

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 5 | Issue 1**

---

**2022**

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for "free" and "open access" by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Issues & Challenges in Wrongful Prosecution vis-a-vis Uniformity of Law

---

DEEPAK<sup>1</sup> AND DR. ANJU BENIWAL<sup>2</sup>

## ABSTRACT

*'It is better that ten guilty persons escape than that one innocent suffers.'*

*-William Blackstone*

*The term 'wrongful prosecution' directly interconnects to the miscarriage of justice. One of the significant issues, which is a matter of concern, is that there is a backlog of cases in the courts and a shortage of judges; the recommendation Supra states that if it is proven that a person was wrongfully prosecuted, he will be compensated. What's more, if it is determined that a person has been unfairly prosecuted, the trial should begin at a specific time. The longer the trial lasts, the longer it will take to determine if someone was wrongly prosecuted. It has also been observed that while there is judicial precedent allowing a miscarriage survivor to sue. There is still no way for a victim of injustice to seek remedies from the Supreme Court or the High courts under their respective writ authority. Such a victim/claimant has a statutory entitlement to compensation. This paper will analyse the concept of wrongful prosecution and its present position in India. Also, this research paper will deal with important areas under this topic, including the Victims rights compensation, who can apply, and availability of remedies. Also, this paper will analyse whether there is any provision of uniform law regarding compensation for wrongful prosecution and recent trends, along with mentioning landmark and recent judgements.*

**Keywords:** *wrongful prosecution, criminal justice system, remedies, compensation*

## I. INTRODUCTION

As we know, the Indian criminal justice system lacks an effective system resulting in wrongful prosecutions. In **Bablu Chauhan @ Dablu v. State Government of NCT of Delhi, 247 (2018) DLT 31**, the Delhi High Court expressed significant concern regarding unjust prosecution and detention of innocent people, emphasising the necessity for a legislative framework to provide redress to such people. In reference to this, the court directed the law commission to undertake a comprehensive examination of the issue and recommend it to the government. The commission has established some principles to be applied to the alleged

---

<sup>1</sup> Author is a Research Scholar at Central University of Haryana, Mahendergarh, India.

<sup>2</sup> Author is an Assistant Professor at Law Department, Central University of Haryana, Mahendergarh, India

"miscarriage of justice" and defined what constitutes unjust prosecution. The commission has proposed several revisions to the Code of Criminal Procedure, 1973. It has created a draught law titled "The Code of Criminal Procedure (Amendment) Bill, 2018" in order to clarify the entire procedure. There is currently no statutory or legal structure in place in our country to compensate persons who have been unfairly imprisoned. It is not uncommon for persons who have been imprisoned for several years to be acquitted by the High Court or the Supreme Court. They are left to their own devices, with no possibility of reintegration into society or rehabilitation, because they have spent most of their lives behind bars, hidden behind the towering prison walls.

## **II. UNDERSTANDING THE TERMS WRONGFUL PROSECUTION, MALICIOUS PROSECUTION AND THEIR RELATION WITH THE MISCARRIAGE OF JUSTICE**

The basic idea behind this approach, which is also quite important, is that someone who has been wrongly prosecuted should not be subjected to these proceedings in the first place. In a broad sense, wrongful prosecution means that a person is detained and charged with a crime because the police or higher officials are entrusted with the same tasks engaged in misbehaviour throughout the investigation and inquiry procedures. India lacks an effective statutory/legal process to remedy unjust prosecutions brought about by police and prosecutorial misconduct, resulting in an epidemic of false cases. There has been an extraordinary spike in filing fraudulent lawsuits, owing to a lack of fear of being prosecuted by courts and a growing desire to frame innocent people for ulterior objectives. According to the petition, innocent people were victimised by authorities who utilised the criminal justice system to settle grudges. It has not only ravaged the nation's social fabric, but it has also wreaked havoc on the already overburdened judiciary, which is dealing with an alarming backlog of over 40 million cases.

