

Bill No. 130 of 2022

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 2022

By

SHRI UNMESH BHAIYYASAHEB PATIL, M.P.

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BILL

further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Seventy-third year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2022.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

5 of 1974

2. In section 2 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) —

Amendment of section 2.

(a) after clause (j), the following clause shall be inserted, namely:—

“(ja) “ malicious prosecution” means instituting the prosecution complained of without any existing reasonable or probable cause;” and

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(b) after clause (x), the following clause shall be inserted, namely:—

“(xa) “wrongful prosecution” means malicious prosecution or prosecution instituted without good faith, which concluded in favour of the accused, and includes any of the following, namely:—

(i) making or fabricating a false or incorrect record or document for submission; 5

(ii) making a false declaration or statement before an officer authorised by law to receive as evidence when legally bound to state the truth that is to say by an oath or by a provision of law;

(iii) otherwise giving false evidence when legally bound to state the truth that is to say by an oath or by a provision of law; 10

(iv) fabricating false evidence for submission;

(v) suppression or destruction of an evidence to prevent its production;

(vi) bringing a false charge, or instituting or cause to be instituted false proceedings against a person; 15

(vii) committing a person to confinement or trial acting contrary to law;

(viii) acting in violation of any law in any other manner not specifically covered under (i) to (vii) above;”.

Amendment of section 357C.

3. In section 357C of the Code,—

(a) for the words “first aid or medical treatment”, the words “first aid or medical treatment and mental healthcare” shall be substituted; and 20

(b) the following provisos shall be inserted, namely:

“Provided that mental healthcare shall be provided by a mental healthcare practitioner who may be a psychotherapist, counsellor, psychoanalyst, who has a degree in psychology and is eligible to provide therapy or counselling; 25

Provided further that such mental healthcare shall be provided in a routine manner, throughout the course of the investigation and trial, and progress noted, as per rules as may be prescribed by the Central Government:

Provided also that the consent of the victim to undergo or deny mental healthcare shall be taken in writing by the mental healthcare practitioner in such manner as may be prescribed; 30

Provided also that mental healthcare service shall be carried out under the aegis of the State Mental Health Authority as constituted under the Mental Healthcare Act, 2017 (No. 10 of 2017).”.

Amendment of section 358.

4. In section 358 of the Code, in sub-section (1), for the words “one thousand rupees”, the words “twenty thousand rupees” shall be substituted. 35

5. After section 358 of the Code, the following sections shall be inserted, namely—

Amendment of section 358.

358A. (1) An application seeking compensation for a wrongful prosecution may be made:—

Application for compensation for wrongful prosecution.

(a) by the accused person, who has sustained the injury; or

5 (b) by any agent duly authorised by the accused person, who has sustained the injury; or

(c) where the accused person died either before or after the termination of the wrongful prosecution, by all or any of the heirs or the legal representatives of the deceased:

10 Provided that where all the heirs or the legal representatives of the deceased have not joined in any such application for compensation, the application shall be deemed to have been made on behalf of and for the benefit of all the heirs and the legal representatives of the deceased.

15 (2) Every application under sub-section (1) shall be filed, at the option of the applicant, either in the Court of Magistrate as authorised and empowered by the High Court having superintendence and jurisdiction over the area in which the wrongful prosecution occurred in such manner as may be prescribed.

20 (3) In case of longer incarceration exceeding six months, the magistrate so empowered may, after providing an opportunity of hearing to the applicant and the other parties, award interim compensation to the applicant, if so claimed, to facilitate his immediate rehabilitation, such compensation which shall not exceed fifty thousand rupees, but in any case shall not be less than twenty five thousand rupees.

25 (4) Every application for compensation under sub-section (1) shall be preferred within a period of two years from the date when acquittal attains finality:

Provided that the Magistrate so empowered may entertain the application after the expiry of the said period of two years but not later than three years, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

30 *Explanation 1.*— For the purpose for this section—

(a) “injury” means any harm caused to any accused, of body, mind, reputation or property, actual or as a probable result of the wrongful prosecution; and

35 (b) “compensation” includes pecuniary or non-pecuniary compensation, or both; whereas the non-pecuniary compensation includes counselling services, mental health services, vocational or employment skills, development, and such other services or assistance that the accused may require to facilitate reintegration into society.”.

Appeal.

358B. (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Magistrate so empowered under sub-section (2) of section 358A may, within a period of ninety days from the date of the award, prefer an appeal to the High Court.

(2) No appeal by the person, who is required to pay any amount in terms of such award, shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is higher, in the manner as may be prescribed. 5

(3) The High Court may entertain an appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. 10

(4) No appeal shall lie against an award of a Magistrate so empowered if the amount awarded is less than fifty thousand rupees.

