

**Report of the Committee under the Chairmanship of Secretary (BM) in MHA constituted to consider the issues raised by the Departmentally Related Parliamentary Standing Committee on the Private Detective Agencies (Regulation) Bill, 2007- Views of Association of Private Detectives and Investigators (APDI), India.**

The Draft Report (2014) dated May 28, 2014 of Police Modernisation and Reforms (PMR) Wing, MHA, GOI took into consideration views of committee members on issues raised by the Parliamentary Standing Committee in its 139<sup>th</sup> Report dated 13/2/2009 on the Private Detective Agencies (Regulation) Bill, 2007:-

The Committee was constituted in the Ministry of Home Affairs under the Chairmanship of Secretary (Border Management), consisting of the following officers:-

1. Secy (B.M), Ministry of Home Affairs, Chairman.
2. Director General, BPR&D, New Delhi, Member
3. Director, National Institute of Criminology and Forensic Sciences, New Delhi, Member
4. Secretary (Home), Govt. of NCT of Delhi, Member
5. Secretary (Home), Govt, of Tamil Nadu, Member
6. Director General of Police, Haryana, Member
7. Director General of Police, Odisha-Member
8. Joint Secretary, Police Modernization, MHA Member.

The Committee looked into all aspects connected with the PDA (R) Bill, 2007 and covered topics like Background; Objectives and the Report of the Parliamentary Standing Committee.

**Background**

The report says that the need for regulating the functioning of Private Detective Agencies operating in India , has been felt since long. All India Police Science Congress in the year 1974 also endorsed that there should be a legislation to regulate the functioning of PDAs in India. The BPR&D had also conducted a detailed study in 1975 and had suggested a common Act to regulate both the Private Security and Private Detective Agencies. However, only Private Security Agencies (Regulation) Act was passed in 2005 and a separate Private Detective Agencies (Regulation) Bill, 2007 was presented in Rajya Sabha by the Home Minister. That was referred to Parliamentary Standing Committee which submitted its report (no.139) dated 13<sup>th</sup> February, 2009.

**Objectives of the PDAR, Bill 2007**

The Economic growth and development in the wake of globalization and liberalization of the Indian economy increased reliance on Private investigation on vigilance issues by the business establishments for their information and/or intelligence gathering purposes. While the PDAs largely met the needs, there has been a growing concern about the manner of functioning of some agencies and it was felt that PDAs be regulated.

Association of Private Detectives & Investigators (APDI) is the representative body of PDAs and its role and strength has been taken into account in the report. However, figures of practicing PDAs outside this Association and on their own is considered to be anywhere between 12000 to 15000 in the country. No official figure is available and only estimates have projected this figure. It was stated that such detective agencies could invade the privacy of individuals and there is the potential of misuse of personal information in respect of people spied upon. Home Ministry felt the need to evolve and enforce proper norms for functioning of these PDAs and that detective agencies of dubious reputations do not operate.

Therefore, the Central Govt. proposed to regulate the working of these PDAs through a system of mandatory Licensing so as to ensure working within the ambit of legal framework and accountability to the regulatory authority.

### **Report of the Parliamentary Standing Committee on the PDAR, Bill 2007.**

The main policy issues raised by the committee covered following points:-

1. Definition of “Lawful objective” and “Lawful Manner”.
2. Jurisdiction of PDAs
3. Conflict between Private & State Detective Agencies.
4. Legal sanctity to PDAs
5. Foreign Detective Agencies in India.
6. MNCs in Detective Agencies in India
7. Jurisdiction of MHA on the subject matter of the Bill.
8. Infringement of Privacy of Individuals.
9. Qualification or the background of the Board Members.
10. Demarcation of areas of cognizable offense.
11. Evidentiary value of reports of PDAs.