There was a case of Madhumala Das wherein she got arrested by the officials for a crime which she had never committed, which led to the situation where her deaf and dumb daughter went into trauma in search for her mother in the village and most importantly, three years of her life was spent in the detention centre<sup>3</sup>. Wrongful prosecution not only causes the loss of years but is somewhat a mental trauma that affects the psychological nature of human beings in a way that actually deteriorates the perspective of human beings towards life and even people suffer

---

<sup>3</sup> Anurag Bhaskar, *Jailed for Years: Why India Needs A Right to Compensation for Wrongful Arrests and Detention*, THE PRINT (Jul. 09, 2019, 10:13 AM), <https://theprint.in/opinion/jailed-for-years-why-india-needs-a-right-to-compensation-for-wrongful-arrests-detention/260336/>.

post-traumatic stress disorder<sup>4</sup>. There are various cases, namely *Khatri v. State of Bihar* (1981) 1 SCC 627; *Veena Sethi v. State of Bihar* AIR 1983 SC 339; *Rudul Sah v. State of Bihar* AIR 1983 SC 1086; *Bhim Singh v. the State of Jammu and Kashmir* (1985) 4 SCC 677 1 247 (2018) DLT 31. 2 and *Sant Bir v. State of Bihar* AIR 1982 SC 1470, in which there have been times when the Supreme Court has ruled that Constitutional courts have the power to grant compensation under Article 21 of the Constitution for a violation of a fundamental right India's Constitution. These have included incidents such as recompense being given to persons who have been wrongfully accused.

Another notable case of *S. Nambi Narayanan v. Siby Mathews*<sup>5</sup>, Mr Narayanan fought for the award from the Hon'ble Supreme Court for 24 years. He sacrificed not only his reputation but also his profession as an accomplished scientist, savings, academic work, and self-esteem in the process of proving his innocence in a case that erroneously labelled him as a national enemy. He spent time in prison, was tortured by the investigating authorities, and the damage he caused was irreversible when he was finally acquitted. When scientist Nambi Narayanan was acquitted of espionage charges by the Kerala Police, he was given Rs. 50 lakhs in compensation. The Kerala High Court, on the other hand, only consented to a compensation of Rs. 10 lakhs. A probe found that Nambi had not been paid the ten lakh rupees even though it had been 11 years. It appears that unlawful prosecution is frequently mistaken with another term, "malicious prosecution," however, the truth is that wrongful prosecution encompasses malicious prosecution. The word "malicious prosecution" is underlined in both the Indian Penal Code and the Law of Torts as an abuse of the court system because it is supposed to provide justice to the innocent. Still, it is used to convict innocent people.

The High Court maintained the verdict of Rs.50,000/- as damages for harassment in *West Bengal State Electricity v. Dilip Kumar Ray*, treating it as damages for malicious prosecution resulting in harassment in the form of mental distress, among other things. The reputational harm judgement of Rs.50,000/- was also upheld. Malicious prosecution has two crucial elements: there was no probable cause for the prosecution or suit to begin, and the prosecution or suit concluded in some way favouring the defendant.

---

<sup>4</sup> Emma Zack, *National PTSD Awareness Day: Exoneree Ginny Lefever Shares Illuminating Research on PTSD and Wrongful Convictions*, INNOCENCE PROJECT (Jun. 27, 2018), [https://www.innocenceproject.org/exoner eeginny-lefever-shares-illuminating-research-on-ptsd](https://www.innocenceproject.org/exoner EEGINNY-LEFEVER-SHARES-ILLUMINATING-RESEARCH-ON-PTSD).