Power to make rules.

358C. (1) The Central Government or as the case may be the concerned State Government, by notification, make rules for the purpose of carrying out the purposes of this Chapter. 15

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the form of making application for claims for compensation and the particulars it may contain, to be paid in respect of such applications under sub-section (2) of 358A; and 20

(b) the form and the manner of the payment of amount for preferring an appeal against an award of a Magistrate under sub-section (2) of section 358B.

STATEMENTS OF OBJECTS AND REASONS

Violence, and in particular sexual violence, violates the body and intrinsic human rights, but also has an indelible and long-lasting impact on the victim's life and psyche. Anxiety, depression, low self-esteem, suicidal tendencies, is typical repercussions of a violent experience. In a short term, a victim experiences fear, nightmares, anger, shame, guilt and even a combination of all of these and more. If untreated, these can also manifest more serious issues such as Post Traumatic Stress Disorders.

Recognizing such impact, the Ministry of Health and Family Welfare Guidelines and Protocols for Medico Legal Care for survivors/victims of sexual violence (MOHFW, 2014) prescribes psychological counselling as a mandate but this has been found to be a largely unimplemented practice (PLD, 2015). These guidelines have been adopted by only nine States and even there, they are seldom followed (Human Rights Watch, 2017). The victims are therefore; left alone to fight these demons that they develop due to the traumas of sexual assault and a need is felt of a mental healthcare professional to guide them through, safely.

As acknowledged by the Hon'ble Supreme Court of India in *Delhi Domestic Workers Union vs. Union of India* 1995 SCC (1) 14, undergoing the procedures of the criminal justice system leads to added trauma, humiliation, and severe psychological stress, with the victim forced to recount every detail of their suffering multiple times throughout the course of the trial. Thus, mental healthcare becomes paramount not just to ease the trials and tribulations of the victim, but to also help them start their healing process and be on the road to recovery.

The Hon'ble Supreme Court, in *Charles Sobhraj vs. Supdt. Central Jail, Tihar*, AIR 1978 SC 1514, established that 'life and personal liberty' must include a dignified life. Further, in the case of *Consumer Education and Research Centre vs. Union of India* 1995 AIR 992, the Apex court held that the right to health and access to health care is an important facet of living a dignified life, therefore it is the State's responsibility to ensure ease in access. In *Re: Inhuman Conditions in 1382 Prisons*, the Apex court in a landmark judgement established the importance of mental health professionals in the criminal justice system. The court therefore included mental health as an integral part of an individual's life under Article 21, and the State assumed responsibility to uphold such a right. Thus, the State must, by way of this amendment, make available such a right for all victims of sexual violence.

In both the Protection of Women from Domestic Violence Act, 2005 and Protection of Children from Sexual Offences Rules, 2020, a mechanism of mandated psychological care to victims has been envisaged. By way of this amendment, an attempt is being made to extend that system to benefit victims of sexual crimes.

Furthermore, the Code of Criminal Procedure prescribes for compensation to people arrested groundlessly under Section 358, however, the amount prescribed under the said section remains to be rupees one thousand which is not the right pecuniary compensation for the loss of liberty and loss of dignity said person has suffered. Hence, the aim of the amendment is to increase the said compensation amount and allow the magistrate to award compensation to such persons who are victims of false FIR's and arrests in consequence to that upto rupees twenty thousand. The amendment further moves to add sections which protects a person and provides for pecuniary compensation for wrongful prosecution. It empowers the magistrate to provide for a magistrate empowered by High Court which has superintendence and jurisdiction over such area to protect such persons and compensate them after and if they move application against their wrongful prosecution which has left repercussions and consequences deterrent to their dignity and prestige in the society.

Hence this Bill.

NEW DELHI;
4 July, 2022.

UNMESH BHAIYYASAHEB PATIL

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the bill provides that mental healthcare shall be provided not just once, but in a routine manner, throughout the course of the investigation and trial, and progress noted, as per rules that may be prescribed by the Central Government.

The rules will relate to matters of detail only. The delegation of legislative power is of a normal character.

ANNEXURE

EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE, 1973

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2. In this Code, unless the context otherwise requires,— Definitions.

(a) * * * *

(j) “local jurisdiction”, in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify;

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(x) “warrant-case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

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357C. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident. Treatment of victims.

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358. (1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit. Compensation to persons groundlessly arrested.

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further to amend the Code of Criminal Procedure, 1973.

(Shri Unmesh Bhaiyyasaheb Patil, M.P.)