The committee was of the view that the issues need to be thoroughly examined in consultation with all the concerned Departments & Agencies and a relook by the Ministry at provisions of the Bill. In view of these observations of DRPSC, it was considered whether the Bill be re-drafted or whether the Bill may be dropped. The proposal to re-examine the provisions of the PDAR Bill, 2007 was duly processed in the Ministry and placed before the Union Home Secretary in June 2009. Shri G.K. Pillai, the then Home Secy was of the opinion that “As of now PDAs are functioning in the country and currently there are no major problems or controversies concerning these PDAs. The country is already an over legislated country, and therefore, I am of the view that if we can avoid further legislation, unless absolutely necessary, the balance should be in favour of no legislation. In these circumstances, I would suggest that we may drop the Private Detective Agencies (Regulation) Bill, 2007”.

## COMMITTEE RECOMMENDATIONS

Based on the detailed deliberations of the committee, the broad principles and approach have been listed as under:-

1. The “Lawful manner of collection of information” and “lawful objectives of collection of information” by PDAs need not be defined in the Bill as they are commonly well understood.
2. The Private detectives should be allowed to work only in the non-Government sector and they would not investigate into bonafide activities of the State.
3. In no case, the PDAs will enter into the work of IB, RAW and CBI which are investigating agencies of the State. They would be allowed only to work in Private sector within the restricted areas of work to be mentioned in the Bill.
4. The areas of operation of the private detective agencies need to be clearly defined in the Bill so as to not make these areas open ended and prone to misuse by PDAs.
5. A list containing the areas of activities, which will expressly be forbidden for PDAs will be included in the Bill. Such list will not be part of delegated legislation or Rules under the Bill.
6. The Bill will continue to have provisions for grant of license to PDAs and holding of license would not confer any special privilege or legal right on the PDAs. Rather it would help the Central as well as State Governments to regulate the activities of licensed PDAs.
7. There is no express privacy law in the country but the privacy of an individual is protected under the provisions contained in Article 21 of the Constitution of Right to Liberty. There is a need to protect the common citizens from the potential misuse of information even lawfully collected by the PDAs in respect of persons spied on.
8. The qualification and experience of Chairperson and members of the Central Board and State Boards should be clearly indicated in the Bill itself.
9. As regards scope of cognizable offence which is required to be reported by PDAs to the police, it was viewed that like any citizen of the country, during the course of discharge of duty, if any cognizable offence comes to the notice of a PDA, he shall forthwith bring it to the notice of his superior and the police and this provisions should find a place in the Bill.
10. A National Register of Private Detective Agents be maintained by a Public Institution set up for regulating the professional development of such Detective agents. This Institute will also lay down the code of ethics and the code of conduct for operation of Private Detective Agents & Agencies.

Based on the above principles and approach arrived at by the committee the matter was further examined in the PM division in consultation with the BPR&D and other members and the conclusions and recommendations of the Committee had been tabulated vis-à-vis issues raised by DRPSC.

These observations/recommendations of the committee are, herein, outlined and the views of Association of Private Detective & Investigation (APDI) are also projected against each point tabulated below:-

Serial Number	Clause of the PDAR Bill, 2007	Observations/Recommendations of the Committee	View Point and submission of PDAs through APDI.
1.	PDA (R) Bill, 2007	1. Central Agencies have suggested that PDAs were proliferating and their areas of operation expanding. It was viewed that a number of private detective agencies were offering a variety of service across the country without being subject to any sort of regulation or accountability with regard to the information collected during the course of their operations. Such unregulated activities of PDAs have a huge potential for misuse and manipulation considering the poor law abiding habits of people in several parts of the country. As the activities of PDAs are often confidential in nature, it is necessary to safeguard the interest of citizens who are desirous of availing of the services of PDAs by clearly specifying the role, limitations and accountability of such agencies. There is a clear	Yes PDAs are offering a variety of services across the country. But APDI (Association of Private Detectives & Investigators) is a legal entity duly incorporated and it is a self-regulated body with strict Code of Conduct for its members and also with Disciplinary & Appeal Rules and Penal provisions (Copy attached). The accountability with regard to the information's collected during the course of their operations are governed by the provisions of the Constitution of India in the matter of Rights of Citizens in Privacy matters and also by IPC offences and other penal