<sup>5</sup> *S. Nambi Narayanan v. Siby Mathews*, (2018) SCC Online SC 1500(India)

### **III. VICTIMS RIGHTS COMPENSATION – IS IT A MYTH, OR IS IT ACTUALLY PROVIDED TO THE VICTIMS OF WRONGFUL PROSECUTION?**

The first case, named *Rudal Shah v. the State of Bihar*, came in 1983, where the dilemma arose regarding awarding compensation to the person who is the victim of wrongful prosecution. The petitioner was wrongfully imprisoned for "14 years" and filed a Habeas Corpus petition. The Supreme Court is hearing a petition for compensation and another remedy under Article 32 of the Constitution. If the Court ordered the petitioner's acquittal without any compensation, the Court believed that Article 21 would be nullified.

The Supreme Court awarded the petitioner Rs. 30,000 in compensation, ruling that the scope of Art.32 is sufficiently broad to encompass the "authority to pay compensation" for infringements of fundamental rights only in circumstances when the infringement is egregious.

According to the data enumerated by the Ministry of Home Affairs, which has revealed such data where the numbers of undertrial prisoners are pretty disturbing and urged the official bodies dealing with the same subject matter to discharge some effective policies and legislations for the same. Prison Statistics India, 2019 has shown that the number of undertrial prisoners by the duration of confinement and duration lies between the range of 2-3 years, 3-5 years and above five years is 330487. Another data has shown that the total number of undertrial prisoners with respect to special and local laws is 71513. Considering the total number of undertrials for both males and females as of 31<sup>st</sup> December 2019 aged between 30-50 years was 131894 and 35317 for age above 50 years<sup>6</sup>.

Undertrials spend a significant amount of time awaiting trials/judicial adjudication of their cases, as evidenced by the enormous number of undertrials (greater than the number of convicted) year after year and their protracted incarceration sentences. When a person is falsely charged and imprisoned pending trial/proceedings, which he should not have been exposed to in the first place, this delay and waiting becomes a graver miscarriage of justice.

Compensation will not be able to give back those years which has been wasted due to the wrongful prosecution, Still, it will help the victims and their families to restore their lifestyle into a better situation for the present as well as future needs. Considering the present scenario and the shortcomings, Law commission report no. 277 dated August 2018 has suggested remedies that should be provided to victims and suggested the concerned authorities to do some amendments in the code of criminal procedure and laid down specific rules and regulations

---

<sup>6</sup> National Crime records Bureau, Prison Statistics in India, 2019, Ministry of Home Affairs, (Jan 31, 2019), <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>.

about the amount of compensation. In the situation of a miscarriage of justice resulting in unjust prosecution, an examination of the existing legislation and case law identifies three types of court-based remedies which are Public Law Remedy, Private Law and Criminal Law Remedy.<sup>7</sup> As wrongful prosecution and miscarriage of justice cannot be studied alone, there are few articles, namely Article 21<sup>8</sup> (Right to life and liberty), Article 22 (protection against arbitrary arrests and illegal detention, etc<sup>7</sup>), which played an important role in ascertaining the wrong which the victim has suffered. Despite the fact that compensation is not explicitly mentioned in the constitution, the Supreme Court has issued numerous rulings and evolved this idea by granting compensation for constitutional rights violations such as illegal arrest and incarceration. Following that, in the case of *Bhim Singh, MLA v. State of J&K & Ors*,<sup>9</sup> the Supreme Court awarded a sum of Rs. 50,000/- as compensation for the illegal detention of an MLA who was intentionally prevented from attending a session of the Legislative Assembly by arresting him and illegally detaining him in police custody, thus violating his constitutional rights under Article 21 and Article 22(2). 'When a person comes to us with a complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights have been violated, the mischief or malice and the invasion may not be washed away or wished away by his being set free,' the court stated.

