

**THE POLICE AND CRIMINAL EVIDENCE BILL**  
(No. IV of 2013)

**Explanatory Memorandum**

The main objects of this Bill are to –

- (a) bring together in one enactment, subject to certain exceptions, the provisions which relate to –
  - (i) the exercise by police officers of the powers to stop, enter, search, seize, arrest and detain; and
  - (ii) the treatment and questioning of detainees;
- (b) provide for a statutory basis for provisional informations; and
- (c) amend certain provisions relating to evidence in criminal proceedings.

**2.** The Bill sets out the provisions referred to in paragraph 1(a) so as to better guarantee the citizen's constitutional rights to liberty, protection of property, freedom of movement and protection of the law. The Bill accordingly limits the power of a private person to make an arrest.

**3.** This Bill provides that a person shall not be arrested on the basis of an allegation without an enquiry being carried out.

**4.** The Bill also –

- (a) increases the penalty for non-attendance of witnesses;
- (b) gives the Court a general power to exclude unfair evidence;
- (c) makes it an offence to interfere with witnesses or potential witnesses in criminal matters;
- (d) provides for the enforcement of the rights of victims of offences;

- (e) introduces the concept of spent convictions for the purposes of sentencing; and
- (f) makes statutory provision for the regulation of the admissibility of confessions.

**Y. N. VARMA**  
*Attorney-General*

12 April 2013

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*Clause*

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## A BILL

**To prescribe the procedures and practices to be followed by police officers in the exercise of their powers and to amend certain provisions relating to evidence in criminal cases**

ENACTED by the Parliament of Mauritius, as follows –

### PART I – PRELIMINARY

**1. Short title**

This Act may be cited as the Police and Criminal Evidence Act 2013.

**2. Interpretation**

(1) In this Act –

“arrestable offence” means a crime or a misdemeanour which is punishable by penal servitude or imprisonment;

“custody officer” , in relation to a place of detention, means –

(a) a police officer at the place of detention not below the rank of Inspector, designated as such by the Commissioner of Police; or

- (b) where no police officer has been designated as such, a police officer not below the rank of Assistant Superintendent at the place of detention;

“excluded material” –

- (a) means personal records which a person holds in confidence and which he has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office; and

- (b) includes –

- (i) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence; or
- (ii) journalistic material which a person holds in confidence and which consists of documents or other records;

“institution” has the same meaning as in the Reform Institutions Act;

“instrumentality” means any property used or intended to be used in any manner to commit an offence;

“intimate sample” means –

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression; or
- (c) a swab taken from any part of a person’s genitals or from a person’s body orifice other than the mouth;

“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“items subject to legal privilege” –

- (a) means –

- (i) communications between a professional legal adviser and a client made in connection with the giving of legal advice;

- (ii) communications between a professional legal adviser and a client or between the adviser or a client and any other person made in connection with or in contemplation of legal proceedings; or
  - (iii) items enclosed with or referred to in communications referred to in subparagraphs (i) and (ii) when they are in the possession of a person who is entitled to such possession; but
- (b) does not include items held with the intention of furthering a criminal purpose;

“journalistic material” means material acquired or created for the purposes of journalism which is in the possession of a person who acquired it or created it for the purposes of journalism;

“Magistrate” means a District Magistrate;

“material” includes any document, object or thing or electronic or digital record;

“non-intimate sample” means –

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail; or
- (c) a swab taken from any part of the body other than an intimate sample;

“offence against property” means an offence under section 40 or 41 or sections 301 to 369 of the Criminal Code;

“offensive weapon” has the same meaning as in the Public Gatherings Act;

“personal records” means documentary or other records concerning an individual who can be identified from them and relating to –

- (a) his physical or mental health;
- (b) spiritual counselling or assistance given to him; or

- (c) other counselling or assistance given to him for his personal welfare;

“place of detention” means a police station or such other investigation unit as may be designated by the Commissioner of Police;

“police detention” means detention at a place of detention or any other place in the charge of a police officer;

“proceeds” means any property or economic advantage derived or obtained, directly or indirectly, through or in connection with the commission of an offence;

“prohibited article” means –

- (a) an offensive weapon; or
- (b) an article –
  - (i) made or adapted for use in the course of or in connection with an offence against property; or
  - (ii) intended by the person having it with him for such use by him or by some other person;

“public place” has the same meaning as in the Public Gatherings Act;

“reform institution” has the same meaning as in the Reform Institutions Act;

“sexual offence” means an offence against –

- (a) section 249, 250 or 251 of the Criminal Code; or
- (b) section 14 or 15 of the Child Protection Act;

“special procedure material” means –

- (a) material, other than excluded material or items subject to legal privilege, in the possession of a person who –
  - (i) acquired or created it –
    - (A) in the course of any trade, business, profession or other occupation; or

- (B) for the purpose of any paid or unpaid office; and
- (ii) holds it subject to –
  - (A) an express or implied undertaking to hold it in confidence; or
  - (B) a restriction on disclosure or an obligation of secrecy contained in any other enactment;
- (b) journalistic material other than excluded material;

“vehicle” includes vessel and aircraft.

- (2) For the purposes of subsection (1), a person holds –
  - (a) material, other than journalistic material, in confidence where he holds it subject to –
    - (i) an express or implied undertaking to hold it in confidence; or
    - (ii) a restriction on disclosure or an obligation of secrecy contained in any enactment;
  - (b) journalistic material in confidence where –
    - (i) he holds it subject to such an undertaking, restriction or obligation; and
    - (ii) it has been continuously held subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

(3) In this Act, “reasonable grounds” means grounds with an objective basis, and based on facts, information, intelligence or behaviour.

### **3. Application of Act**

This Act is in addition to, and not in derogation from, the provisions of the enactments set out in the first column of the First Schedule which are specified in the second column of that Schedule.

## **PART II – INVESTIGATIONS**

### **Sub-Part I – Power to Stop and Search**

#### **4. Power to stop and search persons and vehicles**

(1) Where a police officer has reasonable grounds to believe that he will find articles that are proceeds or an instrumentality of an offence against property, dangerous drugs or other prohibited articles, he may –

(a) in a public place –

(i) subject to subsection (3), search any person or vehicle and anything which is in or on a vehicle; and

(ii) detain a person or vehicle for the purpose of such search;

(b) where a person or a vehicle is on property which is within the curtilage of private premises, exercise a power referred to in paragraph (a) where he has reasonable grounds to believe that –

(i) the person or, as the case may be, the person in charge of the vehicle is not a resident or occupier of the premises; and

(ii) the express or implied permission of the resident or occupier of the premises has not been obtained for the person or vehicle to enter the premises.

