

Bill No. 15 of 2023

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT)
BILL, 2023

By

DR. MOHAMMAD JAWED, M.P.

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BILL

further to amend the Code of Criminal Procedure, 1973.

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

1. (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2023.

Short title and
commencement.

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

Amendment of
Section 2.

2. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), in section 2– 2 of 1974

(a) after clause (c), the following clause (ca) shall be inserted, namely:–

‘(ca) “compensation” shall include, but not limited to, monetary and non-monetary counselling, health services, re-integration in society through skill training, relief of the harm or injury, including body, mind or reputation, suffered by malicious prosecution;’; and 5

(b) after clause (j), the following clause (ja) shall be inserted, namely:–

‘(ja) “malicious prosecution” means instituting prosecution without any existing reasonable or probable cause, with malice or wrongful prosecution instituted without good faith and includes any of the following but not limited to, namely:– 10

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

(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; 15

(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;

(iv) fabricating false evidence for submission; 20

(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;

(vii) committing a person to confinement or trial acting contrary to law; 25

(viii) restraining or confining a person, without application of mind, while instituting a complaint after receiving information under section 154;

(ix) acting in violation of any law in any other manner not specifically covered under (i) to (viii) above.’. 30

Insertion of new
Chapter XXVII.

3. After Chapter XXVII of the Code, the following Chapter and sections thereunder shall be inserted, namely:–

CHAPTER XXVIIA

Compensation to Person Maliciously Prosecuted 35

Application for
compensation.

365A. (1) An application seeking compensation for a wrongful prosecution may be made:–

(a) by the accused person who has been maliciously prosecuted and has suffered injury; or

(b) where the accused person died either before or after the termination of wrongful prosecution, by all or any of the heirs or the legal representatives of the deceased: 40

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 legal representatives of the deceased. 45

(2) Every application under sub-section (1) shall be filed preferred in the court where trial has been concluded or where the applicant resides.

(3) **In case of incarceration for more than three months, in lieu of malicious prosecution the court may after hearing the applicant, award interim compensation to the applicant, for the injury suffered, which shall not be less than rupees one lakh.**

(4) Every application for compensation under sub-section (1) shall be made within a period of one year from the date of acquittal or discharge or closure report filed by the officer, as the case may be:

Provided that the applicant may file application, after the expiry of the said period of one year if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed time.

Explanation.— For the purpose of this section “injury” means monetary and non-monetary harm, of mind, body or reputation or any other kind connected therewith or incidental thereto, suffered during the prosecution, maliciously or wrongfully initiated.

365B. Where the court allows the application for compensation, it may direct that an interest at the rate of nine per cent in addition to the compensation, shall also be paid from the date of such application:

Award of interest on compensation.

Provided, in case the investigating officer or a Government agency has instituted a case, which concluded in favour of the applicant or accused, due to malicious prosecution, the court shall direct the State Government or Central Government, as the case may be, to pay the compensation, awarded by the court to the applicant herein after hearing the applicant and also initiate a judicial inquiry on such investigating officer or the investigating agency.

365C. While adjudicating the quantum of compensation under section 365A the court may, but not limited to, take into account the following factors, namely:—

Factors to be taken into account by the court awarding compensation.

- (i) gravity of offence and punishment therein;
- (ii) loss of health;
- (iii) loss of income;
- (iv) loss of livelihood;
- (v) loss of reputation;
- (vi) loss of property;
- (vii) loss of opportunities;
- (viii) psychological and physiological harm or injury;
- (ix) disqualification suffered due to malicious prosecution;
- (x) loss to lead a dignified life in the family; and
- (xi) such other factor as the court may deem fit for the ends of justice or to prevent miscarriage of justice.

365D. (1) Every State Government shall, in co-ordination with the Central Government, prepare a scheme for providing funds for the purpose of compensation to the person maliciously prosecuted or his dependents heirs who have suffered loss or injury as a result of the malicious prosecution and who require rehabilitation.

Compensation scheme for the person maliciously prosecuted.

(2) Whenever a recommendation or direction, as the case may be, is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall be the nodal authority to dispense or release of the fund so directed to be awarded by the court.

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(3) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the person maliciously prosecuted, may be directed, but not limited to, for immediate first-aid facility or medical benefits or mental health counselling or health services or vocational or skill development training for re-integration into the society, to be made available free of cost on such direction of the court awarding compensation in terms of either monetary or non-monetary, or any other interim relief as the appropriate court may deems fit.

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Appeals.

365E. (1) Any person aggrieved of the interim compensation awarded by the court of the first instance under sub-section (3) of section 365A, may prefer an appeal within the period of ninety days from the date of the award to the High Court.

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(2) No appeal shall lie against the interim award of the court of first instance.

Power to make rules.

365F. (1) The Central Government or State Government, as the case may be, by notification, make rules for the purpose of carrying out the purposes of this Chapter.

