



INDIAN POLICE FOUNDATION

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Indian Police Foundation Calls for Fundamental Changes in the new Criminal Law Bills

The Indian Police Foundation (IPF), a think tank working for police reform, has submitted a memorandum to the Parliamentary Committee on the Ministry of Home Affairs, urging for fundamental changes in the Indian criminal justice system while enacting the three proposed criminal law statutes - Bharatiya Nyaya Sanhita (BNS), Bharatiya Nyaya Sanhita Samhita (BNSS), and Bharatiya Sakshya Bill (BSB) - currently under consideration in Parliament.

While expectations were raised that the new legislations would present a unique opportunity to fix a broken criminal justice system, the IPF is disappointed that most of the regressive provisions in the colonial criminal laws have been retained in the new bills. We need much greater imagination and innovation to overhaul the archaic crime investigation practices and to deal with a deeply flawed criminal justice system ridden with numerous loopholes. There is a need for far more consultation and systemic changes. IPF believes that this historic opportunity will be lost, if the bills are passed in the present form and we strongly urge the Parliament not to rush through the legislations without a nationwide debate.

The British colonial administration used the Indian police to suppress the natives, and the laws gave the police extensive powers of arrest, detention and use of force, with limited resources and accountability against misuse. In the absence of adequate resources or training, police used crude methods to maintain law and order, investigate crimes and question witnesses and accused. Time has come to fix this broken system. IPF has made a series of pathbreaking recommendations aimed at restoring credibility to the investigation process, improving the prosecution apparatus, and ensuring the protection of citizens' rights. The key recommendations by IPF are summarised below.

Modernize Arrest Laws, Reduce Unnecessary Arrests and Decongest Prisons: While it is crucial to empower the police to effectively handle crime, terrorism and violence, serious reform of arrest laws is called for. Procedural law should bestow the powers on the police for effective law enforcement, while defending the constitutional rights of citizens. IPF recommends that the Parliament, while enacting the criminal laws, should review and streamline the arrest laws under the existing CrPC. It is important to introduce legal and administrative safeguards to stop the

colonial-era practice of indiscriminate arrests, detention and incarceration, integrating the principles laid down by Supreme Court from time to time. Prohibit arbitrary arrests. A person should not be arrested unless absolutely necessary under the law and in the interests of maintenance of peace, crime prevention, investigation and prosecution of crime. As a safeguard, we recommend that when an accused person is presented for remand, the Magistrate must review the recorded justifications for arrest. If the justification supports remand, he should make explicit comments to that effect in the remand order; however, if the Magistrate is unconvinced, he may order the release of the accused on bail.

It is crucial that the police should respect the honour and dignity of persons while making arrests, searches, and seizures. While exercising police powers, no deliberate inconvenience, insult or humiliation should be caused and these principles should be incorporated in the law.

Tackle custodial violence, separate custody management from police stations: Establish Custody Management Centres / Central Lock-ups at Circle, Sub-division, and District levels, each with dedicated and trained custody officers. The custody centres should have all basic facilities like full CCTV coverage, lock ups, hygienic toilets / bathrooms, arrangements for food and medical attendance where necessary. This will help reduce custodial violence.

Reform police interrogations and interviews: To ensure the integrity and fairness of the interrogation process, several crucial measures should be established under the law. Firstly, an interrogation room should be linked to the custody centre, allowing for proper and controlled questioning of the accused or suspect. A dedicated and well-trained custody officer should be assigned to ensure strict compliance with statutory requirements and the "duty of care" towards individuals in custody. Scientific interrogation of accused or suspected persons is a critical aspect of a fair and thorough investigation. Presently however, the interrogation practised is often perfunctory, lacking in proper scientific methods and, in some cases, involves the use of third-degree torture. This lackadaisical culture has done tremendous harm to India's policing and criminal justice. IPF recommends introducing a Section 180A in the BNSS, outlining the procedures that enable scientific interrogation of accused or suspects, enabling the recording of such interviews using tamper-proof audio-video devices and allowing for interviews in the presence of a lawyer, with stringent protocols for sealing and submission of the recorded conversation to the magistrate, ensuring transparency and accountability in the investigative process.

Statements of witnesses and accused persons recorded by the police: India's criminal laws should adopt the universally accepted and sound principle that statements recorded by police of witnesses as well as suspects have to be truthful. If statements made under oath are found to have been based on deliberate deception and falsehood, there must be consequences like perjury. Enforce accountability for all parties, including police officers, witnesses, and suspects, who practice deception and fabricate statements.