(2) Where, in the course of a search conducted in accordance with subsection (1), a police officer discovers an article which he has reasonable grounds to believe to be proceeds or an instrumentality of an offence, he may seize the article.

(3) A police officer may not, for the purposes of subsection (1)(a), require a person to remove any clothing other than an outer coat, a jacket, gloves, head gear, footwear or an item worn to conceal identity.

(4) Where a police officer has reasonable grounds to believe that, for the purposes of subsection (1), it is necessary to require a person to remove an item of clothing, other than one specified in subsection (3), he shall do so out of the public view.



(5) Where a search is conducted pursuant to this section, the police officer conducting the search shall be of the same sex as the person searched.

## **5. Conduct of search**

(1) Where a police officer, in the exercise of his powers under section 4 or any other enactment which authorises the search of a person or a vehicle without making an arrest, detains a person or a vehicle, he shall –

- (a) not conduct a search where it subsequently appears to him that no search is required or a search is not feasible;
- (b) except in the case of the search of an unattended vehicle, take reasonable steps, before he starts the search, to bring to the attention of the person or, as the case may be, the person in charge of the vehicle –
  - (i) where he is not in uniform, proof that he is a police officer;
  - (ii) his name, rank and number, where applicable, in the Police Force; and
  - (iii) the object of the search and the grounds for making it; and
- (c) not detain the person or vehicle for the search for longer than such time as is reasonably required to permit the search to be carried out.

(2) (a) Where a police officer has completed the search of an unattended vehicle or of anything in or on it, he shall leave a notice on the vehicle –

- (i) stating that he has made the search;
- (ii) giving particulars of what he has seized; and
- (iii) giving his name and status in the Police Force.

(b) A police officer, pursuant to a search referred to in paragraph (a), may retain and seize the vehicle for the purpose of further enquiry if he discovers articles that are proceeds or an instrumentality of an offence against property, dangerous drugs or other prohibited articles.

(c) A notice under paragraph (a) shall be left by the police officer inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

## **6. Record of search**

(1) Where a police officer has carried out a search, whether consensually or not, in the exercise of a power under this Act, he shall make a record of it as soon as is reasonably practicable.

(2) The record of a search shall –

(a) include a note of the name or a description of the person searched or, as the case may be, a description of the vehicle; and

(b) state –

(i) the date, time and place where it was made;

(ii) the object of the search and the grounds for making it; and

(iii) whether anything, and if so, what was seized.

(3) A person who was the subject of a search or, as the case may be, the owner or person in charge of the vehicle may ask for and have access to a record made under this section not later than 3 months after the completion of the search.

## **7. Road checks**

(1) In this section –

“road check” means the stopping and searching of all vehicles or of vehicles selected by any criterion for one of the purposes set out in subsection (2)(a).

(2) (a) Subject to paragraph (b), a police officer not below the rank of Superintendent may authorise, in writing, the conduct of a road check for the purpose of searching vehicles for the proceeds and instrumentality of an offence or ascertaining whether a motor vehicle is carrying a person who –

(i) has committed, intends to commit or is a witness to an arrestable offence; or

(ii) is unlawfully at large.

(b) An authorisation granted under paragraph (a) shall be in writing and shall specify –

- (i) the precise locality in which the road check is to take place;
- (ii) the period, not exceeding 5 days, during which it may continue;
- (iii) whether it will be continuous or conducted at specified times during that period; and
- (iv) the grounds for belief that an arrestable offence has been or will be committed.

(3) (a) A police officer below the rank of Superintendent may authorise a road check as a matter of urgency where it appears to him that it is required for one of the purposes specified in subsection (2)(a).

(b) A police officer who grants an authorisation under paragraph (a) shall, as soon as is reasonably practicable, cause a police officer of the rank of Superintendent or above to be so informed, and the latter shall forthwith determine, in writing, whether or not the road check is to continue.

(4) Nothing in this section shall affect the exercise by a police officer of a power to stop a motor vehicle for a purpose other than one specified in subsection (2)(a).

## **Sub-Part II – Power of Entry, Search and Seizure**

### **A – Search warrant**

#### **8. Authorisation by Magistrate to enter and search premises**

(1) A Magistrate may issue a warrant in a prescribed form, authorising a police officer to enter and search any premises or set of premises where, on application made to him, he is satisfied that there are reasonable grounds to believe that –

- (a) an arrestable offence has been, or is likely to be, committed;
- (b) there is material on the premises which is likely to be of substantial value, by itself or together with other material, to the investigation of the offence;

- (c) the material is likely to be admissible in evidence at a trial for the offence;
  - (d) the material does not consist of, or include, any items subject to legal privilege, excluded material or special procedure material; and
  - (e) one of the conditions specified in subsection (4) applies to the premises.
- (2) A warrant issued pursuant to subsection (1) may be –
- (a) a specific premises warrant in respect of one or more set of premises specified in the application for the warrant; or
  - (b) an all premises warrant in respect of any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified.
- (3) A Magistrate shall not issue an all premises warrant unless he is satisfied that –
- (a) there are reasonable grounds to believe that it is necessary to search premises which are not specified in the application in order to find material referred to in subsection (1)(b); and
  - (b) it is not reasonably practicable to specify in the application the particular premises which a person occupies or controls.
- (4) The conditions referred to in subsection (1)(e) are that –
- (a) it is not practicable to communicate with a person entitled to grant entry to the premises;
  - (b) it is not practicable to communicate with a person entitled to grant access to the material;
  - (c) entry to the premises will not be granted unless a search warrant is produced; or
  - (d) the purpose of a search may be frustrated or seriously prejudiced unless a police officer can secure immediate entry to the premises.

(5) Where a Magistrate is satisfied that it is necessary to authorise entry and search on more than one occasion to achieve the purpose for which he issues the warrant, he may authorise an unlimited number of entries or a number of entries limited to a maximum.

(6) A police officer may –

- (a) seize and retain anything for which a search has been authorised under this section;
- (b) without prejudice to paragraph (a), seize any proceeds or instrumentality of an offence pursuant to a search conducted under this section.

## **9. Access to excluded or special procedure material**

(1) Where, on application made to him by a police officer, a Judge is satisfied that there are reasonable grounds to believe that –

- (a) an arrestable offence has been, or is likely to be, committed;
- (b) there is material on any premises which consists of, or includes, excluded or special procedure material which is likely to be of substantial value, by itself or together with other material, to the investigation of an offence and to be admissible in evidence at a trial for the offence;
- (c) other methods of obtaining the material have been tried without success or have not been tried because it appeared that they were bound to fail; and
- (d) it is in the public interest that access to the material should be given, having regard to the benefit likely to accrue to the investigation and the circumstances in which the person in possession of the material holds it,

he may, after hearing the person who appears to be in possession of the material, order him to produce forthwith the material to a police officer or give the police officer access to it.