		<p>need for establishment of a regulatory body of an institution to frame the rules and regulations for operation of PDAs as well as to monitor their conduct.</p> <p>2.The PDAs or agents should never be permitted to intrude into privacy of individuals on the pretext of private detective work.</p> <p>3.There is also a need to build up a data bank on the operations of the PDAs.</p>	<p>provisions of the laws of India equally applicable to PDAs &amp; citizens. Thus the alleged potential for misuse and manipulation of information by PDAs vis-à-vis poor law abiding habits of people is controlled by the common laws of India applicable to both. It is,therefore, not required to establish a regulatory body or an institution to frame the rules and regulations for operation of PDAs as well as to monitor their conduct. APDI agrees that PDAs must not intrude into privacy of individuals on the pretext of private detective work and we undertake to inculcate this culture in our members. APDI has a website and data bank of our members and there is no need for a separate data bank about activities of PDAs</p>
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2.	Clause 2(g) PDA(R), Bill 2007	As per clause 2(g) of the Bill, the definition of "Private Detective Work" means collection of information in a lawful	Clause 2(g) of the Bill is already restrictive in nature as 'Private Detective Work' means collection of
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		<p>manner for such an objective, by a licensed private detective agency. However this definition lacked clarity about what is lawful manner of collection and what is a lawful objective, leading to an avoidable debate. It is therefore suggested that the definition of private detective work be modified as under:</p> <p>‘Private Detective Work’ means collection of information by a licensed Private Detective Agency on the subject matters specified in the Schedule....”</p> <p>The Committee has also recommended for a clear definition of areas of work of the PDAs, which will be specified in a separate schedule to be included as part of the Bill. In other words, only those activities which are laid down in the Schedule can be undertaken by a PDA which has been granted a license to operate. The term “collection of information” viz its manner, methodology, timing, storage, retrieval, ownership, usage and commercial aspects of such information</p>	<p>information in a lawful manner for such an objective by a licensed private detective agency. The definition does not lack clarity in as much as all the applicable laws to PDAs vis-à-vis ordinary citizens of India are equally binding and any violation is not permissible for any category of professional in the country. Thus there is no need to specify the subject matter in a separate schedule of “DOs” for PDAs alone. Areas of work of to PDAs to be defined in schedule as part of the Bill would be debatable in the matter of fundamental rights guaranteed under the Constitution of India to the PDAs equally. Permissible areas would “restrict” their rights in the matter of profession and liberty. The term “collection of information” in “lawful manner” automatically controls the aspects of manner, methodology, timings, storage,</p>
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		<p>and mode/sources of collection will be further elaborated in the code of ethics and the code of conduct to be laid down by the Regulatory Institution in this regard. Accordingly, a separate Chapter on Role and functions of the Central Institution for Private Detective Agencies (CIPDA) will be included in the Bill.</p> <p>The licensed PDAs should not be allowed to carry on any such work which is expressly forbidden in the proposed Bill. <b>Any person/entity other than a licensed PDA will not be able to undertake even the permissible activities.</b> No person other than the state entities can undertake the expressly forbidden activities. In other words, what a licensed PDA can do and cannot do will be clearly defined in the Bill. This will obviate the need to define what is a lawful objective for a private detective work and what is lawful manner of collection of information in respect of permissible activities.</p>	<p>retrieval, ownership, usage and commercial aspects of such information and therefore, mode/sources of collection do not warrant further elaboration in the code of ethics and the code of conduct to be laid down by the Regulatory Institution. Even otherwise, Code of Ethics and Code of Conduct are only meant to define what is “unbecoming” of the PDA (or any other employee/professional ) by way of conduct and not by “dos” and “don’t’s” to be prescribed in Rules. There is no need to expressly mention forbidden work in the proposed Bill. <b>Most debatable aspect of recommendation is that “any person/entity other than a licensed PDA will not be able to undertake even the permissible activities”.</b> If such a restriction is imposed in the Bill, the following categories of</p>
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			<p>professionals will necessarily have to obtain licenses as Private detective Agencies:-</p> <ol style="list-style-type: none"><li>1. Both print and electronic media not only collects information but also projects such information as a matter of Right and Freedom of expression.</li><li>2. Advocates and Law firms who need litigation support for court cases.</li><li>3. Banks and Financial Institutions to ascertain and act upon the information for business purposes to establish reliability and credibility of persons/ beneficiaries.</li><li>4. Insurance companies in both Governmental</li></ol>
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			<p>and Private sector who not only collect information but also use the same for business purposes with customers.</p> <p>5. Business Houses who indulge in due diligence for collaboration, take-over bids and investments in India-be it FDI route or otherwise.</p> <p>6. Any other person, Individual, proprietorship, partnership and limited companies enagaged in any kind of information gathering.</p> <p>7. Parents who desire to ascertain eligibility of prospective brides/grooms for their children before</p>
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			matrimonial alliance etc.
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3.	Clause 2(1)(g) of PDA (R)Bill, 2007	1.The Committee recommends for a clear definition of areas of work of the PDAs, which will be specified in a separate schedule to be included as part of the Bill. In other words, only those activities which are laid down in the Schedule can be undertaken by a licensed PDA. The term "Collection of Information" viz its manner, methodology,	The report mostly talks about likely infringements of fundamental or legal rights of citizens and security and integrity or privacy of citizens being affected. What about the fundamental or legal rights of PDAs (including media) for acquiring knowledge
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		<p>timings, storage, retrieval, ownership, usage and commercial aspects of such information and mode/sources of collection will be further elaborated in the code of ethics and the code of conduct to be laid down by the Regulatory Institution in this regard.</p> <p>2.The Licensed PDAs should not be allowed to carry on any such work which is expressly forbidden in the proposed Bill. Any person/entity other than a licensed PDA will not be able to undertake even the permissible activities. <b>No private person/entity other than the state agencies can undertake the expressly forbidden activities.</b> In other words, what a licensed PDA can do and cannot do will be clearly defined in the Bill.</p> <p>3.The Private detectives will be allowed to work only in the non-Government sector and they would not investigate into bonafide activities/affairs of the State. In no case the PDAs will enter into the work of IB, RAW and CBI which are investigating agencies of the state. They would be allowed only to work in the private sector within the defined areas of work to be mentioned in the bill.</p> <p>4.If the provisions relating to jurisdiction and functions are left unguided, unregulated and open ended, it might lead to infringement of fundamental or</p>	<p>and of profession. These rights would get infringed if barbed wire of activities or “DOs” and “Don’t” are made part of the Bill to restrict bonafide rights. As far as the activities of PDAs are concerned it is essentially clear that the work of IB, R&amp;AW and CBI is beyond their purview and jurisdiction. State subject can only be looked into by law-enforcement agencies of the Government and not by PDA. It should be left to the discretion of IB, R&amp;AW and CBI to enlist or desist services of PDAs. No encroachment of Governmental turf is involved. PDAs could always be utilized by Governmental agencies as eyes and ears to assist them and not without control.</p>
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		legal rights of citizens and security and integrity or privacy of citizens may be affected.	
4.	PDA( R) Bill	<p>1) The investigating agencies get the mandate from the various procedural, substantive and criminal laws such as Cr. P.C. 1973, Indian Evidence Act, 1872, IPC, Police Act and other special legislations. The powers vested in the State investigating agencies by law are not available to PDAs. In any case the evidentiary value of the information collected by a PDA shall be determined by the provisions of the Indian Evidence Act, 1872 which will not be same as applicable in the case of evidence collected by the State Agencies. The Courts will (criminal and civil) accordingly deal with the evidence produced before it by the prosecution/defence and parties to the litigation depending upon which agency has produced the same.</p> <p>2.The Committee feels that there would be no conflicts between the PDAs and police because their areas of work/operation has now been clearly defined and demarcated. If any private detective agency gives information contrary to information furnished by police it is for the Courts to weigh the evidence produced by the two and establish the truth.</p> <p>3.The evidence furnished by a PDA or an agent would thus be like that of any private person</p>	<p>The Indian Evidence Act, 1872 deals with all types of Relevant &amp; Irrelevant, direct and indirect, admissible and inadmissible evidences under various provisions. All these provisions are state of art definitions and need no changes for incorporating evidence of PDA specially. Even otherwise state agencies are already governed by various provisions of the Evidence Act. Thus APDI agrees that both the criminal and civil courts in India would evaluate evidence as per existing provisions. There is not likely to be any ambiguity in the evidence collected by State agencies and PDAs as their areas of operations are clearly different. Thus the evidence furnished by PDAs would fall into categories defined for any private person, witness or</p>