In a separate case involving the 2005 suicide bombing in Hyderabad, the Metropolitan Sessions Court in Nampally, Hyderabad, acquitted the ten defendants in the case of the blast at the Hyderabad Commissioner's Task Force office in Begumpet on October 12, 2005. According to the court, the prosecution was unable to prove the ten accused involvement in the plot to blow up the Task Force building. The Court emphasised that the suspects were caught without any specific evidence, so the police failed to substantiate the accused's plot. The innocents wasted 'ten years of their lives due to the authorities' negligence.<sup>10</sup> The victims received no remuneration, and the investigators were not exposed to any coercion. This isn't the first time the cops have made a blunder. These are often considered high-profile cases. The causes of a "Miscarriage of Justice" have long been recognised by the legal system. Furthermore, their reluctance to act to provide a coherent legal framework for compensation shows that they are unconcerned about the victims' vulnerable circumstances. The failure of the judiciary to act continues to hinder development. 2005, Express News Service The court has acquitted all ten

---

<sup>7</sup> LAW COMMISSION OF INDIA, WRONGFUL PROSECUTION (MISCARRIAGE OF JUSTICE): LEGAL REMEDIES (2018), <https://lawcommissionofindia.nic.in/reports/Report277.pdf> (last visited Mar 1, 2021).

<sup>8</sup> INDIA CONST. art. 21.

<sup>9</sup> *Bhim Singh, MLA v. State of J & K & Ors* (1985) 4 SCC 677 (India).

<sup>10</sup> The Indian express, (Aug 11, 2017, 04:00 AM), <https://indianexpress.com/article/india/2005-hyderabad-blast-casecourt-acquits-all-10-accused/>.

defendants in the Hyderabad Blast case. It can be well observed from the timeline of the constitution amendments with regard to wrongful prosecution and various judgements pronounced by the Supreme Court that there is no proper legislation that talks about the exact amount of compensation that should be given to the victims. It depends on the facts and circumstances of the case.<sup>11</sup>

Compensation in the form of civil litigation against the state for monetary damages is provided under the private law remedy. This is a type of supplementary remedy accessible on account of tortious conduct by public servants, particularly negligence by a public servant in the course of work. In the case of *Saheli, A Women's Resources Center & Ors. v. Commissioner of Police Delhi & Ors.* 48, the Supreme Court upheld the principle of the vicarious liability of the State, i.e. the State is responsible for the tortious acts of its employees, and ordered the Delhi Administration to pay the compensation for police misconduct.<sup>12</sup> Concerning the criminal law remedy, there are specific provisions in the Indian Penal Code, 1860 and Criminal Procedure Code, 1973.

#### **IV. UNIFORM LAW REGARDING WRONGFUL PROSECUTION**

As there are various recommendations which are made in the Law Commission Report no. 277, taking into consideration the present scenario of the Indian criminal justice system, though we are still lacking behind in implementing those provisions in the Code of Criminal Procedure, 1973. We've seen time and time again that the victim has to go through a lot of upheavals and lose a lot of time while in prison. The suspected criminals imprisoned in most of these cases are from lower socioeconomic origins, and their dependents in their families are also significantly impacted.

The Law Commission report also calls for the State to provide victims with interim compensation. The compensation shall be of a 'Pecuniary' and a 'Non-Pecuniary nature,' with the former referring to the amount of compensation decided by Courts based on Guiding Principles, and the latter referring to measures taken by the State for the victim's reintegration into society, including employment opportunities and the removal of social stigma associated with a crime that the victim has never committed.

Considering the International perspective, the victims of verified cases of such miscarriage of justice must be paid "according to law," according to Article 14(6) of the ICCPR and General

---

<sup>11</sup> Law commission of India, Wrongful Prosecution (miscarriage of justice) – Legal remedies, Law Commission 277<sup>th</sup> Report, Aug 2018, <https://lawcommissionofindia.nic.in/reports/Report277.pdf>.

<sup>12</sup> *Saheli, A women's resources centre Vs. Commissioner of Police A.I.R 1990 SC 513 (India).*

Comment 32 of the United Nations Human Rights Committee on Miscarriage of Justice.