(2) An applicant under paragraph (1) shall cause the order made under that subsection to be served forthwith on the person against whom the order is directed.

(3) A person who fails to comply with an order issued pursuant to this section shall commit an offence.

(4) Where an application has been served on the person referred to in subsection (2), he shall not conceal, destroy, alter or dispose of the material to which the application relates, except with leave of a Judge or the written authorisation of a police officer, until the Judge has disposed of the application or he has complied with the order, whichever occurs earlier.

(5) Where an order under subsection (1) has not been complied with and one of the conditions specified in section 8(4) applies to the premises referred to in the application for the order, the Judge may, on application made to him, authorise a police officer to enter and search the premises or set of premises.

(6) In cases of urgency where a Judge is not available, a Magistrate may issue an order on the person who appeals to be in possession of the material not to conceal, destroy, alter or dispose of the material, which shall remain in force for not more than 48 hours.

(7) A police officer may seize and retain anything for which a search has been authorised under this section.

(8) A police officer executing an order pursuant to this section shall cause a statement, in a prescribed form, specifying whether the material sought was found and whether any article has been seized and retained to be filed in the Registry of the Court which issued the order.

## **10. Issue and execution of search warrant**

(1) A police officer who makes an application for a warrant under section 8(1) or 9(5) or an order under section 9(1) shall answer on oath any question which the Judge or Magistrate puts to him.

(2) A warrant may authorise one or more specified persons to accompany a police officer who is executing it and a person so authorised shall have the same powers as the police officer whom he accompanies in respect of the execution of the warrant and the seizure of anything to which the warrant relates.

(3) Entry and search under a warrant shall be carried out –

- (a) within one month from the date of its issue or such longer period as the Judge or Magistrate may allow; and
- (b) at a reasonable hour unless it appears to the police officer that the purpose of the search may be frustrated by entry at a reasonable hour.

(4) Where the occupier of premises which are to be entered, or some other person who appears to be in charge of the premises, is present, the police officer shall –

- (a) identify himself to the person and, if not in uniform, produce to him proof that he is a police officer; and
- (b) supply to the person a certified copy of the warrant.

(5) A police officer executing a warrant may break open a door or window of any premises, where he is not otherwise able to obtain access, provided that he has –

- (a) specified that he is in possession of a warrant;
- (b) announced his name, rank and, where applicable, his number; and
- (c) demanded admission.

(6) A police officer executing a warrant shall endorse it with a statement specifying whether the material sought was found and whether any article has been seized and retained.

(7) Where a warrant has been executed, the police officer shall cause the endorsed warrant to be returned to an officer of the Court from which it was issued, within 7 days of its execution.

## **B – Entry and search without warrant**

### **11. Entry for arrest or preventing damage or injury**

(1) A police officer may, subject to this section, without warrant, enter and search any premises for the purpose of –

- (a) executing a warrant of arrest issued in connection with or arising out of criminal proceedings;
- (b) executing a warrant of commitment to stand trial;
- (c) arresting a person for an arrestable offence;
- (d) recapturing a person who is unlawfully at large; or
- (e) preventing injury to a person or preventing serious damage to property.

(2) A power of entry and search conferred by subsection (1) shall, except for the purpose specified in subsection (1)(e) –

- (a) only be exercisable where the police officer has reasonable grounds to believe that the person whom he is seeking is on the premises; and
- (b) be limited, where premises consist of 2 or more separate dwellings, to the dwelling in which the police officer has reasonable grounds to believe that the person whom he is seeking may be, and to any part of the premises which the occupiers use in common.

(3) Nothing in this section shall affect a power of entry of the Police to deal with or prevent a breach of the peace or the exercise of a power of entry and search in the manner specified in section 10(5).

## **12. Entry and search after arrest**

(1) Subject to this section, a police officer may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence where he has reasonable grounds to believe that there is, on the premises, evidence, other than items subject to legal privilege, that relates to –

- (a) that offence; or
- (b) some other arrestable offence which is connected with or similar to that offence.

(2) Subject to subsection (3), a police officer not below the rank of Inspector shall not exercise a power conferred by subsection (1) unless an officer of the rank of Inspector or above has authorised it.

(3) A police officer may conduct a search before the person is taken to the police station where that person's presence is necessary for the effective investigation of the offence.

(4) Where a police officer exercises a power under subsection (1), without the authorisation of an officer of the rank of Inspector or above, he shall inform such an officer of the fact as soon as is reasonably practicable.

(5) A police officer who authorises a search, or is informed of a search, shall make a record in writing of the grounds for the search and the nature of the evidence that was sought.



## **C – Seizure**

### **13. Power of seizure**

(1) Where a police officer is lawfully exercising a power of search under section 8, 9, 11, 12 or 21, he may –

- (a) seize any article where he has reasonable grounds to believe that it –
  - (i) has been obtained in consequence of the commission of an offence;
  - (ii) is evidence in relation to an offence which he is investigating or any other offence;
  - (iii) is necessary to seize it in order to prevent it from being concealed, lost, altered, damaged or destroyed;
- (b) require any information which is stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form where he has reasonable grounds to believe that any of the 3 conditions specified in paragraph (a) applies to the information.

(2) Where a police officer is otherwise lawfully on any premises, he may seize any article which is in plain view on the premises where he has reasonable grounds to believe that any of the 3 conditions specified in paragraph (a) applies to the article.

### **14. Access and copying**

(1) A police officer who seizes any article, in the exercise of a power conferred by section 8, 9, 11, 12, 13 or 21, shall provide a receipt, which shall be in a prescribed form, particularising the items seized, to a person showing himself to –

- (a) be the occupier of the premises on which it was seized; or
- (b) have had custody or control of it immediately before the seizure.

(2) Where a request for permission to be granted access to any article which has been seized by a police officer and retained for the purpose of an investigation is made to the police officer in charge of the investigation by a person

who had custody or control of the thing immediately before it was seized, the officer may allow the person who made the request access to it under the supervision of another police officer.

(3) Where a request for a photograph or a copy of any such thing is made to the police officer in charge of the investigation by a person who had custody or control of the thing immediately before it was seized, the officer may allow the person access to it under the supervision of another police officer for that purpose or cause it to be photographed or copied.

