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No arrest for offences with maximum penalty of 7 yrs or less

31 Dec 2008, 0548 hrs IST, Manoj Mitta , TNN

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NEW DELHI: Ever since he flung his shoes at George Bush on December 14, Iraqi journalist Muntader al-Zaidi has been in custody. But if something like that were to happen here with the Indian president, the assailant might not even be arrested. For, assaulting the President is among a range of offences that are no more covered by the existing arrest regime thanks to amendments recently passed in Parliament.

The eight Bills passed by Lok Sabha on December 23 without a debate in 17 minutes included a radically revamped Criminal Procedure Code, which divests the police of the usual arrest powers in all cases where the maximum possible sentence is seven years or less. Since the CrPC amendment Bill had been cleared earlier by Rajya Sabha on December

18, it is all set to pass into law once President Pratibha Patil gives her assent.

Instead of arresting the accused, the police will now be obliged to issue him a "notice of appearance" for any offence punishable with imprisonment up to seven years, which — as it happens — is the maximum penalty prescribed under Section 124 of Indian Penal Code for assaulting a President.

Seven years or less is also the maximum penalty for a host of other offences, including attempt to commit culpable homicide (Section 308) or robbery (Section 393), voluntarily causing grievous hurt (Section 325), cheating (Section 420), outraging a woman's modesty (Section 354) and death caused by negligence (Section 304A).

The notice of appearance casts a duty on the accused person to appear before the police and "cooperate" with the investigation. It is only if he fails to comply with the terms of the notice that the question of arresting him will arise.

Under the new law if authorities are still particular about arresting somebody in the first instance, then the police will specially have to give reasons for that in writing in court.

This is how the new law liberalises the arrest provisions:

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This is how the new law increases the arrest provisions.

* Section 41A (1) says that in all cases punishable with imprisonment up to seven years, "the police officer may, instead of arresting the person concerned, issue to him a notice of appearance."

* Section 41A (3) conveys the import of this far-reaching devise by saying, "Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police are of the opinion that he ought to be arrested."

* Section 41A (4) explains the remedy that is available to the police when the accused does not honour his part of the deal: "Where such person, at any time, fails to comply with the notice, it shall be lawful for the police officer to arrest him..."

Since notice of appearance is now stipulated in the investigation of all offences punishable with imprisonment up to seven years, arrest will cease to be an inevitable fallout for accused persons in a wide variety of cognizable cases, including even those that were traditionally classified as "non-bailable."

On an offence such as kidnapping, for instance, the police cannot any longer use arrest as a first resort as the offence is punishable under Section 363 with imprisonment up to seven years. Similarly, if a public servant induces a woman in his custody to have sex with him, the police cannot straightaway arrest him as the offence is punishable under Section 376B with imprisonment up to five years.

The more serious IPC crimes on which the police is exempt from issuing notice of appearance to accused persons include murder, rape, dowry death, waging war on State, robbery or dacoity with deadly weapons and kidnapping.

The introduction of notice of appearance is part of a larger attempt to raise the bar for arrest. In case of offences punishable with imprisonment exceeding seven years, the police can arrest merely on "credible information" or "reasonable suspicion".

But in the case of offences punishable with imprisonment up to seven years, the police will also have the burden of recording the reasons for being satisfied that such arrest is "necessary."

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