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(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 365A;

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(b) the procedure to be followed by a Court in holding an inquiry and the powers vested in a Civil Court which may be exercised by a Court;

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(c) the form and the manner of the payment of amount for preferring an appeal against an award of the Court under sub-section (1) of section 365D; and

(d) any other matter which is considered necessary.

(3) Every rule made by a State Government under this section shall be laid, as soon as may be after it is made, before the State Legislature.

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STATEMENT OF OBJECTS AND REASONS

Restraining or confining the liberty of the human being must be in exceptional circumstances rather than a normal routine through powers vested in law. Article 21 of the Constitution says, ‘no person shall be deprived of his life and personal liberty except in accordance with procedure established by law’ and Article 22 provides for protection against arbitrary arrests and illegal detention. The administration of justice would be defied if the law of the land is moulded in a way that does not prohibit an individual from maliciously or wrongfully prosecuting the person in question. Malicious prosecution adds to the already burdened criminal justice system. Depriving a person of their liberty because of malicious prosecution is a direct violation of their fundamental right. Further, confinement leads to the loss of productive years, which a free person could have used for leading a dignified life, the loss of education, the loss of health, the loss of income, loss of livelihood, loss to lead a family with dignity, and loss to reputation etc. The international covenants, to which India is a signatory, protect a person from wrongful prosecution, but the implementation of the same has not been done. Article 14(6) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) delineates the obligation of States in cases of miscarriage of justice resulting from wrongful prosecutions. It states that “when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new and newly-discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him”.

Article 9(5) of the ICCPR further underscores this right by declaring that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.

The United Nations Human Rights Committee explained the obligations contained in Article 14 of ICCPR: “It is necessary that States parties enact legislation ensuring that compensation as required by this provision, can in fact be paid and that payment is made within a reasonable period of time”. Not all countries party to this have substantiated it with their domestic amendments or laws.

The National Crime Records Bureau’s (NCRB) annual statistical report called the ‘Prison Statistics India (PSI)’ contains information with respect to prisons, prisoners, and prison infrastructure. According to PSI 201513, there were 4,19,623 prisoners across the country; out of which, 67.2% *i.e.* 2,82,076 were undertrials substantially higher than the convict population *i.e.* 1,34,168 (32.0%). With respect to the issue of miscarriage of justice under consideration here, the period of incarceration of the undertrials also needs to be taken into consideration. The data shows that 25.1% (70,616) of the total undertrials spent more than a year in prison; 17.8% (50,176) spend up to 1 year in prison as undertrials, 21.9% (61,886) of the undertrials were in prison for

3 to 6 months, and 35.2% (99,398) undertrials spent up to 3 months in prison. Also to be noted is the data of release, which shows that during the year 2015, 82,585 prisoners were released by acquittal, and 23,442 prisoners were released in appeal. As per International report released, India, has one of the highest undertrial prisoners in the world.

The apex court considering state of affairs expressed anguish over person languishing in jails such as in *Thana Singh v. Central Bureau of Narcotics* 2(2013) 2 SCC 590. See also: *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, Patna, AIR 1979 SC 1369*; *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and Ors. (1994) 6 SCC 731*, observing: “The laxity with which we throw citizens into prison reflects our lack of appreciation for the tribulations of incarceration; the callousness with which we leave them there reflects our lack of deference for humanity.

It also reflects our imprudence when our prisons are bursting at their seams. For the prisoner himself, imprisonment for the purposes of trial is as ignoble as imprisonment on conviction for an offence since the damning finger and opprobrious eyes of society draw no difference between the two..”. After the *Maneka Gandhi v. Union of India, AIR 1978 SC 597*, Hon’ble Supreme Court of India gave a much needed interpretation of Article 21 of the Constitution of India, the courts started to consider awarding compensation in cases of undue detention and bodily harm. *Khatari & Ors. v. State of Bihar & Ors., AIR 1981 SC 928* (the Bhagalpur Blinding case) was one of the earliest case wherein the question was considered as to whether a person deprived of his life and liberty in violation of Article 21 be awarded relief by the court or not and the court further ordered the State to meet the expenses of housing the blinded victims in a blind home in Delhi.

The court in *Rudal Sah v. State of Bihar AIR 1983 SC 1086*, where the Supreme Court, passed an order of compensation for the violation of Articles 21 and 22 of the Constitution. In this case the petitioner was unlawfully detained in prison for 14 years after the order of acquittal. The court observed thus: “One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt”.

Afterwards, the *Boma Chara Oraon* case, where the Supreme Court declared that anyone deprived illegally of his life or personal liberty can approach the Supreme Court and seek compensation for violation of his fundamental right under Article 21. The need to compensate the victims of wrongful arrests, incarceration etc. by awarding “suitable monetary compensation”, the Supreme Court in the case of *Bhim Singh, MLA v. State of J & K & Ors. (1985) 4 SCC 677* opined that the mischief, malice or invasion of an illegal arrest and imprisonment cannot just be “washed away or wished away” by setting free the person so arrested or imprisoned.

