

As INTRODUCED IN RAJYA SABHA

Bill No.LX of 2003

THE CRIMINAL LAW (AMENDMENT) BILL, 2003

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BILL

further to amend the Indian Penal Code 1860, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

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

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Criminal Law (Amendment) Act, 2003. 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.

CHAPTER II
AMENDMENT TO THE INDIAN PENAL CODE

Insertion of new section 195A. **2.** After section 195 of the Indian Penal Code, the following section shall be inserted, namely:- 45 of 1860.

Threatening or inducing any person to give false evidence.

“195A. Whoever-

(i) threatens any person with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested; or

(ii) induces any person through any means,

to cause such person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”.

CHAPTER III
AMENDMENT TO THE CODE OF CRIMINAL
PROCEDURE, 1973

Amendment of section 161. **3.** In section 161 of the Code of Criminal Procedure 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in sub-section (3), the following proviso shall be inserted, namely:- 2 of 1974.

“Provided that in respect of offences specified in sub-section (1) of section 164A, where such person is required to be forwarded to the nearest Magistrate for recording his statement under that section, his statement shall not be reduced into writing by the police officer under this sub-section:

Provided further that where any statement has been recorded under section 164A, the police officer shall enclose a copy of such statement as part of his police diary recording therein that such person has made such statement before the Judicial Magistrate or, as the case may be, the Metropolitan Magistrate and proceed further investigation in accordance with the provisions of this Code.”.

4. In section 162 of the Code of Criminal Procedure, for sub-section (1), the following sub-sections shall be substituted, namely:- Amendment of section 162.

“(1) The statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it and a copy of the statement as recorded shall be given forthwith free of cost by the police officer to the person who made the statement, under acknowledgment.

(1A) Every statement referred to in sub-section (1) shall contain the date, time and place as to when and where the statement was recorded and shall, subject to the provisions of sub-section (3) of section 173, be forthwith forwarded forthwith by the officer in charge of the police station to the Magistrate empowered to take cognizance of the offence upon a police report.

(1B) Any statement referred to in sub-section (1) or any record thereof, whether in a police diary or otherwise, or any part of such statement or record shall not be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.”.

1 of 1872.

5. After section 164 of the Code of Criminal Procedure, the following section shall be inserted, namely:- Insertion of new section 164A.

Evidence of material witnesses to be recorded by Magistrate in certain cases.

“164A. (1) Any police officer, not below the rank of sub-inspector, making an investigation of any offence punishable with death or imprisonment for seven years or more, shall, in the course of such investigation, produce all persons whose statement appears to him to be material and essential for proper investigation of the case, to the nearest Metropolitan Magistrate or the Judicial Magistrate, as the case may be, for recording their statements.

(2) Subject to the provisions of sub-section (3), the Magistrate shall record the statements of such persons produced before him under sub-section (1) on oath and shall forward such statements so recorded to the Magistrate by whom the case is to be inquired into or tried.

(3) The Magistrate shall, before recording any statement of a person under sub-section (2), satisfy himself that such person is making the statement voluntarily and not under any inducement, threat or promise.

(4) Copies of such statements shall be furnished to the police officer referred to in sub-section (1).

Amendment of section 195.

6. In section 195 of the Code of Criminal Procedure, in sub-section (1), for the words “except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate”, the words “except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate” shall be substituted.

Insertion of new Chapter XXIA.

7. After Chapter XXI of the Code of Criminal Procedure, the following Chapter shall be inserted, namely:-

“CHAPTER XXIA
PLEA BARGAINING

Application of the Chapter.

265A. (1) This Chapter shall apply in respect of an accused against whom-

(a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life, or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204,

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

265B. (1) An accused of an offence may file application for plea bargaining in the Court in which such offence is pending for trial. Application for plea bargaining .

(2) The application under subsection (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he has been charged with the same offence.

(3) After receiving the application under sub-section(1), the court shall issue notice to the public prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the public prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under sub-section (3), the court shall examine the accused *in camera*, where the other party in the case shall not be present to satisfy itself that the accused has filed the application voluntarily and where -

(a) the court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the public prosecutor or the complainant or the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to he victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the court finds that the application has been filed involuntarily by the accused or he has previously been convicted by the court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this code from the stage such application has been filed under sub-section (1)

Guidelines for mutually satisfactory disposition.

