

THE CODE OF CRIMINAL PROCEDURE, 1973

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The Code of Criminal Procedure, 1973

Introduction

There was no uniform law of criminal procedure for the whole of India For the guidance of the Courts there were separate Acts which were applicable in erstwhile provinces and the presidency towns The Acts which were applicable in the presidency towns were first consolidated by the Criminal Procedure Supreme Court Act (16 of 1852) The Acts which were applicable in the provinces were consolidated by the Criminal Procedure Code (25 of 1861) Criminal Procedure Supreme Courts Act was replaced by the High Court Criminal Procedure Act (12 of 1865) and the Criminal Procedure Code was replaced by Act 10 of 1872 A uniform law of procedure for the whole of India was consolidated by the Code of Criminal Procedure of 1882 (10 of 1882) It was replaced by the Code of Criminal Procedure, 1898 (5 of 1898) This Code of 1898 had been amended by various amending Acts In 1955 extensive amendments were made to simplify procedure and to speed up trials The State Governments too made a large number of amendments to the Code of 1898 To make the criminal procedure more comprehensive the Law Commission was asked to undertake a detailed examination of the Code of Criminal Procedure, 1898 The Commission submitted its report on 19th February, 1968 In the meanwhile Law Commission was reconstituted and the reconstituted commission made a detailed study of the Code of 1898 and submitted its report in September, 1969 Thereafter a draft Bill (41 of 1970) was introduced in the Rajya Sabha on 10th December, 1970 The Bill was referred to a Joint Select Committee of both the Houses of Parliament Incorporating the recommendations of the Joint Select Committee the Code of Criminal Procedure Bill was taken up for consideration by the Parliament

STATEMENT OF OBJECTS AND REASONS

The law relating to criminal procedure applicable to all criminal proceedings in India (except those in the States of Jammu and Kashmir and Nagaland the Tribal Areas in Assam) is contained in the Code of Criminal Procedure, 1898 The Code has been amended from time to time by various Acts of the Central and State Legislatures The more important of these were the amendments brought about by Central legislation in 1923 and 1955 The amendments of 1955 were extensive and were intended to simplify procedures and speed up trials as far as possible In addition, local amendments were made by State Legislatures of which the most important were those made to bring about separation of the Judiciary from the Executive Apart from these amendments, the provisions of the Code of 1898 have remained practically unchanged through these decades and no attempt was made to have a comprehensive revision of this old Code till the Central Law Commission was set up in 1955

2 The first Law Commission presented its Report (the Fourteenth Report) on the Reform of Judicial Administration, both civil and criminal in 1958; it was not concerned with detailed scrutiny of the provisions of the Code of Criminal Procedure, but it did make some recommendations in regard to the law of criminal procedure, some of which required amendments to the Code A systematic examination of the Code was subsequently undertaken by the Law Commission not only for giving concrete form to the recommendations made in the Fourteenth Report but also with the object of attempting a general revision The main task of the

Commission was to suggest measures to remove anomalies and ambiguities brought to light by conflicting decisions of the High Courts or otherwise to consider local variations with a view to securing and maintaining uniformity, to consolidate laws wherever possible and to suggest improvements where necessary Suggestions for improvements received from various sources were considered by the Commission A comprehensive report for the revision of the Code, namely, the

Forty-first Report, was presented by the Law Commission in September 1969 This report took into consideration the recommendations made in the earlier reports of the Commission dealing with specific matters, namely, the Fourteenth Twenty-fifth Thirty-second, Thirty-third, Thirty-sixth, Thirty-seventh and Fortieth Reports

3 The recommendations of the Commission were examined carefully by the Government, keeping in view among others, the following basic considerations:—

- (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
- (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
- (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community

The occasion has been availed of to consider and adopt where appropriate suggestions received from other quarters, based on practical experience of investigation and the working of criminal Courts