<sup>13</sup>These articles, taken together, impose a legal obligation on the states parties to implement laws guaranteeing that the victims are compensated and that such compensation is provided within a "reasonable amount of time." As previously stated, numerous countries, notably the United Kingdom, the United States, and Germany, have enacted legislation establishing statutory responsibility for compensating victims of such miscarriages of justice.

Following a careful review of the law commission report, we may conclude that it proposes to create a particular statutory system for redressing situations of a miscarriage of justice resulting from wrongful prosecution and compensation from the state if the improper prosecution is proven. The Law Commission report eloquently enunciated the legal remedies open to those wrongly prosecuted, and the state is obligated to compensate those who have been wrongfully prosecuted. As we all know, Rudul Shah's case was a watershed moment in state responsibility jurisprudence. We think it's particularly noteworthy since it contributed to developing compensation jurisprudence for constitutional violations of fundamental rights.

One of the most important things to keep in mind when creating this solution structure is that the claims must be resolved as soon as possible. Because the claim derives from an unjustified (and sometimes lengthy) prosecution that the wrongly accused and his family should not have been exposed to in the first place, timeliness and efficiency are especially vital. Any remedy developed in this manner must be swift, efficient, and customised to the claimant's best interests; the forum in which these claims are assessed is the most crucial component of this. In these proceedings on the probabilistic threshold, the standard of proof will be the balance that an average prudent person would exercise given the circumstances at the time he is called upon to act. with the burden of proof falling on the claimant (accused) to show misconduct that led to wrongful prosecution and/or misconduct that occurred during the prosecution. The standard is the assumption of a prudent man confronted with connecting probabilities or improbabilities concerning a fact-situation, after weighing the various probabilities and improbabilities and arriving at the preponderance - whether a reasonable man could have arrived at the same conclusion.

Also, there must be statutory backup with regard to the non-monetary compensation as Nonmonetary assistance must also include a specific provision for removing disqualifications linked with prosecution or conviction, which could make it difficult for a wrongfully accused person to find a job in the public or private sector, or get admission to a school, among other

---

<sup>13</sup> International Covenant on Civil and Political Rights, 1996 art. 14(6)

things. The preceding is crucial because of the social stigma and other penalties connected with prosecution and conviction (even if it was wrong in the first place). In a criminal case, an acquittal by a trial court or an appellate court that records a finding that the accused was wrongfully charged must eliminate the stigma because the accusations have been dropped, i.e. in circumstances of honourable acquittals. To put the above into practice, an explicit clause deleting the aforementioned disqualifications must be included. A law provision like this would go a long way toward helping the guilty person reintegrate into society.

## **V. CONCLUSION**

Seeing the number of cases that are pending in courts actually depicts a darker picture of our Indian justice system as the number of undertrials and cases of criminal nature is high; it seems that a lot more has to be done in this regard to ensure that victims are not exploited and can back to their original lives. The rights of innocents are so precious. It should be protected from any misconduct and wrongful act of any person, even if it's a higher authority, as fundamental rights play an indispensable role in one's life. However, it has been observed that award of compensation has been given in various cases, but it has been well observed that several years of the victim get elapsed till the time justice is served. The Law Commission, through its report, has suggested many meaningful changes, recommended some changes, and even there is an amendment bill which has been passed by Lok Sabha in which the definition of wrongful prosecution has been inserted but not yet in force. The law commission has recommended that there is a need to establish special courts for this purpose to ensure speedy redressal of the grievances of the innocents and to achieve some decline in pending cases of criminal nature and undertrials. There is a number of suggestions and recommendations which are made in Report No. 277 of Law Commission, but it should be noted that there is a number of limitations as well in the recommendations made as a balance and coordination has to be maintained between the judiciary and investigative bodies for obtaining a more precise picture regarding the person who is being prosecuted and the trial has been initiated against that individual.

