

First Reading of Criminal Justice Reform Bill and Evidence (Amendment) Bill in Parliament: Recent History of Criminal Justice Reform

Historical Context of Present Reforms

1. The reforms in these Bills are a very major step in a long-term move towards a more progressive, balanced and modern criminal justice system that still protects society from crime effectively. These reforms are in the spirit of past reforms and in many cases build directly on those reforms.
2. Video-Recording of Interviews (“VRI”):
 - As recently as 2010, Government did not consider it beneficial to introduce VRI.
 - After extensive study of both local conditions and overseas best practices and intensive stakeholder consultation, we are now introducing VRI.
 - This opens the police interview process to greater scrutiny, and has the overall purpose of helping judges deliver fair and accurate trial outcomes.
3. Pre-trial Disclosure in Criminal Cases:
 - Before 2010 amendments to the Criminal Procedure Code, the Prosecution was not obliged to share any details of its case or the police statements of the accused before trial. The system was adversarial in the purest sense.
 - In 2010, almost all offences were put under a pre-trial disclosure regime. It is now recognised that this system contributes to fairness as well as an accurate outcome at trial.
 - We are now extending the coverage of this system to further important offences.
4. Victim Compensation in the Criminal Justice System:
 - Victim compensation recognises that criminal law is not just about the public’s interests, but the interests of individual victims.
 - Law was strengthened in 2010 to oblige judges to consider compensation.
 - It is now being strengthened again to require judges to give reasons if they do not order compensation, and to enable victims to participate directly in the compensation process in court.

Historical Context of Present Reforms (cont'd)

5. Community-Based Sentences (“CBS”):
 - Before 2010 CPC amendments, there were few options to deal with offenders other than fines and imprisonment.
 - CBS was introduced in 2010 because the Government recognised the need for a range of rehabilitative options that targeted the root causes of crime. These may protect society from re-offending better than fines or imprisonment.
 - CBS has been popular and successful. Scheme is now being further enhanced by expanding the range of offenders and offences that are eligible for CBS.
6. Protection of complainants of sexual and child abuse offences:
 - Before 2012 amendments to the Evidence Act, the law allowed the Defence to cast doubt on the credibility of rape complainants by attacking their “general morality”: in other words, their sexual history, even if it was not relevant to the charge.
 - This was abolished in 2012, to protect victims of sexual crime from being further victimised in the court process.
 - Now, further protections are being introduced to protect the identities and privacy of complainants of sexual and child abuse offences, including further restrictions on questions about their sexual behaviour.
7. Safeguards Concerning the Use of the Death Penalty:
 - Before changes to the law in 2012, the most important capital offences involved the mandatory death penalty; judges had no discretion to consider the individual facts of a case in passing sentence.
 - In 2012, the Penal Code and Misuse of Drugs Act were amended to introduce more discretion for judges in sentencing for certain types of murder and drug trafficking offences.
 - The CPC was also amended to provide that if an offender sentenced to death does not appeal, the case must proceed to a confirmation hearing before the Court of Appeal.
8. Further details on these topics can be found in the Annexes below.

Annex A: Video-Recording of Interviews

1. When the CPC was reviewed in 2010, the Government, together with stakeholders, considered whether video recording of interviews (“VRI”) should be introduced. At that time, the Government decided that it should not be introduced.
2. Since, then, however, the Criminal Bar has continued to ask for VRI to be introduced.
3. Given the importance of this issue to the Criminal Bar, we worked closely with stakeholders to re-examine whether there was a workable model of VRI that would enhance the effectiveness and fairness of the criminal justice system.
4. This legislative framework for VRI that will be put in place *via* amendments to the CPC is a culmination of this effort. There has also been significant investment in infrastructure and training to support the implementation of VRI.
5. Such video-recordings will provide an objective account of what happened during the interview and the demeanour of the participants, allowing courts to quickly assess the weight and admissibility of the statement.

Annex B: Pre-trial Disclosure in Criminal Cases

1. In 2010, the Criminal Procedure Code (“CPC”) was repealed and re-enacted, introducing major changes to the criminal justice system.
2. One of the changes introduced was pre-trial disclosure in criminal cases, under the Criminal Case Disclosure process.
 - a. The Prosecution would have to hand a summary of its case to the Defence, including a list of exhibits and witnesses it intended to rely on. This would include copies of the police statements of the accused it intended to use.
 - b. After this, the Defence would hand the Prosecution a summary of its case and lists of the exhibits and witnesses it intended to rely on.
 - c. Finally, the Prosecution would hand the Defence the remaining police statements of the accused and copies of the documentary exhibits listed in its case.
3. From the outset, this applied to most offences tried at the Supreme Court and District Courts, including all offences under the Penal Code and the Misuse of Drugs Act.
4. In the Criminal Justice Reform Bill 2018, we are enhancing the Criminal Case Disclosure scheme by extending it to further important offences, including those under the Moneylenders Act and Prevention of Corruption Act.