## **15. Retention**

(1) Subject to this section, any article which has been seized by a police officer lawfully exercising a power of search under section 8, 9 11, 12, 13 or 21 may be retained for as long as reasonably necessary –

- (a) for use as evidence at a trial for an offence;
- (b) for forensic examination or other investigation in connection with an offence; or
- (c) to establish its lawful owner where the police officer has reasonable grounds to believe that it has been obtained in consequence of the commission of an offence.

(2) Any article seized on the ground that it may be used to –

- (a) cause physical injury to a person;
- (b) damage property;
- (c) interfere with evidence; or
- (d) assist in escaping from police detention or lawful custody,

may be retained indefinitely or destroyed.

(3) Nothing may be retained for a purpose referred to in subsection (1) where a photograph or a copy would be sufficient for that purpose.

### **Sub-Part III – Arrest**

#### **16. Arrest without warrant by police officer**

(1) Subject to subsection (2), a police officer may, without a warrant, arrest anyone –

- (a) who is about to commit or in the act of committing an offence;
- (b) whom he has reasonable grounds to believe to be about to commit or to be committing an offence; or
- (c) whom he has reasonable grounds to believe to have committed an offence which he has reasonable grounds to believe has been committed.

(2) The power of arrest conferred by subsection (1) is exercisable only where the police officer has reasonable grounds to believe that it is necessary to arrest the person so as to –

- (a) enable the person's name or address to be ascertained, where the officer –
  - (i) does not know, and cannot readily ascertain, the person's name or address; or
  - (ii) has reasonable grounds to doubt whether a name or address given by the person is his real name or address;
- (b) prevent the person from –
  - (i) causing physical injury to himself or to any other person;
  - (ii) suffering physical injury;
  - (iii) causing loss or damage to property;
  - (iv) committing an indecent act in public; or
  - (v) causing an unlawful obstruction on a road;
- (c) protect a child or other vulnerable person from the person;

- (d) allow the prompt and effective investigation of an offence or of the conduct of the person; or
- (e) prevent any prosecution for an offence from being hindered by the disappearance of the person.

### **17. Arrest following allegation**

A police officer shall not arrest a person on the basis of the mere allegation of a third party unless he has carried out the necessary investigations to verify that the conditions specified in section 16(1) are fulfilled.

### **18. Arrest without warrant by private person**

(1) Subject to subsection (2), a person other than a police officer may, without a warrant, arrest anyone –

- (a) who is in the act of committing an arrestable offence;
- (b) whom he has reasonable grounds to believe to be committing an arrestable offence;
- (c) whom he has reasonable grounds to believe has committed an arrestable offence;

(2) The power of arrest conferred by subsection (1) is exercisable only where –

- (a) the person making the arrest has reasonable grounds to believe that it is necessary to arrest the person in order to prevent the person from –
  - (i) causing physical injury to himself or any other person;
  - (ii) suffering physical injury;
  - (iii) causing loss or damage to property; or
  - (iv) escaping before a police officer can intervene;
- (b) it appears to the person making the arrest that it is not reasonably practicable for a police officer to make the arrest instead; and

- (c) the person making the arrest delivers the person arrested to the nearest place of detention as soon as is reasonably practicable.

## **19. Information to be given on arrest**

(1) Where a person is arrested by a police officer without a warrant, he shall forthwith after the arrest –

- (a) be informed that he is under arrest and of the ground for the arrest; and
- (b) be cautioned, in such terms as may be prescribed, that he needs not make a statement unless he wishes to do so.

(2) Subsection (1) shall not apply where it is not reasonably practicable for the person to be informed or cautioned, as required, by reason of his having escaped from arrest, or such other reasonable cause, before the information could be given.

## **20. Arrest elsewhere than at police station**

(1) Where a person is, at any place other than a police station –

- (a) arrested by a police officer for an offence; or
- (b) taken into custody by a police officer after being arrested for an offence by a person other than a police officer,

the police officer shall, within one hour, take the person to a place of detention.

(2) Where a person is taken into custody by a police officer after being arrested for an offence by a person other than a police officer, the police officer shall forthwith provide the person with the information required in section 19.

(3) Nothing in this section shall prevent a police officer from delaying taking a person to a place of detention if the presence of that person at a place other than a place of detention is necessary for the purposes of section 55 of the Dangerous Drugs Act.

(4) Any delay under subsection (3) –

- (a) shall only be lawful where it is authorised by a Magistrate within 6 hours of arrest;

- (b) shall not be authorised by the Magistrate unless there are reasonable grounds to believe that compliance with subsection (1) will –
  - (i) lead to interference with or harm to evidence connected with an offence or interference with or physical injury to other persons;
  - (ii) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
  - (iii) hinder the recovery of any property obtained as a result of such an offence;
- (c) may be authorised for a period not exceeding 48 hours.

(5) Where a police officer exercises a power under subsection (3), he shall –

- (a) inform the person that he has exercised such a power;
- (b) record the reasons for such detention.

## **21. Search upon arrest**

(1) Subject to subsection (3), a police officer may, out of the public view, search any person who has been arrested at a place other than a police station for articles which –

- (a) the person might use to assist him to escape;
- (b) might be evidence relating to an offence; or
- (c) may present a danger to himself or to other persons.

(2) Subject to subsection (3), a police officer shall also have power, where the arrest was made for an arrestable offence, to enter and search any premises in which the arrested person was, when arrested or immediately before, for evidence relating to the offence.

(3) A police officer may only exercise the power conferred by –

- (a) subsection (1) where he has reasonable grounds to believe that the person to be searched may have concealed on him anything for which a search is permitted;

- (b) subsection (2) where he has reasonable grounds to believe that there is, on the premises, evidence for which a search is permitted.

(4) A police officer may seize and retain for the purposes of enquiry anything which he finds following a search pursuant to subsection (1) or (2) where he has reasonable grounds to believe –

- (a) that the person searched might use it to assist him to escape;
- (b) it is evidence of an offence or has been obtained in consequence of the commission of an offence; or
- (c) that the person searched might use it to cause physical injury to himself or to another person.

(5) An officer carrying out a search under this section shall be of the same sex as the person charged.

#### **Sub-Part IV – Detention**

### **22. Custody officer**

(1) The Commissioner of Police shall, at every place of detention, designate a police officer not below the rank of Inspector as custody officer.

(2) Every custody officer shall ensure that –

- (a) all persons in police detention are treated in accordance with this Act; and
- (b) all matters relating to such persons, which are required by this Act to be recorded, are recorded in custody records.

(3) A custody officer shall not be involved in the investigation of the offence in relation to which a person is in police detention, and that custody officer is required to perform his duties under this Act with respect to that person.

### **23. Period of detention without charge**

(1) Subject to subsection (2), a person shall not be kept in a place of detention for more than 24 hours without being charged with an offence.

