

The Criminal Law (Amendment) Act, 2005

UNION OF INDIA

India

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Act 2 of 2006

- Published on 1 January 2006
- Commenced on 1 January 2006
- [This is the version of this document from 1 January 2006.]
- [Note: The original publication document is not available and this content could not be verified.]

An Act 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- sixth Year of the Republic of India as follows:-

Chapter I

PRELIMINARY

1. Short title and commencement.-

(1) This Act may be called the Criminal Law (Amendment) Act, 2005. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

Chapter II

AMENDMENT TO THE INDIAN PENAL CODE

2. Insertion of new section 195A.-

After section 195 of the Indian Penal Code (45 of 1860), the following section shall be inserted, namely:-

195A. Threatening or inducing any person to give false evidence.-

Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that 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; and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.

Chapter III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

3. Amendment of section 195.-

In section 195 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereafter in this Chapter referred to as 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 authorise in writing in this behalf, or of some other Court to which that Court is subordinate" shall be substituted.

4. Insertion of new Chapter XXIA.-

After Chapter XXI of the Code of Criminal Procedure, the following Chapter shall be inserted, namely:-' CHAPTER XXIA PLEA BARGAINING

265A. Application of the Chapter.-

(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. Application for plea bargaining.-

(1)A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.(2)The application under sub- section (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 had 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 of 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 the 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 a 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).

265C. Guidelines for mutually satisfactory disposition.-

In working out a mutually satisfactory disposition under clause (a) of sub- section (4) of section 265B, 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 may, if he so desires, 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. Report of the mutually satisfactory disposition to be submitted before the Court.-

Where in a meeting under section 265C, 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.

265E. Disposal of the case.-

Where a satisfactory disposition of the case has been worked out under section 265D, 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 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;(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 (20 of 1958) 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.

265F. Judgment of the Court.-

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.

265G. Finality of the judgment.-

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.

265H. Power of the Court in plea bargaining.-

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 matters relating to the disposal of a case in such Court under this Code.

265I. Period of detention undergone by the accused to be set off against the sentence of imprisonment.-

The provisions of section 428 shall apply, for setting off 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.

265J. Savings.-

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.

265K. Statements of accused not to be used.-

Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.

265L. Non- application of the Chapter.-

Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 .

5. Amendment of section 292.-

In section 292 of the Code of Criminal Procedure, -(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 Department 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 " and 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 Department or any officer in charge of the Forensic Science Laboratory or of the Government Examiner of Questioned Documents Organisation or of the State Examiner of Questioned Documents Organisation, as the case may be, " .

6. Amendment of section 340.-

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 authorise in writing in this behalf.

7. Amendment of the First Schedule.-

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

1. 2 3 4 5 6" 195A Threatening any Imprisonment for Cognizable Non- bail-

Court by person to give 7 years, or fine, able which offence false evidence. or both. of giving false evidence is triable. If innocent The same as for Ditto Ditto Ditto.", Person is the offence. Convicted and sentenced in consequence of false evidence with death, or imprisonment for more than seven years.(b) in the 4th column, in the entry relating to section 196, for the word " Ditto", the word " Non-cognizable" shall be substituted.'.

8. Omission of section 25 of Act 25 of 2005 .-

Section 25 of the Code of Criminal Procedure (Amendment) Act, 2005 shall be omitted.

Chapter IV

AMENDMENT TO THE INDIAN EVIDENCE ACT, 1872

9. Amendment of section 154 of Act 1 of 1872 .-

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.