

**GOVERNMENT OF INDIA
HOME AFFAIRS
LOK SABHA**

UNSTARRED QUESTION NO:365
ANSWERED ON:21.11.2000
CHANGES IN PENAL LAWS
VARKALA RADHAKRISHNAN

Will the Minister of HOME AFFAIRS be pleased to state:

- (a) whether the Law Commission has suggested changes in the Penal Laws to restrict the police`s powers to arrest persons accused of bailable and non-cognisable offences;
- (b) if so, the details thereof; and
- (c) the reaction of the Government thereto?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (I.D. SWAMI)

(a): The Law Commission of India in its 154th Report on the Code of Criminal Procedure, 1973 made a number of recommendations which the police have to adhere to while causing arrest of any person.

(b): A statement is attached.

(c): Since the Criminal Law is on the Concurrent List to the Seventh Schedule of the Constitution of India, the recommendations of the Law Commission of India in its 154th Report are under examination in consultation with State Governments/Union Territory Administrations.

Statement showing reply to Part (b) of the Lok Sabha Unstarred Question No.365 for 21st November, 2000.

Recommendations of the Law commission relating to the law of arrest in Chapter IV of its 154th Report on the Code of Criminal Procedure, 1973.

1. The Law Commission has recommended insertion of the following new sub-clause to Section 41 of the Code `41 (3) - A police officer arresting a person under clause (a) of sub-section (1) of section 41 Cr.P.C. must be reasonably satisfied that arrest is necessary and must record such satisfaction in respect of matters covered every clause of sub-section (1).

2. The Law Commission has recommended insertion of section 41A in the Code on the following lines :-

`41A (1). The police officer may, if satisfied that immediate arrest of the person concerned is not necessary, issue to him a notice requiring him to appear before the police officer at specified time and place for further investigation and it shall be the duty of that person to comply with the terms of the notice.

(2) If such person fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned therein.`

3. The Law Commission has suggested a proviso to sub-section (1) of section 46 Cr.P.C. to be added to provide that where a woman is to be arrested then, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation, arrest shall be presumed and unless the circumstances otherwise require or unless the police officer arresting is a female, the police officer shall not actually touch the person of woman for making her arrest.