265C. In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 265(B), the court shall follow the following procedure, namely –

(a) In a case instituted on a police report, the court shall issue notice to the public prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused, if he so desires, may

participate in such meeting with his pleader, if any, engaged in the case.

(b) in a case instituted otherwise than on police report, the court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the court to ensure throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused, as the case may be so desires, he may participate in such meeting with his pleader engaged in the case.

265D. Where in a meeting under section 265(C), a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265B has been filed in such case.

Report of the mutually satisfactory disposition to be submitted before the court.

Disposal of the case.

265E. (1) Where a satisfactory disposition of the case has been worked out, under section 265 D, the Court shall dispose of the case in the following manner, namely:-

- (a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 or under the Juvenile Justice (Care and Protection of Children) Act, 2000 or any other law for the time being in

20 of 1958.
56 of 2000.

force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused.

20 of 1958.
56 of 2000.

- (b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958 or the Juvenile Justice (Care and Protection of Children) Act, 2000 or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;
- (c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;
- (d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b), or clause (c) , then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

No disability on punishment under this Chapter.

265F. Notwithstanding anything contained in any law for the time being in force, the punishment imposed under this Chapter shall be considered expiatory in nature and no person punished under this Chapter shall be liable to any disability under any law for the time being in force on the ground that he has been punished under this Chapter

20 of 1958.

265G. The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

Judgment of the Court.

265H. The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

Finality of the judgment.

265-I. A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matter relating to the disposal of a case in such Court, under this Code.

Power of the Court in plea-bargaining.

Period of detention undergone by the accused to be set off against the sentence of imprisonment.

265J. The provisions of section 428 shall apply, for setting of the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

45 of 1860.

Savings.

265K. The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation.-For the purposes of this Chapter, the expression "Public Prosecutor" has the meaning assigned to it under clause (u) of section 2 and includes an Assistant Public Prosecutor appointed under section 25."

8. In section 292 of the Code of Criminal Procedure,-

Amendment of section 292.

(a) in sub-section (1), for the portion beginning with the words "gazetted officer" and ending with the brackets and words "(including the officer of the Controller of Stamps and Stationery)", the following shall be substituted, namely:-

"officer of any Mint or of any Note Printing Press or of any Security Printing Press (including the officer of the Controller of Stamps and Stationery) or of any Forensic Documents or Division of Forensic Science Laboratory or any Government Examiner of Questioned Documents or any State Examiner of Questioned Documents, as the case may be,".

(b) in sub-section (3), for the portion beginning with the words "except with" an ending with the words "as the case may be," the following shall be substituted, namely:-

"except with the permission of the General Manager or any officer in charge of any Mint or of any Note Printing Press or of any Security Printing Press or of any Forensic Documents or any officer in charge of

the Forensic Science Laboratory or of the Government Examiner of Questioned Documents Organization or of the State Examiner of Questioned Documents Organization, as the case may be,”.

Amendment of section 320.

9. In section 320 of the Code of Criminal Procedure, in sub-section (2), in the Table, after the entries relating to section 494 of the Indian Penal Code, the following entries shall be inserted, namely:- 45 of 1860.

1	2	3
“Punishment for subjecting a married woman to cruelty.”	498A	The married woman so subjected to cruelty.”.

Amendment of section 340.

10. In section 340 of the Code of Criminal Procedure, in sub-section (3), for clause (b), the following clause shall be substituted, namely:-

“(b) in any other case, by the presiding officer of the court or by such officer of the Court as the court may authorize in writing in this behalf.”

Amendment of section 344.

11. In section 344 of the Code of Criminal Procedure, in sub-section (1), after the words, “such evidence should be used in such proceeding”, the words figures and letters “then, subject to the provisions of section 344 A” shall be inserted.

12. After section 344 of the Code of Criminal Procedure, the following section shall be inserted, namely:- Insertion of new section 344A.