(2) The period of 24 hours shall begin when the person referred to in subsection (1) reaches the place of detention.

(3) Where a person is removed to hospital, on the advice of a medical practitioner, because he is in need of medical attention, any time during which he is being questioned by a police officer in hospital, or on the way there or back, shall be included in the period to be calculated for the purpose of subsection (1).

(4) Notwithstanding subsection (1), a Magistrate, may, for the purposes of section 55 of the Dangerous Drugs Act, authorise a delay of not more than 48 hours, where he has reasonable grounds to believe that compliance with subsection (1) will –

- (a) lead to interference with or harm to evidence connected with an offence or interference with or physical injury to other persons;
- (b) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) hinder the recovery of any property obtained as a result of such an offence;

(5) Where a police officer exercises a power under subsection (4), he shall –

- (a) inform the detained person that he has exercised such power;
- (b) record the reasons for exercising such power.

#### **24. Arrest for further offence**

Where –

- (a) a person –
  - (i) has been arrested for an offence; and
  - (ii) is at a place of detention in consequence of that arrest; and
- (b) it appears to a police officer that, if the person were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that other offence.



## **25. Release from police detention**

Except where it comes to the knowledge of a custody officer that a person in police detention was unlawfully at large at the time of his arrest, where the custody officer –

- (a) becomes aware, in relation to that person, that the grounds for his detention have ceased to apply; and
- (b) is not aware of any other ground on which the continued detention of that person could be justified,

he shall arrange for his release without bail.

## **26. Continued detention and release on parole**

(1) Where a person is arrested for an offence and is in detention without charge, the custody officer shall determine whether he has sufficient evidence to warrant detention.

(2) Where there is insufficient evidence to warrant detention, the custody officer shall arrange for the release on parole of the person referred to in subsection (1) unless –

- (a) his detention is necessary to secure or preserve evidence relating to the offence or to obtain evidence by questioning him;
- (b) his name or address cannot be ascertained;
- (c) the custody officer has reason to believe that, if released, he will fail to appear before a Magistrate;
- (d) in the case of an arrestable offence, the custody officer has reasonable grounds to believe that the person may –
  - (i) commit a further offence; or
  - (ii) interfere with witnesses;
- (e) where, under this Act, a sample may be taken from him, his detention is necessary for that purpose; or
- (f) the custody officer has reasonable grounds to believe that his detention is necessary for his own protection.

(3) Where a custody officer continues the police detention of a person under subsection (1), he shall, as soon as is practicable, make a written record of the grounds for continued detention, and the record shall, unless the person is –

- (a) not in a fit state to understand;
- (b) violent; or
- (c) in need of medical attention,

be made in presence of the person.

## **27. Review of continued detention**

(1) A review of the police detention of a person shall be periodically conducted by the custody officer, with a view to determining whether or not to authorise his continued detention.

(2) (a) The first review shall be not later than 6 hours after the detention started.

(b) The second review shall be not later than 9 hours after the first review.

(c) Subsequent reviews shall be at intervals of not more than 9 hours.

(3) (a) A review under subsection (2) may be postponed, but for not more than 3 hours, where –

- (i) the person under detention is being questioned by a police officer; or
- (ii) for any other good cause, it is not practicable to carry it out.

(b) Where a review is postponed, the fact shall be recorded in writing, by the custody officer, together with the reasons for the postponement.

(4) The custody officer who carries out a review under this section shall give to the person under detention or his counsel an opportunity to make representations to him about the detention.

## **Sub-Part V – Provisional Information**

### **28. Provisional information**

(1) A police officer not below the rank of Inspector shall file, before the appropriate District Court, a provisional information charging a person in police detention, or a person released under section 25 so as to bring that person under the control and in the custody of the Court.

(2) A provisional information filed pursuant to subsection (1) shall specify the charge and the details of the charge.

(3) A Magistrate before whom a provisional information is filed pursuant to subsection (1) shall inform the person charged, in a language that he understands, of the contents of the provisional information.

(4) (a) A provisional information filed under subsection (1) shall lapse after a period of 6 months unless the Magistrate, on good cause shown, including but not limited to the fact that there are reasonable grounds to allow the police a further period of investigation, is satisfied that the provisional charge ought to subsist, whereupon he may extend that period for such time as he may deem appropriate in the circumstances.

(b) Nothing in paragraph (a) shall preclude a Magistrate from striking out, or otherwise dismissing, a provisional information earlier than the periods specified in that paragraph.

## **Sub-Part VI – Questioning and Treatment of Detainees**

### **29. Search of detainee**

(1) A custody officer shall ascertain and record anything which a person has with him where he is –

(a) brought to a place of detention after being arrested or committed to custody by order of a Court; or

(b) arrested at a place of detention and detained.

(2) A custody officer may seize anything which a person has with him except clothes and personal effects.

(3) Notwithstanding subsection (2), a custody officer may seize clothes and personal effects, where has reasonable grounds to believe that any of the clothes or personal effects may be used –

- (a) to cause damage or injury;
- (b) to interfere with evidence;
- (c) to assist the detainee to escape; or
- (d) as evidence relating to an offence.

(4) Where a custody officer considers it necessary to do so to enable him to carry out his duty under subsection (1) or (2), he may, subject to subsection (6), search the person or cause him to be searched by another police officer.

(5) The officer in charge at a reform institution may, in relation to a person detained at the institution, exercise any of the powers given to a police officer under this section.

(6) (a) An intimate search may not be conducted under this section.

(b) A police officer carrying out a search or examination under this section shall be of the same sex as the person searched.

(7) An authorisation given under this section shall be in writing, and shall specify the grounds for such authorisation.

### **30. Intimate search and sample**

(1) Where a police officer of at least the rank of Inspector has reasonable grounds to believe that a person who is detained at a place of detention may have concealed on him a dangerous drug or anything which he could use for purposes of telecommunication or to cause injury to himself or to others, he may authorise an intimate search of that person.

(2) An intimate search shall only be carried out –

- (a) at a place of detention or at a hospital or other medical institution or premises;
- (b) under the supervision of a Government Medical Officer; and
- (c) by a person of the same sex as the person searched.

(3) A custody officer may seize and retain anything which is found on an intimate search of a person where he has reasonable grounds to believe that it may be evidence relating to, or likely to be used for, the commission of an offence.

(4) The officer in charge at a reform institution may, in relation to a person detained at the institution, exercise any of the powers given to a police officer under subsection (1) or (3).

(5) Where a police officer of at least the rank of Superintendent has reasonable grounds to believe that –

- (a) a person who is detained at a place of detention is involved in an arrestable offence; and
- (b) an intimate sample may tend to confirm or disprove his involvement,

he may authorise an intimate sample to be taken from that person.

