

APPENDIX

EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2005

No. 25 OF 2005

[23rd June, 2005.]

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. 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 ¹[; and different dates* may be appointed for different provisions of this Act.]

*

*

*

*

*

16. Insertion of new section 144A.—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:—

‘144A. 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.

1. Ins. by Act 25 of 2006, s. 2 (w.e.f. 2-6-2006).

* 23-6-2006, *vide* Notification No.S.O. 923(E) dated 21-6-2006 [Except the Provisions of Section 16, 25, 28(a), 28(b), 38, 42(a), 42(b), 42(f)(iii) and (iv) and 44(a)].

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

* * * * *

¹* * * * *

* * * * *

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.

* * * * *

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.

(1A) 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. S. 25 omitted by Act 2 of 2006, s. 8 (w.e.f. 16-4-2006).

(IB) 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.”.

* * * * *

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 153A, the following entries shall be inserted, namely:—

| 1 | 2 | 3 | 4 | 5 | 6 |
|--------|--|--|-------|-------|-------------------|
| “153AA | 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 2,000 rupees | Ditto | Ditto | Any Magistrate.”; |

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

* * * * *

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

* * * * *

(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.

* * * * *

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

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

‘153AA. 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 144A 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 fire arms, sharp edged weapons, lathis, *dandas* and sticks.’.

* * * * *