

**Bill No. 29 of 2010**

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT)  
BILL, 2010

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*further to amend the Code of Criminal Procedure Act, 1973.*

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2010.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2.** On and from the date of commencement of section 5 of the Code of Criminal Procedure (Amendment) Act, 2008, in section 41 of the Code of Criminal Procedure, 1973 [as amended by section 5 of the Code of Criminal Procedure (Amendment) Act, 2008], in sub-section (1), in clause (b), the following proviso shall be inserted at the end, namely:—

Amendment of section 41.

"Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest."

Amendment  
of section  
41A.

**3.** On and from the date of commencement of section 6 of the Code of Criminal Procedure (Amendment) Act, 2008, in section 41A of the Code of Criminal Procedure, 1973 [as inserted by section 6 of the Code of Criminal Procedure (Amendment) Act, 2008],—

5 of 2009.  
2 of 1974.

(a) in sub-section (1), for the words "The police officer may", the words "The police officer shall" shall be substituted;

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

## STATEMENT OF OBJECTS AND REASONS

In the light of objections from certain quarters to certain provisions of the Code of Criminal Procedure (Amendment) Act, 2008, the said Act could not be brought into force. These provisions, *inter alia*, relate to the power of the police to arrest without warrant. A reference in the matter was made to the Law Commission of India to take the initiative to bring about a consensus on the issues. The Law Commission discussed the issues with all concerned including the Chairperson(s) of some of the Bar Councils and the Chairman of the Bar Council of India. After holding consultations, the Law Commission recommended further amendment in the provisions of amended section 41 of the aforesaid Act to make it compulsory for the police to record the reasons for making an arrest as well for not making an arrest in respect of a cognizable offence for which the maximum punishment is up to seven years. The Law Commission also suggested further changes in the newly inserted section 41A of the Code of Criminal Procedure Act, 1973 (inserted by Act 5 of 2009) to make it compulsory for the police to issue a notice in all such cases where arrest is not required to be made under clause (b) of sub-section (1) of the amended section 41. It was also suggested that the unwillingness of a person who has not been arrested to identify himself and to whom a notice has been issued under the aforesaid section 41A could be a ground for his arrest. It has been decided to accept the suggestions of the Law Commission of India and to amend the Code of Criminal Procedure Act, 1973 as amended by the Code of Criminal Procedure (Amendment) Act, 2008.

2. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 2nd March, 2010.*

P. CHIDAMBARAM

ANNEXURE

EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE, 1973

(2 of 1974)

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CHAPTER V

ARREST OF PERSONS

When police  
may arrest  
without  
warrant.

**41.** (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

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(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making 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 the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing.

Notice of  
appearance  
before police  
officer.

**41A.** (1) The police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

\* \* \* \* \*

(4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

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

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*(Shri P. Chidambaram, Minister of Home Affairs)*