(6) An intimate sample shall only be taken –

- (a) at a place of detention or a hospital or other medical institution or premises;
- (b) except in the case of a sample of urine, by or under the supervision of –
  - (i) a Government dentist, in the case of a dental impression; or
  - (ii) a Government Medical Officer.

(7) An authorisation given under this section shall be in writing, and shall specify the grounds for such authorisation.

### **31. Non-intimate sample**

(1) Where a police officer of at least the rank of Inspector has reasonable grounds to believe that –

- (a) a person detained at a place of detention is involved in an arrestable offence; and
- (b) a non-intimate sample may tend to confirm or disprove his involvement,

he may authorise a non-intimate sample to be taken from that person where –

- (i) the person has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation; or
- (ii) he has had such a sample taken but the sample proved insufficient.

(2) An authorisation which is given under this section shall be in writing and shall specify the grounds for such authorisation.

### **32. X-ray and ultrasound scan**

(1) (a) Where a police officer of least the rank of Inspector has reasonable grounds to believe that a person detained at a place of detention may have hidden in his body a dangerous drug or anything which he could use for purposes of telecommunication or to cause injury to himself or to others, he may authorise an x-ray of the person to be taken or an ultrasound scan of the person to be carried out, or both.

(b) The officer in charge of a reform institution may, in relation to a person detained at the institution, exercise the powers given to a police officer under paragraph (a).

(2) An x-ray or an ultrasound scan may only be taken or carried out –

(a) at a hospital; and

(b) by or under the supervision of a medical practitioner.

(3) An authorisation given under this section shall be in writing, and shall specify the grounds for such authorisation.

### **33. Information regarding arrest**

(1) Where a person has been arrested and is detained at a place of detention, the custody officer shall, at the request of the arrested person, and within one hour of such request, inform a friend, a relative, or other person who is known to or is likely to take an interest in the welfare of the arrested person, of the place of detention of the arrested person that he has been arrested and detained.

(2) A custody officer shall, on the arrival of an arrested person at a place of detention, forthwith inform that person of his right under subsection (1).

(3) Notwithstanding subsections (1) and (2), a police officer of the rank of Inspector may, for the purposes of section 55 of the Dangerous Drugs Act, authorise

a delay of not more than 24 hours, where he has reasonable grounds to believe that compliance with subsections (1) and (2) –

- (a) will lead to interference with or harm to evidence connected with an offence or interference with or physical injury to other persons;
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

(4) A police officer of the rank of Inspector may apply, in writing, on a prescribed form, to a Magistrate for an extension of not more than 48 hours of the delay referred to in subsection (3), before the expiry of the 24 hour period referred to in subsection (3).

(5) Where a police officer exercises a power under subsection (4), he shall –

- (a) inform the detained person that he has exercised such power;
- (b) record the reasons for exercising such power.

#### **34. Legal advice**

(1) Where a person has been arrested, he shall forthwith be informed by the custody officer that he is entitled to consult privately with, and be represented by, a barrister, in person or by telephone and the custody officer shall make the necessary arrangements for that purpose.

(2) A custody officer shall, on the arrival of an arrested person at a place of detention, forthwith inform that person of his right under subsection (1).

(3) Notwithstanding subsections (1) and (2), a police officer of the rank of Superintendent, may, for the purposes of section 55 of the Dangerous Drugs Act, authorise a delay of not more than 24 hours, where he has reasonable grounds to believe that compliance with subsections (1) and (2) will –

- (a) lead to interference with or harm to evidence connected with an offence or interference with or physical injury to other persons;
- (b) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

- (c) hinder the recovery of any property obtained as a result of such an offence.

(4) A police officer of the rank of Superintendent may apply, in writing, on a prescribed form, to a Magistrate for an extension of not more than 48 hours of the delay referred to in subsection (3), before the expiry of the 24 hour period referred to in subsection (3).

(5) Where a police officer exercises a power under subsection (4), he shall –

- (a) inform the detained person that he has exercised such power;
- (b) record the reasons for exercising such power.

### **35. Fingerprinting of detainee**

(1) The fingerprints of a person who has been arrested and is detained at a place of detention may be taken with his consent where –

- (a) he is detained in consequence of his arrest for an offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence; or
- (c) he has had his fingerprints taken but –
  - (i) they do not constitute a complete set of his fingerprints; or
  - (ii) some or all of them are not of sufficient quality to allow analysis, comparison or matching.

(2) Where a person refuses to give his fingerprint pursuant to this section, the investigating or enforcement officer may apply to a Magistrate for an order compelling the person to give his fingerprint.

(3) On an application made under subsection (2), the Magistrate may make an order under that subsection where he is satisfied that –

- (a) the taking of the fingerprints is justified in all the circumstances of the case;



- (b) it appears that the person against whom the application is made may be connected to or associated with an offence; and
- (c) it is in the interest of justice to do so.

(4) An order made under subsection (1) shall be valid for a period of 14 days, and the Magistrate may extend the period of validity of the order, for such period not exceeding 28 days as he thinks fit.

### **36. Fingerprinting of offender**

- (1) Where a person –
  - (a) has been convicted of an offence;
  - (b) has not at any time been in police detention for the offence; and
  - (c) has not had his fingerprints taken in the course of the investigation of the offence or since the conviction,

a police officer may, not later than one month after the date of the conviction –

- (i) require him, by written notice, to attend the police station named in the notice, within 7 days of the date of receipt of the notice, so that his fingerprints may be taken; or
- (ii) where the person is detained at an institution, require, by notice, the officer in charge of that institution to bring the detainee to the police station named in the notice, within 7 days of such notification.

(2) Where a person convicted of an offence has had his fingerprints taken as referred to in subsection (1)(c), and –

- (a) those fingerprints do not constitute a complete set of his fingerprints; or
- (b) some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching,

a police officer may require him, by written notice, to attend a police station, within 7 days of the date of receipt of the notice, so that his fingerprints may be taken anew.

(3) A police officer may, without warrant, arrest a person who fails to comply with a notice issued under subsection (1) or (2).

### **37. Photographing of detainee**

(1) A person who has been arrested and is detained at a place of detention may be photographed by a police officer –

- (a) with his consent; or
- (b) where consent is withheld, or it is not practicable to obtain it, with the authorisation of a police officer of at least the rank of Inspector.

(2) A photograph taken under subsection (1) –

- (a) may be used by, or disclosed to, any person for a purpose related to the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution or the enforcement of a sentence; and
- (b) after being so used or disclosed, may be retained but may not be so used or disclosed except for a purpose so related to one of the matters specified in paragraph (a).