		called upon by the Court to give evidence.	expert as the case may be.
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5.	Clause 8,9 & 10 of PDA (R) Bill,2007.	<p>1.As per article 19(1) of the Constitution a citizen has right to practice any profession or carry on any occupation, trade or business. The PDAs are thus carrying out a business or profession. However with the enactment of the bill, it is expected that there will be some regulation of the activities done by the PDAs who would be working within the legal parameters and would be accountable to a regulatory authority. Of course, since these agencies would be regulated through the Act and would need a license to operate, it would give recognition to the agencies under the law but there would be no issue of regularization of their illegal or non-permissible activities in any manner.</p> <p>2.The Bill provides for conditions to be eligible to become a PDA which include the physical fitness and completion of successful detective training by an individual. In addition, the PDA is required to get the character and antecedents of the private detective agents verified whom they propose to employ. Thus, the induction of agents in a PDA shall be streamlined and only trained individuals shall be employed as private detective agents.</p>	<p>1.APDI agrees with the observations of the committee with regard to provisions of Article 19(1) of the constitution which bestows right of profession, trade, occupation of PDAs. Also that PDAs would earn the license and would therefore, be regulated by the Act for streamlined practices. No enactment accepts or regularizes any illegal or non-permissible activities of any manner which are otherwise prohibited under any other law.</p> <p>2.APDI also endorses the view that physical fitness, training and verification of antecedents of PDAs would be governed by the Act and only trained individuals shall be employed.</p> <p>3. A National Register to enlist licensed PDAs can always be maintained by the</p>
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		<p>3.It is proposed to maintain a national register of Private Detective Agents, wherein a person having completed the required education and training will be eligible to get himself/herself registered. If the conditions specified in the license granted to a PDA are violated intentionally by the PDAs or its agents, the license of the agency is liable to be cancelled.</p> <p>4.If an individual Agent is found to be involved in any illegal activity or violates any provisions of this Act or rules framed under he/she will make himself liable for his name being struck off from the national Register of Certified Agents for a specified period of time or on a permanent basis. In addition, they can also be prosecuted for civil and criminal liabilities by the State or the private individuals under the relevant provision of IPC, Cr. Pc and other relevant Laws like any other citizen.</p> <p>5.Under these circumstances, the working of the PDAs could be expected to improve significantly and there would be an effective check on their undesirable activities. The Bill does not confer any legal sanctity on the report and findings of the PDAs.</p>	<p>designated authority wherein cancelled licenses for violation by PDAs would also find a mention.</p> <p>4.PDAs would be governed by rules to be framed for any violation. No legal sanctity is envisaged for the report and findings of PDAs.</p>
6.	Clause g(2) of PDAR, Bill 2007	1.The aim of the clause in the proposed legislation is that	The Govt. must keep a cardinal

