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বিষয়

Report on Observations of the Law Commission on the Draft of the Code of Criminal Procedure (Amendment) Bill 2013 prepared by the Legislative and Parliamentary Affairs Division of the Ministry of Law, Justice and Parliamentary Affairs and presented in an Exchange of Opinion Meeting on June 22, 2013

০১ জুলাই ২০১৩

১৫, কলেজ রোড
ঢাকা-১০০০

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July 1, 2013

Law Commission is happy to state that many of the recommendations of its report on possible amendments of CrPC sent to the Law Ministry on August 11, 2011 have been taken into consideration in the comprehensive draft amendment bill prepared by the Ministry and presented in an Exchange of Opinion Meeting on June 22 this year for discussions and soliciting opinion of the stakeholders. The Commission believes, the draft bill, if and when made into law, will revolutionize the administration of criminal justice in the country. Its proper implementation would greatly promote access to justice. The Law Commission seeks to make a few observations for further improvement of the draft bill.

It appears some of the recommendations of the Law Commission could not be considered. However, we believe their inclusion would improve the draft. They are:

1. While the burden of proof must continue to lie with the prosecution, scopes for burden shifting on the accused, especially in alibi, may be widened in specific cases i.e. human & drugs trafficking, contraband, illegal possession of arms and drugs, abduction accompanied by rape, death in police custody, death of the wife in the custody of the husband or his family. (paragraph 14(ii) of the Law Commission Report).
2. Some of the non-compoundable offences which have been made compoundable in the draft in order that they qualify for mediation provisions of the proposed amendments need reconsideration. They are mostly on extortion (also suggested by many in the Exchange of Opinion) , causing death by gross negligence and attempt to murder related Sections of the Penal Code. These Sections 304A, 304B, 307, 326, 384, 385, 386, 387 and 449 are recommended to be left as before non-compoundable and hence beyond the scope for mediation.
3. Although there were some critical observations in the seminar about the stage of the trial when plea bargaining process is to start, the Commission argues the draft's position in the matter is correct. However, there is need for some linguistic

clarifications in the relevant parts of the draft. The Commission also believes, since the term 'plea bargaining' is to appear for the first time in the Code of Criminal Procedure, its meaning/definition in short needs to be included in the Section 4 (definitions) of the Chapter 1 of the Code. The short definition may be in the following words: "plea for reduction of punishment on voluntary confession preceded by understanding between prosecution and accused under 243A." It is also recommended probation of offenders under Probation Offenders Ordinance, 1961 and one-fourth of the duration of sentence where there is no minimum limit be also included in the forms of reduction of punishment under Section 243A(7). (paragraph 23 of the Commission Report)

4. It appears under Sections 154 and 156 there is no bar for the same police officer to file FIR/suit and investigate the case. To reduce any possibility of bias the same person should not be allowed to do both the jobs unless any extraordinary circumstance demands otherwise. (paragraph 8 of the Commission Report)
5. Statement of a witness under Section 161 needs to be compulsorily signed or fingerprinted, and if need be or possible, be recorded by audio-visual electronic devices. Likewise, statement or confession by an accused before a magistrate under Section 164 should also be recorded by such electronic devices. (paragraphs 9 and 10 of the Commission Report)
6. Relevant Sections of the Code should be amended to allow the concerned private parties to employ their own advocates to submit and take part in the proceedings without the permission of public prosecutor (paragraph 20 of the Commission Report).

Lastly, for success of mediation under the provisions of both CPC and CrPC a strong and attractive profession of mediators needs to be built up and nourished. For this the Commission strongly recommends the establishment of an Institute of Mediation for education, training, skill development and motivation of the mediators. A compulsory course for the mediators for a prescribed period in the Institute is also recommended.

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