### **38. Disposal of sample, fingerprint or photograph**

(1) Where a sample, fingerprint or a photograph –

- (a) is taken from a person in connection with the investigation of an offence; and
- (b) is not required to be destroyed pursuant to subsection (2),

it may be retained but shall not be used by any person except for a purpose related to the –

- (i) prevention or detection of crime;
- (ii) investigation of an offence;
- (iii) conduct of a prosecution;
- (iv) the enforcement of sentence; or

(v) certification of the identity of a person by comparison of fingerprints.

(2) Subject to subsection (3), where –

- (a) a sample, fingerprint or a photograph has been taken from a person in connection with the investigation of an offence; and
- (b) that person is not prosecuted before a Court, or is prosecuted and acquitted,

the officer in charge of the Crime Records Office of the Police Department shall cause it to be disposed of as soon as it has fulfilled the purpose for which it was taken, unless a police officer, not below the rank of Assistant Superintendent, certifies in writing that such sample, fingerprint or photograph is required for the purposes of another investigation, or such other criminal proceedings.

(3) A sample, fingerprint or a photograph shall not be required to be disposed of pursuant to subsection (2) where it was taken for the purpose of the investigation of an offence of which a person has been convicted unless, on application made to him by an interested party, a Judge so orders upon being satisfied that undue prejudice will be caused to that interested party.

### **Sub-Part VII –Treatment of Victims**

#### **39. Treatment of victims**

(1) Every police officer engaged in the detection or investigation of an offence shall take all reasonable steps to ensure that a victim –

- (a) is treated with fairness, dignity and respect;
- (b) has his complaint investigated with celerity;
- (c) is kept informed of developments in the investigation;
- (d) is protected from discrimination and harassment;
- (e) is promptly given back any personal property seized as evidence when it is no longer required; and
- (f) is provided with such proper assistance as he may require.

(2) In this section, where a victim cannot be informed of the developments in the investigation, the police may inform his close relatives of such developments.

(3) For the purposes of enforcement of rights provided in this section, a victim or his close relatives may, as the case may be, be represented by a legal representative.

(4) In subsection (1) –

“victim” means a person who has suffered prejudice, including physical, mental or emotional injury, economic loss or substantial impairment of his human or fundamental rights as a result of the commission of an offence.

### **PART III – EVIDENCE**

#### **40. Exclusion of unfair evidence**

(1) In any criminal proceedings, the Court may refuse to allow evidence on which the prosecution proposes to rely to be given where it appears to the Court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the Court ought not admit it.

(2) A breach of a Code of Practice issued under this Act shall not lead to the exclusion of evidence obtained as a result of such breach unless it is established that the breach significantly and substantially affects that accused’s right to a fair trial.

#### **41. Attorney-General to issue Codes of Practice for tape-recording and visual recording**

The Attorney-General shall –

- (a) issue Codes of Practice in connection with the tape-recording and visual recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at places of detention;
- (b) make regulations prescribing the manner in which the tape-recording and visual recording of interviews of persons suspected of the commission of criminal offences, or of such descriptions of criminal offences as may be prescribed, shall be carried out.

#### **42. Admissibility of sound or visual recording**

The sound or visual recording of any statement, other than those statements under section 41, made or any act done shall be admissible in evidence in any criminal proceedings where –

- (a) the recording was made lawfully;
- (b) its authenticity of the recording or a copy of it is proved to the satisfaction of the Court; and
- (c) no other exclusionary rule applies.

#### **43. Confession and admission**

(1) Subject to section 40, a confession made by a person charged with an offence may be given in evidence against him or for a co-accused insofar as it is relevant to any matter in issue in the proceedings and is not excluded by the Court pursuant to section 40 or this section.

(2) Where the prosecution or a co-accused proposes to give in evidence a confession made by a person charged with an offence and it is represented to the Court that the confession was, or may have been, obtained –

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him as a result,

the Court shall not allow the confession to be given in evidence against the person charged or for the co-accused except insofar as the prosecution proves to the Court, beyond reasonable doubt or, as the case may be, the co-accused proves to the Court, on a balance of probabilities, that the confession was not obtained in the manner set out in paragraph (a) or (b).

(3) The Court may, of its own motion, require the prosecution or the co-accused, as a condition of allowing it or him to give the confession in evidence, to prove that the confession was not obtained in the manner referred to in paragraph (a) or (b) of subsection (2).

(4) The fact that a confession is wholly or partly excluded pursuant to section 40 or this section shall not affect the admissibility in evidence –

- (a) of any fact discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the person charged speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) (a) Evidence that a fact to which paragraph (b) applies was discovered as a result of a statement made by a person charged shall not be admissible unless evidence of how it was discovered is given on his behalf.

(b) This paragraph applies to any fact discovered as a result of a confession which is –

- (i) wholly excluded pursuant to section 40 or this section; and
- (ii) partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(6) In this section –

“oppression” includes –

- (a) torture, inhuman or degrading treatment; and
- (b) the use or threat of violence.

#### **44. Confession by minor or mentally handicapped person**

Where at a trial –

- (a) the case against a person charged with an offence depends wholly or substantially on a confession made by him; and
- (b) the Court is satisfied that –
  - (i) the person is a minor or a mentally handicapped person; and
  - (ii) the confession was not made in the presence of a parent or guardian or some independent person who is not a police officer,

the Court or Judge shall where the case is tried with a jury –

- (A) warn the jury that there is a special need for caution before convicting the accused in reliance on the confession; or

- (B) treat the case as one where there is a special need for caution before convicting the accused in reliance on the confession.

## **PART IV – MISCELLANEOUS**

### **45. Offences**

(1) Any person who resists, opposes, molests, hinders or obstructs a police officer or any person other than a police officer, who is exercising a power conferred on him by this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 3 months.

(2) Any person who commits an offence under this Act, for which no specific penalty is provided, shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

### **46. Regulations**

(1) The Attorney-General may, for the purpose of this Act, make such regulations as he thinks fit.

(2) Regulations made under subsection (1) may provide for –

(a) anything that may be prescribed under this Act; and

(b) issuing Codes of Practice in connection with the –

(i) exercise by police officers of statutory powers –

(A) to search a person without first arresting him;

(B) to search a vehicle without making an arrest; or

(C) to arrest a person;

(ii) securing and handling of exhibits;

(iii) submission of exhibits to the Forensic Science Laboratory for examination;

(iv) designation of an enquiry officer in charge of the police enquiry;

- (v) provision of witnessing officers in respect of the recording of statements;
- (vi) recording of diary book entries and entries in police note books;
- (vii) detention, treatment and questioning of persons by police officers;
- (viii) searches of premises by police officers;
- (ix) seizure of property found by police officers on persons or premises;
- (x) rights of victims;
- (xi) exercise by investigating or enforcement officers of any power referred to in this paragraph;
- (xii) recording and conduct of interviews of persons suspected of having committed offences; or
- (xiii) organisation of identification procedures.