“344A. (1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that, any witness, whose statement recorded under sub-section (2) of section 164A in respect of one offence or in respect of a different offence as referred to in sub-section (2) of section 221, appearing in such proceeding had subsequently retracted his statement Summary Procedure for trial of witnesses deposing contrary to statements recorded under section 164A by Magistrate.

in material particulars by stating inconsistent facts or had changed his version by narrating new facts which were destructive of the prosecution case and the Court of Session or a Magistrate of first class is satisfied that such retraction, contradiction or change of version is of such a nature that the witness is guilty of knowingly or willfully giving false evidence or fabricating false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and notwithstanding anything contained in the provisions of this Code, sentence him to imprisonment for a term which shall not be less than three months but which may extend to two years and shall also be liable to fine:

Provided that the provisions of this section shall apply only where the giving or fabrication of false evidence relates to the conduct of the witness subsequent to the recording of his statement under sub-section (2) of section 164A.

(2) The provisions of sub-sections (2), (3) and (4) of section 344 shall apply for trial of an offence under this section as they apply to the summary trial of an offence referred to in sub-section (1) of that section.”.

Amendment of
the First
Schedule.

13. In the First Schedule to the Code of Criminal Procedure, under the heading “I.-OFFENCES UNDER THE INDIAN PENAL CODE”, after the entries relating to section 195, the following entries shall be inserted, namely:-

1	2	3	4	5	6
“195A	Threatening or inducing any person to give false evidence.	Imprisonment for 7 years, or fine, or both.	Cognizable.	Non-bailable.	Magistrate of the first class.”;

CHAPTER IV
AMENDMENT TO THE INDIAN EVIDENCE ACT,
1872

Amendment of
section 154 of
Act 1 of 1872.

14. In the Indian Evidence Act 1872, section 154 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

“(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.”

STATEMENT OF OBJECTS AND REASONS

It is widely felt that criminal cases in courts fail because statements by witness(es) are reneged either out of fear or allurements. To prevent the evil of witness turning hostile, it is proposed to amend Sections 161, 162 and 344, and to insert new sections 164A and 344A in the Code of Criminal Procedure, 1973. The amendments to the Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872, inter alia, provide that (i) statement made to Police by any person during investigation, if reduced to writing, is to be signed and quickly transmitted to the Magistrate; (ii) recording of evidence of material witness by Magistrate in all offences punishable with death or imprisonment for 7 years or more during investigation; (iii) statement of the witness duly recorded before Magistrate under oath, in the discretion of the court, be treated as evidence; and (iv) summary trial for perjury and enhanced punishment awarded consequent to such summary trial.

2. The disposal of criminal trials in the courts takes considerable time and that in many cases trials do not commence for as long a period as 3 to 5 years after the accused was remitted to judicial custody. Large number of persons accused of criminal offences are unable to secure bail, for one reason or the other, and have to languish in jail as under-trial prisoners for years. Though not recognized so far by the criminal jurisprudence, it is seen as an alternative method to deal with huge arrears of criminal cases. To reduce the delay in the disposal of criminal trials and appeals and also to alleviate the suffering of under-trial prisoners, it is proposed to introduce the concept of plea-bargaining as recommended by the Law Commission of India in its 154th Report on the Code of Criminal Procedure. The Committee on Criminal Justice System Reforms under the chairmanship of Dr.(Justice) V.S. Malimath, formerly Chief Justice of the Kerala High Court, has also endorsed the Commission's recommendations. It means pre-trial negotiations between defendant and prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecutor. The benefits of plea

bargaining would, however, not be admissible to habitual offenders. A Chapter on this is being incorporated in the Code of Criminal Procedure, 1973.

3. Section 498-A of Indian Penal Code, 1860 provides punishment to husband or relatives of husband of a woman subjecting her to cruelty. It has been widely reported that this provision has been misused and is also harsh as it is non-compoundable. It is, therefore, proposed to make the offence a compoundable one.

4. Section 290 of The Code of Criminal Procedure, 1973, includes only officers of the Mint or India Security Press, Nasik as experts for giving their opinion with regard to fake currency notes and coins. Expert opinion given by officers of other note printing press suffers from legal infirmity. Therefore, it is proposed to include in section 292 more scientific experts to give evidence in cases relating to fake currency notes.

5. It is also proposed to amend the Indian Penal Code to provide punishment for threatening or inducing any person to give false evidence.

6. The Bill seeks to achieve the above objects.

(L.K. ADVANI)

New Delhi,

The 14th August, 2003.