaining cases?

Q.4. Should the adjudicatory authority be given discretion regarding acceptance of the settlement in order to prevent prosecutorial coercion? If yes, what should be the extent of such discretion?

Committee for Reforms in Criminal Laws

Part E

Judgment, Appeals, References and Revisions

Q.1. Should the provisions of the Cr.P.C. be modified to:

- a) Fix a reasonable time frame for the pronouncement of judgment after reserving the same?
- b) Limit the number of times a matter should be fixed for clarifications after the conclusion of arguments, with due exceptions?

Q.2. Should there be similar provisions (in relation to time-frames for pronouncement of orders after reserving the same) for interim orders as well?

Q.3. Should the proviso to s. 372 be modified to allow the victim a right to challenge a judgment or order on the ground that it imposes inadequate punishment?

Q.4. Should s. 378 be modified to provide for appeal to the Sessions Court (subject to the grant of special leave by the Sessions Court) against an order of acquittal passed by a Magistrate in a complaint case?

Q.5. Should s. 397 be modified to provide for filing for revision against orders passed by Magistrates only to the Sessions Court?

Q.6. Should the Cr.P.C. be modified so as to contain a non-exhaustive list of interlocutory orders which shall not be amenable to the revisional jurisdiction under Chapter XXX? Please suggest what orders should be classified as interlocutory for the purposes of Chapter XXX.

Part F

Orders for Maintenance of Wives, Children and Parents

Q.1. Should the grounds for refusal of maintenance in sub-sections (4) and (5) of s. 125 be modified?

Q.2. Should the list of persons eligible for maintenance under s. 125 be modified? If so, please specify such modification(s).

Q.3. Should the expression 'unable to maintain' in s. 125 be defined?

Q.4. Should s. 125(2) be modified to make the amount of maintenance be payable *only* from the date of application by the claimant?

Q.5. In the light of issues relating to inexpediency and inefficiency of enforcement procedures under s. 125, should magistrates be given *further* powers to ensure the timely enforcement of such orders? If yes, please suggest suitable remedies or modifications in present procedures for the same.

Q.6. Should the limitation period for going to the court for issuance of warrant under sub-section (3) of s. 125 be modified?

Q.7. Should s. 125 be amended to provide for a right to appeal against an order passed by the magistrate?

Q.8. Should factors such as those enumerated in s. 20 of the Protection of Women Against Domestic Violence Act, 2015 (eg. the maintenance amount being adequate, fair and reasonable and consistent with the standard of living to which the claimant is accustomed; inclusive of medical expenses, if any; etc.) also be expressly listed in s. 125 for computation of maintenance? If yes, please suggest appropriate factors.

Part G

Victims and Witnesses

Q.1. Should the definition of 'victim' under s. 2(wa) be modified?

Q.2. Should a special procedure on the lines of the Delhi High Court's "Guidelines for Recording of Evidence of Vulnerable Witnesses in Criminal Matters" be introduced within the Cr.P.C.? If yes:

- a) Please list the categories of witnesses requiring recognition as vulnerable witnesses (e.g. minors, victims of sexual offences, victims of hate crimes, persons with disabilities, etc.).
- b) please specify the components, other than those mentioned in the guidelines, (if any) which should form a part of such a special procedure.

Q.3. Should express statutory recognition be given to:

- a) the right of complainant/victims/witnesses **to protection by the State** against intimidation, violence, threats of violence, coercion and inducement;
- b) the right of all complainant/victims/witnesses **to be informed**, in a reasonable, accurate and timely manner, about any Court proceeding including bail proceedings, by the Court, Prosecution and/or the State;
- c) the right of the complainant/victims/witnesses **to be heard** in any proceedings with respect to bail, discharge, release, parole, acquittal, conviction or sentence of an accused or any such incidental proceedings.

Q.4. In addition to the mechanism provided under the Witness Protection Scheme, 2018, should the Magistrate/Judge be expressly empowered under the Cr.P.C. to order for concealment of identity, protection or relocation of the complainant/victims/witnesses and/or take any other measure to secure the complainant/victims/witnesses against violence, threats of violence, coercion, inducement etc. and to periodically review the same? If yes;

- a) on what grounds and how should such discretion be exercised?; and,
- b) should a mechanism to appeal against such orders be provided?

Q.5. Should an express statutory duty be created on the Courts, Prosecution, Police and/or the State to inform the complainant/victims/witnesses as regards their rights to protection or other rights/measures available under the Cr.P.C. as well as the Witness Protection Scheme, 2018? If yes, on which of the above-mentioned functionaries should such duty be specifically enjoined?

Q.6. Please suggest a comprehensive, efficient and practicable delivery mechanism for ensuring the complainant / victim's right to legal aid. Should the role of the Directorate of Prosecution be enhanced in this regard?

Q.7. Does the existing compensation/restitution mechanism provided for under ss. 357 and 357A suffice? If not, please suggest comprehensive, efficient and practicable modifications for its enhancement.

Q.8. Should payment of expenses incurred by complainant/victims/witnesses under s. 312 be mandatory and time bound instead of being discretionary?

Q.9. Please suggest a comprehensive, efficient and practicable delivery mechanism for victim support services, including the right to information, with respect to the following:

- a) Medical Aid;
- b) Psychological Aid/ Counseling;
- c) Compensation/restitution;
- d) Other financial/material assistance; and,
- e) Any other assistance (If yes, please suggest suitable forms of assistance).

Committee for Reforms in Criminal Laws