The Court awarded a sum of Rs. 50,000/- as compensation for illegal detention but, it is noteworthy that it did not delve into the reasoning or mechanism of how this “suitable monetary compensation” was determined

or should be determined in similar cases. Furthermore, getting into the question of “who will pay the compensation” the Supreme Court in the case of *SAHELI, A women’s resource center v. Commissioner of Police, Delhi* AIR 1990 SC 513, held the vicarious liability of the State *i.e.* the State to responsible for the tortious acts of its employees; and, ordered the Delhi Administration to pay the compensation for police atrocities which lead to the death of a 9 year old child; further noting that the Delhi Administration has the option to recover the amount paid from the officers found responsible. Further, plethora of judgements of the court such as in *Nilabatibehera and D.K. Basu* talked about police atrocities and awarding compensation. Therefore, plethora of judgements of Supreme Court talked about compensation to person wrongfully prosecuted or unduly incarcerated, which is barred by law in common parlance. Even the Delhi High Court in the case of *Babloo Chauhan @ Dabloo vs. State Government of NCT of Delhi* 247 (2018) DLT 31 expressed its concerns about wrongful implication of innocent persons who are acquitted but after long years of incarceration, and the lack of a legislative framework to provide relief to those who are wrongfully prosecuted. The Court, *vide* its order dated 30 November 2017, specifically called for the Law Commission of India to undertake a comprehensive examination of issue of relief and rehabilitation to victims of wrongful prosecution, and incarceration and held “There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated. The instances of those being acquitted by the High Court or the Supreme Court after many years of imprisonment are not infrequent. They are left to their devices without any hope of reintegration into society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls.

The possibility of invoking civil remedies can by no stretch of imagination be considered efficacious, affordable or timely... .The decisions in *Khatri vs. State of Bihar* (1981) 1 SCC 627; *Veena Sethi vs. State of Bihar* AIR 1983 SC 339; *RudulSah vs. State of Bihar* AIR 1983 SC 1086; *Bhim Singh vs. State of Jammu and Kashmir* (1985) 4 SCC 677 and *Sant Bir vs. State of Bihar* AIR 1982 SC 1470, are instances where the Supreme Court has held that compensation can be awarded by constitutional courts for violation of fundamental right under Article 21 of the Constitution of India. These have included instances of compensation being awarded to those wrongly incarcerated as well. But these are episodic and are not easily available to all similarly situated persons. There is an urgent need, therefore, for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration... Specific to the question of compensating those wrongfully incarcerated, the questions as regards the situations and conditions upon which such relief would be available, in what form and at what stage are also matters requiring deliberation...” after which the 277th Law Commission report in furtherance of the order of the Hon’ble Delhi High Court recommended for the formation of a legislative framework in lieu of compensation to person maliciously prosecuted.

In the prevalent time wherein registration of FIR has become a norm than a need, when a crime has taken place, so as to subvert the due process of law

and falsely, maliciously or wrongfully incarcerate the person lead to abuse of law or manipulation of law according to whims and fancies of the sovereign. Thereby, there is indeed a need of legislative framework so to compensate the sufferings of the wrongfully or maliciously incarcerated and his/her family.

Therefore, this bill is produced herein below.

Hence this Bill.

NEW DELHI;
20 July, 2022.

MOHAMMAD JAWED

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117(1) AND 117(3) OF THE CONSTITUTION

[Copy of letter No. 23.08.2022-Judl.Cell-I dated 12 January, 2023 from Shri Ajay Kumar Mishra, Minister of State in the Ministry of Home Affairs to the Secretary General, Lok Sabha].

The President, having been informed of the subject matter of the Code of Criminal Procedure (Amendment) Bill, 2022* (*Amendment of section 2, etc.*) by Dr. Mohammad Jawed, Member of Parliament, recommends under articles 117(1) and 117(3) of the Constitution for introduction and consideration of the Bill in Lok Sabha, respectively.

[*Bill, being printed in 2023, the year in the title of Bill has been changed from 2022 to 2023.]

FINANCIAL MEMORANDUM

Clause 3 of the Bill *vide* proposed section 365A provides for award of interim compensation to persons convicted of wrongful prosecution. Further the proposed section 365B provides for award of interest on compensation. Also the same clause *vide* proposed section 365D provides for giving medical facilities, mental health counselling vocational and skill training to maliciously prosecuted persons in order to ensure their reintegration in the society. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees one hundred crore may involve as recurring expenditure per annum from the Consolidated Fund of India.

A non-recurring expenditure of rupees forty crore may also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill *vide* proposed section 365F empowers the Central Government and the State Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE
ACT, 1973

(2 OF 1974)

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

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(c) “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

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(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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further to amend the Code of Criminal Procedure, 1973.

(Dr. Mohammad Jawed, M.P.)