		<p>control over such companies or agencies should be in Indian hands. The issue of pattern of share-holding had been considered when the Bill was formulated. It was observed that this activity was not included in the sectors where FDI is prohibited or any sectoral caps are stipulated. Thus, making 100% FDI through automatic route possible. Therefore, a decision was taken to impose a condition as indicated in clause 9(2) of the Bill.</p> <p>2.In addition, it is also recommended that an additional condition for a person to become a Private detective agent could be to be an Indian citizen. This will ensure that all the Agents which can be employed have to be necessarily Indian citizens and even a minority foreign shareholding is unlikely to have any adverse social impact or conflict with internal security or privacy of individuals.</p>	<p>principle in mind. No law of land in any country permits investigation within its geographical limits by any other country's Governmental law-enforcement agencies. Detection, investigation &amp; collection of evidence by other country's police is absolutely prohibited and other methodologies have been evolved to get any such investigation done. INTERPOL treaties, Letter of Rogatory by court of one country to counterpart court in other country are the permissible routes. How then a company, firm or an association of persons of another country can be allowed to seek and earn a license as PDA in another country? This permissibility even after incorporating conditions of Indian citizenship or a registered company in India, would jeopardize the security and</p>
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			<p>intelligence concerns of India. Even in those countries where PDAs are licensed, no other country's licensed PDAs are allowed to operate. World Association of Detectives works like INTERPOL to accommodate lawful investigations through their counterpart members of WAD. India, by allowing majority share holding by foreigners, even though through separately registered company in India would undermine security if PDAs from Foreign Detective Agencies are allowed to earn a license in India as PDA.</p>
7.	Clause 9 (2) of PDA (R) ,Bill 2007	<p>1.The registration clause has been kept so that those companies which are registered outside, may not operate directly but should do so through a company registered in India which will be accountable to the law of the country.</p> <p>2.In addition, it is also recommended that an additional condition for a person to become a Private Detective</p>	<p>This clause needs very guarded examination of the recommendation of the Committee as flood-gates would be opened to allow legal entry of Multinational corporations for detective work in India. Merely making a provision</p>