#### **47. Repeals**

The provisions of the enactments set out in the first column of the Second Schedule which are specified in the second column of that Schedule are repealed.

#### **48. Consequential amendments**

The enactments set out in the first column of the Third Schedule are amended in the manner specified in the second column of that Schedule.

#### **49. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a day to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.



## FIRST SCHEDULE

[Section 3]

### RETAINED PROVISIONS

<b>Short title</b>	<b>Retained provision</b>
Animal Diseases Act	section 16
Biological and Toxin Weapons Convention Act	section 6
Chemical Fertilisers Control Act	section 8
Chemical Weapons Convention Act	sections 9 and 10
Consumer Protection Act	section 7
Consumer Protection (Price and Supplies Control) Act	sections 23, 25 and 26
Courts Act	sections 128(4), 161, 161A, 161B, 161C, 162, 163, 165, 168, 170, 171, 172, 173, 174, 175, 177, 177A, 181, 181A, 181B, 181C, 181D, 181E, 181F, 182
Criminal Code (Supplementary) Act	sections 69, 91 and 102A
Criminal Procedure Act	sections 54 to 58
Customs Act	sections 113, 128, 131A, 132, 133, 134, 135, 136, 137, 142 and 151 to 153
Dangerous Chemicals Control Act	section 31
Dangerous Drugs Act	sections 27(6), 31, 49, 51, 53 and 57
Data Protection Act	section 17
Deportation Act	section 7(2)
District and Intermediate Courts (Criminal Jurisdiction) Act	sections 4 to 15, 23 and 51

Electronic Transactions Act	sections 45 and 46
Environment Protection Act	sections 35, 79 and 80
Excise Act	sections 29, 30 and 32 to 34
Explosives Act	sections 21, 21A and 21B
Fair Trading Act	section 12
Films Act	section 18
Firearms Act	section 41
Fisheries and Marine Resources Act	sections 51(2), 53 to 55
Forests and Reserves Act	section 12
Immigration Act	section 13
Income Tax Act	sections 126 and 126A
Juvenile Offenders Act	sections 9 and 19
Legal Metrology Act	sections 15 and 16
Mauritius Agricultural Marketing Act	section 26
Merchant Shipping Act	section 189
National Coast Guard Act	section 12
Official Secrets Act	Section 16
Police Act	sections 9(1)(c), 13, 13A to 13F, 14 and 16
Ports Act	section 67
Prevention of Corruption Act	section 53
Prevention of Terrorism Act	section 27
Quarantine Act	section 10
Reform Institutions Act	sections 7, 10 and 12
Removal of Sand Act	section 15
Road Traffic Act	sections 123G, 123H, 123L, 134, 142, 143, 162, 173, 173A and 182
Tinted Motor Spirit Act	sections 3, 4 and 5
Tourism Authority Act	sections 36, 66, 67, 70, 96, 97, 112 and 115

Town and Country Planning Act	section 27
Transfer of Prisoners Act	section 8
Value Added Tax Act	section 35
Wildlife and National Parks Act	section 28

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**SECOND SCHEDULE**  
[Section 47]

**REPEALED PROVISIONS**

Short title	Repealed provision
Bail Act	Section 12
Courts Act	section 168(2) and the Third Schedule
Criminal Code (Supplementary) Act	sections 30, 31 and 89
Criminal Procedure Act	sections 221 and 222
Curepipe Carnegie Library Act	section 7
District and Intermediate Courts (Criminal Jurisdiction) Act	sections 16, 17, 18, 20 to 22 and 24 to 39
Police Act	section 12
Tourism Authority Act	section 118

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### THIRD SCHEDULE

[Section 48]

#### CONSEQUENTIAL AMENDMENTS

Short title	Extent of amendment
Courts Act	<p data-bbox="716 478 1409 590">(a) in section 128(2), by deleting the figure "2,000" and replacing it by the figure "100,000";</p> <p data-bbox="716 632 1409 898">(b) in section 161 –</p> <ul style="list-style-type: none"><li data-bbox="797 709 1409 785">(i) by deleting the word "Part" and replacing it by the word "Sub-part";</li><li data-bbox="797 827 1409 898">(ii) by deleting the definition of "sexual offence case";</li></ul> <p data-bbox="716 940 1409 1052">(c) in section 179, by deleting the figure "2,000" and replacing it by the figure "100,000";</p> <p data-bbox="716 1087 1409 1163">(d) by inserting, after section 189A, the following new section –</p> <p data-bbox="797 1199 1175 1232"><b>189B. Spent convictions</b></p> <p data-bbox="797 1276 1409 1465">Where a Court convicts a person of any offence, that Court shall not, for sentencing purposes, take into account the previous convictions of that person for –</p> <ul style="list-style-type: none"><li data-bbox="954 1514 1305 1547">(a) any contravention;</li><li data-bbox="954 1591 1409 1892">(b) a crime or misdemeanour, other than an offence specified in the Second Schedule to the Certificate of Character Act 2012, for which he was given only an absolute discharge, or</li></ul>

a conditional discharge and complied with the terms and conditions of that conditional discharge; or

(c) a crime or misdemeanour, other than an offence specified in the Second Schedule to the Certificate of Character Act 2012, dating back to more than 5 years prior to such conviction, for which that person has been –

(i) given only a fine of up to 5,000 rupees; or

(ii) make the subject of a probation order only, and has complied with the terms and conditions of the order.

Criminal Code

by inserting, after section 280, the following new section –

**280A. Interference with witnesses or potential witnesses**

(1) Any person who –

(a) advises, persuades or intimidates, or offers an inducement to, a person who has been summoned, or whom he has reason to believe will be summoned, as a witness in criminal proceedings to give false or misleading evidence or to

abstain from giving evidence; or

- (b) advises, persuades or intimidates, or offers inducement to, a person to give false or misleading information, or to abstain from giving information, to a police officer who is engaged in the detection or investigation of an offence,

shall commit an offence.

(2) Any person who commits an offence under subsection (1) shall, on conviction, be liable to a fine not exceeding 500,000 rupees and penal servitude not exceeding 20 years.

Official Secrets Act

in section 16(1), by adding the words "by a police officer".

Stage Plays Act

in section 7, by deleting the words "or a censor", "or censor" and "censor or" in subsections (1), (2) and (3), respectively.

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