## **VI. SUGGESTIONS**

After analysing Report No. 277 of the Law Commission, it has been very well observed that there are cases in which compensation has been awarded but after spending a number of years and time and these are two things which cannot be gained again. Therefore it has been suggested after doing in-depth research of the position of wrongful prosecution in India, its issues and present scenario that there are certain lacuna which is in existence in our Indian Criminal Justice system,

As it has been mentioned in the report of the Law Commission as well the problem of a miscarriage of justice which includes incarceration, wrongful and malicious prosecution, is awarded with ex gratia compensation and not statutory, which simply means that it is not backed by law. Though Law commission Report No. 277 has suggested changes that would help the concerned authorities work in the right direction by making necessary amendments in the Code of Criminal procedure, 1973.

However, it has been suggested that government, judicial authorities, and investigative agencies should coordinate to meet the ends of justice.<sup>14</sup> Following are some suggestions which are made after studying and understanding the topic areas:-

- Role of NGO, Legal aid and other legal help, welfare schemes should be accessible to the victims of wrongful prosecution, and these organisations should play a pro-active role.

- As wrongful prosecution not only causes absenteeism among the family members due to unavailability of the victim, but it causes mental trauma, reputation loss and social boycott as well. Therefore, to overcome all this stress and provide relief to the families of victims, mental awareness camps, rehabilitation centres, and mental support should be given to them.

- Judiciary and Investigative agencies have to step forward so that there is a decline in miscarriage of justice. Also, if police officials efficiently perform their duties and conduct proper inquiry and investigation, this will lead to less amount of wrongful prosecution and undertrials.

The survivor of a false conviction suffers in two ways in our criminal justice system. First, it is psychological and personal because the individual who has been incarcerated has done time in prison for a crime he did not commit. Second, due to the criminal justice system's inefficiency, the perpetrator of a false conviction is sentenced to a lifetime of societal hatred and condemnation.

\*\*\*\*\*

---

<sup>14</sup> Law commission of India, Wrongful Prosecution (miscarriage of justice) – Legal remedies, Law Commission 277<sup>th</sup> Report, Aug 2018, <https://lawcommissionofindia.nic.in/reports/Report277.pdf>.

## VII. REFERENCES

1. Priyamvada Singh, *Case Brief of S. Nambi Narayanan v. Siby Mathews*, Ipleaders. in (Nov 26, 2020), <https://blog.ipleaders.in/case-brief-s-nambi-narayanan-v-siby-mathews/>.
2. Shailesh Poddar, *Malicious Prosecution under Criminal Law in India*, law blog, (Apr 25, 2020), <https://thelawblog.in/2020/04/25/malicious-prosecution-under-criminal-law-in-india/>.
3. Devika Sharma, Former ISRO Scientist, ordered for the compensation of Rs. 50 Lakhs – committee constituted for taking action against erring police officers : The Scc Online blog (Sep 17, 2018), <https://www.sconline.com/blog/post/2018/09/17/former-isro-scientist-ordered-for-compensation-of-rs-50-lakhscommittee-constituted-for-taking-action-against-erring-police-officers-sc/>.
4. Express web desk, *All accused acquitted in Hyderabad suicide blast case*, The Indian Express, (Aug 10, 2017, 05:03:25 AM) <https://indianexpress.com/article/india/all-accused-acquitted-in-hyderabad-suicide-blast-case4790723/>.
5. Udai yashvir Singh and Smita Singh, *Right to Compensation for Wrongful Prosecution, Incarceration, and Conviction: A Necessity of the Contemporary Indian Socio-Legal Framework*, 4 IJLMH, 451, 457-461 (2021).
6. Manisha Tripathi and Shivam Tripathi, *Malicious Prosecution and Conviction: A Question Mark on Justice*, 4 IJLMH, 215, 218-221 (2021).
7. P.M Swapna, *Need for reform to avoid wrongful prosecution*, The Leaflet Constitution First, (Dec 2, 2021), <https://www.theleaflet.in/need-for-reform-to-avoid-wrongful-prosecution>

\*\*\*\*\*