

Bill No. 19 of 2022

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT)
BILL, 2022

By

DR. T. SUMATHY (A) THAMIZHACHI THANGAPANDIAN, 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.

5 (2) It shall come into force at once.

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

Amendment of
the Section 2.

“(i) after clause (j), the following clauses shall be inserted, namely:—

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

(ii) 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;
- (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;
- (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;
- (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;”

Insertion of new Chapter XXVIA.

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

“CHAPTER XXVIA

Compensation to Persons Wrongfully Prosecuted.

Application for compensation.

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

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

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.

(2) Every application under sub-section (1) shall be filed, at the option of the applicant, either in the Special Court having jurisdiction over the area in which the wrongful prosecution occurred or the Special Court within the local limits of whose jurisdiction the applicant resides, in such form containing such particulars as may be prescribed.

(3) In case of longer incarceration exceeding six months, the Special Court may, after providing an opportunity of being heard 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 be less than twenty five thousand rupees but may extend upto rupees fifty thousand.

(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:

5 Provided that the Special Court 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.

10 365B. Notwithstanding anything contained in any other law for the time being in force, where an injury gives rise to a claim for compensation under this Chapter or through any other remedy, the person entitled to compensation may claim such compensation under any one of the remedies to the exclusion of other remedies provided under the Code.

Option regarding claims for compensation in certain cases.

15 **365C. (1) On receipt of an application for compensation made under section 365A, the Special Court shall, after giving notice of the application to the Central Government or the concerned State Government, as the case may be, and after giving an opportunity of being heard to all the parties, hold an inquiry into the claim or as the case may be, into each of the claims of misconduct which lead to wrongful prosecution and/or the misconduct during the prosecution which made it wrongful and, may make an award determining the just and reasonable compensation, specifying the person or persons to whom it shall be paid, and shall also specify the amount which shall be paid by the Central or the State Government concerned, as the case may be, and may also direct the Central or the State Government concerned to proceed against the erring official in accordance with law.**

Award of the Special Court.

(2) The Special Court shall arrange to deliver copies of the award to the parties concerned, free of cost, within fifteen days from the date of such award.

25 (3) The application made under section 365A shall be disposed of within a period of one year from the date of receipt of the application:

Provided that in case the application is not disposed of within the said period, the Court shall record the reasons in writing for not disposing of the application within the specified period.

30 **365D. Where a Special Court allows a claim for compensation made under this Code, it may direct that in addition to the amount of compensation interest shall also be paid at the rate of six per cent per annum and from such date not earlier than the date of making the claim as it may specify in the award.**

Award of interest where any claim is allowed.

35 365E. While adjudicating the quantum of compensation or interest under section 365C or 365D, as the case may be, the Special Court shall take into consideration the following financial and other factors, namely:

Factors to be taken into account by the Special Court.

- (i) seriousness of the offence; severity of the punishment; the length of incarceration;
- (ii) loss or damage to health;
- (iii) loss of income or earnings;
- 40 (iv) loss or damage to property;
- (v) legal fees and other consequential expenses resulting from the wrongful prosecution;
- (vi) loss of family life;
- 45 (vii) loss of opportunities (of education, of possibilities of livelihood, future earning abilities, skills);
- (viii) stigmatization that is harm to reputation or similar damage;
- (ix) psychological and emotional harm caused to accused and his family;
- (x) such other factors which the Special Court considers necessary as regards the claim in furtherance of justice.

50 365F. Notwithstanding anything contained in any other law for the time being in force, a person who is awarded compensation for wrongful prosecution under section 365C shall not suffer any disqualification on account of such prosecution or conviction.

Removal of disqualification attaching to conviction..

Procedure and powers of Special Court.

365G. (1) For holding an inquiry under section 365C, the Special Court may, subject to any rule to be made in this behalf, follow such summary procedures as it thinks fit.

(2) The Special Court, while adjudicating a claim under this Chapter, shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (i) the summoning and enforcing the attendance of any party or witness and examining the witness on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (v) issuing of any commission for the examination of any witness;
- (vi) any other matter which may be prescribed.

(3) Subject to the provisions of this Chapter, a Special Court shall, for the purpose of the adjudication of a claim under this Chapter, have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed and shall adjudicate upon such a claim as if it were a Civil Court.

Appeals.

365H. (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Special Court 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.

(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.

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

Power to make rules.

365I. (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.

(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;
- (b) the procedure to be followed by a Special Court in holding an inquiry under sub-section (1) and the powers vested in a Civil Court which may be exercised by a Special Court under clause (vi) of sub-section (2) of section 365G;
- (c) the form and the manner of the payment of amount for preferring an appeal against an award of a Special Court under sub-section (2) of section 365H;
- (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.

Explanation 1.— For the purpose of section 365A and 365B, “injury” means any harm caused to any accused, of body, mind, reputation or property, actual or as a probable result of the wrongful prosecution.

Explanation 2.— For the purpose of sections 365A, 365B, 365C, 365D, 365E, 365F and 365I, “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 re-integration into society.”