		<p>Agent would be to be an Indian citizen. This will ensure that all the Agents which can be employed have to be necessarily Indian Citizens and even a minority foreign shareholding is unlikely to have any adverse social impact or conflict with internal security or privacy of individuals.</p>	<p>for operations in India through a company to be registered in India is not enough. The fact would remain that the Indian Company would be controlled by Multinational Detective Corporation abroad. Even if condition for being an Indian citizen is incorporated, the accountability to foreign corporations would remain the same. Very sensitive security related concerns of India would be available at close range for those Indian disguises of Multinational detective Corporations. Even now Chartered Accountant Companies (about 18 in all) of Multinational entities are operating in India and are actively engaged in corporate intelligence and investigations under their "Forensic Accounting Divisions."</p>
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8.	Clause 2(h) of PDA(R) Bill, 2007	<p>1.The main objective of the Bill is to regulate the functioning of PDAs and towards that end providing a licensing regime which inter alia would enable a check on antecedents of the companies/persons engaged in private detective work, as also on their activities. All this would have a profound interaction and discourse/transactions with internal security and related matters. Merely because it involves the rendering of a service to consumer would not make the subject fall under the purview of the Department of Consumer Affairs as there are more serious issues of information security, individual privacy and criminal conspiracy against the state or the individuals involved.</p> <p>2.A similar example is that of Private Security Agencies Act,</p>	<p>Like Private Security Agency (Regulation) Act, 2005 the proposed PDA (R) Bill 2007 needs to be administered by MHA alone and the Deptt. Of Consumer Affairs has no role to play. The subject matters being regulated by PDA(R) Bill, 2007 do fall within the purview of MHA alone.</p>