Admissibility of statements made to police. As a first step towards reform, we recommend admissibility of statements and confessions made before the police and recorded by police

officers during the course of investigation and following the procedure as prescribed above, under strict safeguards such as the use of tamper-proof audio-video recording, presence of a defence lawyer, prompt sealing and submission to the magistrate, informing the accused of their rights, and the requirement of further corroborative evidence.

Re-organise the prosecution system: Currently, temporary public prosecutors, often practicing lawyers, handle prosecution in Sessions Courts and High Courts, leading to limited dedication and interest, with unlimited scope for chaos. A dedicated cadre of prosecutors will help develop professionalism and nurture talent. The law should completely overhaul the existing prosecution system. Prosecution being a state subject, states should be mandated to establish a dedicated cadre of prosecutors.

Multiple FIRs: The evil and often deliberate practice of registering numerous FIR's in multiple police stations in the country, based on contents of electronic / print / social media contents, needs to be taken note of by the new law, introducing better clarity in the procedural law. The lack of legal clarity has not only become a tool of harassment, but it has also led to the affected persons approaching High Courts and Supreme Court to club them, causing unnecessary work for Constitutional Courts.

Preliminary Enquiries by SHOs introduced in BNSS Bill: may have justification in certain cases, but is likely to exacerbate burking of crimes, delays in registration and harassment. We recommend that BNSS should incorporate principles laid down in the Lalita Kumari judgment, allowing preliminary inquiries only in rare cases with safeguards against misuse. Stringent penalties should deter false and frivolous FIRs while ensuring that genuine complaints are not ignored.

Reduce overcrowding of prisons, reduce the number of Under Trial Prisoners (UTPs): IPF recommends clear provisions in the law that no arrest shall be made under offences which are punishable with imprisonment for two years or less, unless the offence is committed in the presence of the police officer and even in such cases, the SHO shall release the accused on bail on his own personal bond. Also, it is crucial to review and reformulate the bail laws, liberalizing bail in cases punishable with less than 7 years of imprisonment. While the present laws permit this, there is a general reluctance to grant bail even in non-heinous offences.

Training framework: We recommend that the Bar Council of India should establish a code of ethics and guidelines for lawyers assisting clients during police interrogations, ensuring their proper conduct and safeguarding the accused's rights, without defeating the purpose of police investigations. Also, a national police interrogation and interview training framework should be recommended to educate police officers in appropriate and scientific interrogation techniques and the respect of individuals' rights.

Recognise the new realities: The new laws should factor in the Crime Criminal Tracking and Networking System (CCTNS) and the Inter-operable Criminal Justice System (ICJS), instead of recognising only manual processes and paper registers. Further, considering that many well-

educated persons are joining the constabulary today, the new laws should enable selected subordinate staff to participate in investigative process, subject to safeguards.

Accountability Standards: IPF emphasizes the need for strong accountability standards to prevent misuse or abuse of police powers, especially the process of recording statements and confessions. Police officers who deliberately fabricate and falsify evidence must be awarded major punishments including removal from service. There should be serious consequences for those who make false statements under oath. The witness protection scheme needs more realistic provisions.

Resources and Infrastructure: For this scheme to succeed, it is important to build and make available the resources and supportive infrastructure like the introduction of body-worn cameras, CCTVs at police stations and Custody Facilities capable of recording the proceedings and produce the artefacts in the trial with the required chain of custody.

Bring clarity and precision in the law to avoid ambiguity and variances in interpretation. Some of the new provisions introduced in the proposed penal law are imprecise and if interpreted loosely, can result in extensive misuse of the law. There are too many errors, ambiguities, inconsistencies and even incomplete sentences. Further, it is necessary to establish realistic timeframes for investigations and trials to expedite the criminal justice process and reduce the backlog of cases.

It is also important to retain the current section numbering schemes to preserve legal continuity and a smoother transition to the new framework. This can be achieved by inserting new legal provisions and removing obsolete ones through appropriate amendments. The re-shuffling of section numbers in the bills is a mindless innovation which can only result in confusion and unnecessary work.

The IPF firmly believes that these recommendations, if implemented, will bring about much-needed reforms in the criminal justice system, fostering transparency, accountability, and justice for our citizens. The Foundation calls upon the government and the Parliament to consider these proposals seriously, as they reflect the aspirations of an emerging nation, for a fair and effective criminal justice system.

Considering the numerous errors that have crept in as pointed out in the comments on individual Bills, we submit that a clause-by-clause review may be undertaken, apart from incorporating the substantive reforms suggested above. Even if it is time-consuming, this is essential as these enactments will have a lasting impact on our criminal justice system over long years to come.

The detailed memorandum submitted by the Indian Police Foundation for consideration of the Parliamentary Committee is attached.

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