4 One of the main recommendations of the Commission is to provide for the separation of the Judiciary from the Executive on an all India basis in order to achieve uniformity in this matter To secure this, the Bill seeks to provide for a new set up of criminal Courts In addition to ensuring fair deal to the accused, separation as provided for in the Bill would ensure improvement in the quality and speed of disposal as all Judicial Magistrates would be legally qualified and trained persons working under close supervision of the High Court

5 Some of the more important changes proposed to be made with a view to speeding up the disposal of criminal cases are—

- (a) the preliminary inquiry which precedes the trial by a Court of Session, otherwise known as committal proceedings, is being abolished as it does not serve any useful purpose and has been the cause of considerable delay in the trial of offences;
- (b) provision is being made to enable adoption of the summons procedure for the trial of offences punishable with imprisonment up to two years instead of up to one year as at present; this would enable a larger number of cases being disposed of expeditiously;
- (c) the scope of summary trials is being widened by including offences punishable with imprisonment up to one year instead of six months as at present; summons procedure will be adopted for all summary trials;
- (d) the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases;
- (e) the provision for compulsory stoppage of proceedings by a subordinate Court on the mere intimation from a party of his intention to move a higher Court for transfer of the case is being omitted and a further provision is being made to the effect that the Court hearing the transfer application shall not stay proceedings unless it is necessary to do so in the interest of justice;

(f) when adjournments are granted at the instance of either party, the Court is being empowered to order costs to be paid by the party obtaining the adjournments to the other party;

(g) provision is being made for the service of summons by registered post in certain cases;

(h) in petty cases, the accused is being enabled to plead guilty by post and to remit the fine specified in the summons;

(i) if a Court of appeal or revision discovers that any error, omission or irregularity in respect of a charge has occasioned failure of justice it need not necessarily order retrial;

(j) the facility of part-heard cases being continued by successors-in-office now available in respect of Courts of Magistrates is being extended to Courts of Session

In addition to the above specific measures, the Commission's recommendations which are intended to resolve conflicts of decisions on various matters or to remove ambiguities have been given effect to and these provisions may, by themselves, help in reducing the time taken in litigation

6 Some of the more important changes intended to provide relief to the proper sections of the community are—

(a) provisions have been made for giving legal aid to an indigent accused in cases triable by a Court of Session; the State Government may extend this facility to other categories of cases;

(b) the Court has been empowered to order payment of compensation by the accused to the victims of crimes, to a larger extent than is now permissible under the Code;

(c) when a Commission is issued for the examination of a witness for the prosecution, the cost incurred by the defence including pleader's fees may be ordered to be paid by the prosecution;

(d) the accused will be given an opportunity to make representation against the punishment before it is imposed

In addition to these specific provisions, the steps taken to reduce delays would themselves automatically benefit the poorer sections, as it is they who particularly suffer by the prolongation of criminal cases

7 The notes on clauses explain the more important provisions of the Bill

Act 2 of 1974

The Code of Criminal Procedure Bill having been passed by both the Houses of Parliament received the assent of the President on 25th January, 1974 It came into force on the 1st day of April, 1974 as THE CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974)

List of Amending Acts

1. The Repealing and Amending Act, 1974 (56 of 1974)
2. The Code of Criminal Procedure (Amendment) Act, 1978 (45 of 1978)

3. The Code of Criminal Procedure (Amendment) Act, 1980 (63 of 1980)
4. The Criminal Law (Amendment) Act, 1983 (43 of 1983)
5. The Criminal Law (Second Amendment) Act, 1983 (46 of 1983)
6. The Code of Criminal Procedure (Amendment) Act, 1988 (32 of 1988)
7. The Code of Criminal Procedure (Amendment) Act, 1990 (10 of 1990)
8. The Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991)
9. The Code of Criminal Procedure (Amendment) Act, 1993 (40 of 1993)
10. The Criminal Law (Amendment) Act, 1993 (42 of 1993)