Annex C: Victim Compensation in the Criminal Justice System

1. Before 2010, criminal courts had the discretion to order an offender to pay compensation to the victim. However, they had no positive duty to consider whether to do this or not.
2. In 2010, this procedure was enhanced. The CPC was amended to impose a positive duty on the courts to actively consider after every conviction whether or not to make victim compensation orders. If appropriate, it must make such orders.
3. In the Criminal Justice Reform Bill 2018, we are going further to require that where courts have the power to award compensation, they must give reasons if they do not do so.
4. For the first time, victims will be empowered to participate in the compensation order process by making submissions or giving evidence.
5. Amendments will also be made to empower the courts to order compensations of the dependents of a person whose death was caused by an offence for bereavement and funeral expenses.

Annex D: Community-Based Sentences

1. Before 2010, courts had few options in terms of community-based sentencing as an alternative to imprisonment. They were limited to schemes such as the Home Detention Scheme and probation.
2. In the 2010 CPC amendments, major reforms were made introducing a range of new Community-Based Sentences:
 - a. Short Detention Orders
 - b. Day Reporting Orders
 - c. Mandatory Treatment Orders
 - d. Community Service Orders
 - e. Community Work Orders
3. The outcomes from these amendments were positive, but the Government assessed that more benefit could be reaped from Community-Based Sentences both for offenders and for society.
4. As such, in the Criminal Justice Reform Bill 2018, we are further expanding the eligibility criteria for such sentences and making other enhancements.
 - a. A wider range of offenders with past criminal records will be eligible for community sentences if their records are less serious.
 - b. Offences with specified minimum fines will be eligible for community sentences. This refers to offences where no particular type of sentence is mandatory, but where a fine is imposed, it has to have a certain minimum amount. One example is driving while under influence of drink or drugs under s 67(1) of the Road Traffic Act, punishable with a fine of between \$1,000 and \$5,000, imprisonment of up to 6 months, or both. The specified minimum fine for this offence is therefore \$1,000.
 - c. The types of eligible offences, and the maximum duration, for Mandatory Treatment Orders will be increased. In-patient treatment will be possible under Mandatory Treatment Orders.
 - d. Courts may impose a suspended imprisonment sentence with a community sentence to encourage offenders to comply with the terms of the community sentence.

Annex E: Protection of complainants of sexual and child abuse offences

1. Before 2012, the Evidence Act contained a provision (s 157(d)) that allowed the credit of a rape complainant to be impeached by proof that she is of a “generally immoral” character. This was clearly inappropriate as it allowed questions to be asked of the complainant in court about her sexual history without any test of whether that material was relevant to the charges. It also enabled the Defence to further traumatise a victim of sexual assault.
2. Following extensive feedback from consultees, including the NGO AWARE, in 2012 the Evidence Act was amended to abolish this provision.
3. The Evidence (Amendment) Bill 2018 builds upon the changes made in 2012 by introducing a power to make rules about what kind of questions may be asked or evidence used in relation to sexual offence and child abuse cases. Rules will be introduced to state that no reference can be made to evidence of the complainant’s sexual history with persons other than the accused person not relating to the charge without the permission of court. Such permission must be sought in the absence of the complainant, and will only be granted if it is in the interests of justice to do so.
4. Other measures are also being introduced in the Criminal Justice Reform Bill 2018 to protect such complainants, as follows:
 - a. Automatic protection of their identity from publication from the point the complaint is lodged.
 - b. Courts may order the use of physical screens to separate the complainant from the accused person.
 - c. Closed-door hearings will be mandatory when the complainant is testifying.
 - d. The complainants may give a video-recorded police interview that can be used in place of their evidence-in-chief in court, to avoid them having to repeat their traumatic account multiple times. This will be implemented at a later stage.
5. These measures are accompanied by major developments in police investigation practice, such as the use of a one-stop forensic examination centre (OneSAFE), multi-disciplinary interviews, provision of a sexual crime information pamphlet to victims, and enhanced training in victim empathy and minimisation of victim trauma.

Annex F: Safeguards Concerning the Use of the Death Penalty

1. In 2010, the CPC reforms included a new rule (in s 227(3)) that the High Court shall not record a plea of guilty to a capital case unless the accused is tried and the Prosecution leads evidence to prove its case a trial. This ensures that no one is convicted of a capital offence unless there is sufficient evidence to prove their guilt.
2. In 2012, a series of major reforms took place in this area. The Penal Code was amended to provide that the mandatory death penalty would only apply to the most serious form of murder under s 300(a) of that Code, which involves intentional killing. In the other forms of murder where killing is not intentional, the Court would have the discretion to sentence the offender to death or life imprisonment.
3. The Misuse of Drugs Act was also amended such that the death penalty would no longer be mandatory for drug trafficking cases where (a) the trafficker was a courier and (b) they either gave the Central Narcotics Bureau substantive cooperation in disrupting drug trafficking activities, or they had a mental disability which substantially impaired his appreciation of the gravity of their act.
4. Finally, the CPC was amended to require confirmation by the Court of Appeal before a sentence of death can be carried out. Where the accused person did not appeal, the Prosecution has to apply for a confirmation hearing before the Court of Appeal, which will examine the record of proceedings and the grounds of decision to satisfy itself of the correctness, legality and propriety of the conviction for which the death sentence is imposed; and of the imposition of the death sentence, where this is discretionary.
5. Taken together, these reforms gave the courts a greater role in supervising and scrutinising the use of the death penalty and contributed to a more robust system in this area.