STATEMENT OF OBJECTS AND REASONS

The National Crime Records Bureau's (NCRB) annual statistical report called the "Prison Statistics India" 2015, there were 4,19,623 prisoners across the country. Out of which, 67.2 per cent. *i.e.* 2,82,076 were undertrials (*i.e.* people who have been committed to judicial custody pending investigation or trial by a competent authority) being substantially higher than the convicted population *i.e.* 1,34,168 (32.0 per cent.).

Such large number of undertrials (more than the number of convicts) year after year and their long detention periods show that undertrials spent a substantial period of time awaiting trials or judicial determination of their case. The delay and waiting becomes a graver miscarriage of justice when the person is wrongfully accused and incarcerated pending trial/proceedings, which he should not have been subjected to in the first place.

One of the gravest instances of miscarriage of justice resulting in an extremely long wrongful incarceration was in the case of *Mohd. Jalees Ansari & Ors. Vs. Central Bureau of Investigation*, where the accused was booked under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) for bomb blasts in five trains in Mumbai (December 1993). Subsequently, after a "confession," he was sent to a prison, where he spent the next twenty-three years. In 2016, the matter reached the Supreme Court, where the Apex court, overturning the TADA courts decision, ruled that the confession which was taken in police custody and formed the basis of the conviction did not have legal sanction and was inadmissible. And, after suffering through twenty-three long years of wrongful incarceration, he was exonerated of all charges.

Article 14(6) of the International Covenant on Civil and Political Rights (ICCPR) read with the General Comment 32 of the United Nations Human Rights Committee, dealing with miscarriage of justice, requires that the victims of proven cases of such miscarriage to be compensated "according to law". Many countries including the United Kingdom, the United States, and Germany have converted this commitment into law, where the State has assumed statutory responsibility for compensating the victims of such miscarriage of justice. India has ratified ICCPR in the year 1968 (with certain reservations) but is yet to comply with its obligations and enact a legislation laying down the law for compensation of the victims of this miscarriage of justice. However, by virtue of judicial decisions, compensation was recognised as a remedy for redressal of miscarriage of justice resulting in violation of right to life and personal liberty including wrongful prosecution; albeit under public law as a claim of constitutional tort against the State, to be filed in the Constitutional Courts *i.e.* the Supreme Court and the High Courts.

Despite the above, under the current set of remedies, claim and grant of compensation for the said miscarriage of justice still remains complex and uncertain. Under public law, a violation of fundamental rights due to police and prosecutorial misconduct can invoke State liability but the amount and payment of compensation remains arbitrary and lacks transparency.

In *Babloo Chauhan @ Dabloo Vs. State Government of NCT of Delhi*, the High Court of Delhi, *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". The Law Commission in its 277th Report recommended specific legal provision for redressal of cases of miscarriage of justice resulting in wrongful prosecution—covering both the substantive and procedural aspects.

The proposed Bill, therefore, seeks to provide a legislative framework for redressal of harms inflicted by wrongful prosecution arises on many counts one of the most important being that the injustice caused to the innocents needs to be redressed within the framework of rights and not *ex-gratia* by the State. The Bill also seeks to establish a legislative process to provide a transparent, uniform efficacious, affordable and timely remedy for the loss and harms inflicted on the victims on account of wrongful prosecution.

Hence this Bill.

NEW DELHI;
January 21, 2021

T. SUMATHY (A) THAMIZHACHI THANGAPANDIAN

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

[Copy of Letter No. 8/3/2021-Judl. Cell-I dated 26 March, 2021 from Shri G. Kishan Reddy, 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, 2021* (*Amendment of section 2, etc.*) by Dr. T. Sumathy (A) Thamizhachi Thangapandian, M.P., recommends under articles 117(1) and 117(3) of the Constitution for introduction and consideration of the Bill, respectively, in Lok Sabha.

[* As the Bill has been tabled in the year 2021, the requisite recommendation of the President had been conveyed in the year 2021. However, the Bill becomes due for introduction in the year 2022. Accordingly, the year of the title of the Bill and enacting formula thereto has been changed to the year 2022 and 'Seventy-third year of Republic of India', respectively.]

FINANCIAL MEMORANDUM

Clause 3 of the Bill *vide* proposed section 365C provides for award of compensation to persons convicted of wrongful prosecution by the Special Court which shall be charged on the Consolidated Fund of India. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is likely to involve an annual recurring expenditure of about rupees fifty crore from the Consolidated Fund of India.

No non-recurring expenditure is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill *vide* proposed section 365I provides for the Central Government or the State Government to make rules regarding the form of making application for claims of compensation and the particulars it may contain, procedure to be followed by a Special Court in holding an inquiry and the form and the manner of the payment of amount for preferring an appeal against an award of a Special Court, etc. As the rules will relate to matters of detail only, the delegation of power is of a normal character.

ANNEXURE

(THE CODE OF CRIMINAL PROCEDURE ACT, 1973)

[ACT NO. 2 OF 1974]

* * * * *

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

(a) “bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “non-bailable offence” means any other offence;

* * * * *

(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 1 [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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LOK SABHA

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further to amend the Code of Criminal Procedure, 1973

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(Dr. T. Sumathy (A) ThamizhachiThangapandian, M.P.)