		2005, under which though a consumer hires the services of private security guards but the Act is administered by the MHA as licensing of such agencies has been vested in the hands of State Licensing authorities, which are under legal obligation to consider their application for grant of a license to operate and regulate their affairs.	
9.	Clause 28 of PDA(R) Bill, 2007	The Committee noted that the privacy of an individual is protected under provisions contained in the Article 21 of the Constitution on Right to Liberty, though there is no privacy law in the country. However, the issue of privacy law has been discussed at various fora and there are several Court Judgements which are in the nature of law and determine/define the individual privacy and there is no major difficulty in determination of limits of individual privacy. Therefore, even in the absence of any Privacy Law in India, the PDAs would be bound to respect and maintain the privacy of any Individual/entity as enunciated in the various court rulings and pronouncements on the subject. Any infringement of this provision will attract penal provisions and the Bill should incorporate provisions to this effect. Clause 28 of the Bill is specifically designed to take care of this issue.	The recommendations of the committee to the effect that “therefore, even in the absence of any privacy law in India, the PDAs would be bound to respect and maintain the privacy of any individual/entity as enunciated in various court ruling and pronouncements on the subject” are acceptable to APDI. Clause 28 of the PDA(R) Bill, 2007 takes care of penal provision and no change is required.
10.	Clause 5 of PDA(R)Bill, 2007	The Committee viewed that constitution of Central Board and State Board is an important element of the policy decision of	The recommendations of the committee about the

		<p>sovereign authority and as such an essential function which cannot be delegated to an ancillary body or else it would amount to excess delegation. So the qualification and experience of Chairperson and Members of the Boards should be provided in the Bill itself.</p> <p>The Central Board Chairman should have served the Government of India or a state Government at a level equivalent to an Additional Secretary to Government of India. A Member of Central Board should have served at least for a period of three years at the level of Joint Secretary to Government of India. The qualification of Chairperson of a State Board would be same as the member of the Central Board. The Members of the State Board must have served the Government of India or the State Government at the level of DIG of Police or a Director in the Government of India or an equivalent level in the armed forces.</p>	<p>qualification or background of Board members is acceptable to the extent that it should be provided in the Bill. However, since the PDA(R)Bill, 2007 is to be administered by MHA on account of the fact that the subjects of crime, enforcement and security fall under MHA, qualification for Chairman and Members of Central Board must include that they should have served any Central Board or State law enforcement agency in the rank of IG and above. Atleast Central Board must stipulate law-enforcement background of IG rank. For State Boards, the recommendations are acceptable.</p>
11.	Clause 20(1) of PDA(R),Bill,2007	1.As regards the scope of cognizable offence which is required to be reported by PDAs to the police, the Committee feels that like any citizen of the country, during the course of discharge of duty, if any cognizable offence comes to the notice of a Agent, he shall bring	The recommendations of the Committee are that the provisions in Clause 26(1) of PDA(R)Bill, 2007 already cover the aspect of PDAs being duty bound to report to the police

		<p>it to the notice of his superior and /or the police.</p> <p>2.The private detective agents have a responsibility as a common citizen as per section 39 of Cr.P.C. In addition, the clause 26(1) of the Bill relating to cognizable offence, prescribes that if the commission of any cognizable offence is noticed by any private detective agent during the course of discharge of his duties, he shall bring it to the notice of his superior immediately who in turn shall forthwith inform the police either through his employer of agency or on his own.</p>	<p>about any cognizable offence coming to their notice as per applicability under section 29 of Cr.P.C to common citizens is acceptable to APDI without any change</p>
12.	The entire PDA(R), Bill, 2007	<p>1.The Ministry of Law and Justice was earlier consulted in the matter and they had mentioned that it does not appear to be a legal issue.</p> <p>2.The Committee recommends that it does not appear necessary to make a provision in the Act as the evidentiary value of the information collected by PDA shall be regulated by the provisions of the Indian Evidence Act, 1872 in the same way as the court deals with evidence produced before it by the prosecution/defence and parties to the litigation. No amendment in Evidence Act is contemplated with reference to the present Bill.</p>	<p>APDI agrees to the opinion of Ministry of Law and Justice that evidentiary value of PDAs report is not a legal issue. APDI also agrees with the committee's observation that reports of PDA and their evidentiary value are to be regulated by the provisions of the Indian Evidence Act, 1872 in the same way as the courts deal with evidence produced before it by prosecution/defence and parties to the litigation. No amendment in the</p>

			Evidence Act, 1872 is required.
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In View of the fact that the Committee has already examined each clause of the Bill and has made its recommendations, there is no need to include a list of activities on each clause to be included in a separate schedule on which licensed PDAs can work. It is already covered that PDAs will not have any overlapping or encroaching jurisdiction of activities over the law enforcement agencies, IB, R&AW and CBI and it is, therefore, abundantly clear that only private investigation would be the jurisdiction of PDAs which is restricted to “Lawful manner” and for “ Lawful objective”. Moreover the list of “Do’s” and “Don’t’s” as are proposed to be included in the schedule of the Bill are contradictory in intent and purposes and would further complicate the issues. It is generally acceptable that Anti-counterfeiting (of) security related matters, documents (Currency, stamp papers etc); subjects already under investigation with police (be it matrimonial or theft or cognizable offences ;Forensic investigations; subjudice cases etc) would remain beyond purview of PDAs. As such there should be no separate schedule in the Bill which would prescribe or proscribe fields or subjects of investigation.

**Insertion of clause 19A in the PDA(R)Bill, 2007 about “Right to privacy not to be interfered by a Private Detective Agent or a Private Detective Agency”.**

This recommendation of the Committee tends to create discrimination vis-à-vis citizens of India (Including Print and electronic media) and Private Detective Agents. There are no privacy laws in India and various courts (including supreme court) have examined the issues and have decided broad-based principles of privacy. No court or Government has ever considered it essential to pass an enactment to define privacy laws in India. The reason for not bringing in a legislation is that there is often the question of deciding whether it is a “Business” under Article 1(g) of the Constitution of India, or is it an activity deserving protection under Article 19 1(a) as a “Right to freedom of speech and expression” in the matter of News Media. There is also the right to “Knowlegde” and to “information”. The rights of a citizen and rights of professionals cannot be on different footing. While News Media enjoys Freedom of Speech and also expression (including freedom of circulation), the PDAs are engaged in only collecting permissible information in a “lawful manner” and “for lawful purpose” for clients only. Article 19 1(g) does not abrogate or limit the rights enshrined in Article 19 1(a) of the Constitution. The placement of Article 19 within the Constitution is rather significant. It finds a place in Part III of the Constitution and is, therefore, a “Fundamental right”. Pertinently, part III of the Constitution does not only confer fundamental rights but also confirms their existence and gives them protection. Hence, even a right to enforce a fundamental right by moving the Supreme Court is guaranteed under Article 32 of the Constitution as a fundamental right.

Further fundamental rights form a part of the “basic structure” of the constitution and cannot be amended. Thus while Freedom is not absolute, there is no absolute power to diminish it either.

It is best to abide by the recommendation of the Committee made with regard to Clause 28 of the PDA(R), Bill, 2007 wherein it has specially mentioned that -**“Therefore, even in the absence of any Privacy Law in India, the PDAs would be bound to respect and maintain the privacy of any Individual/entity as enunciated in the various court rulings and pronouncements on the subject. Any infringement of this provision will attract penal provisions and the Bill should incorporate provisions to this effect. Clause 28 of the Bill is specifically designed to take care of this issue”**.

“If “privacy laws” are defined in the PDA (R)Bill, 2007 every court would give it a different interpretation and a turmoil would result

**Mr. V M Pandit**  
**President-APDI**