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# Malicious Prosecution and Conviction: A Question Mark on Justice

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## ABSTRACT

*Malicious prosecution is said to be worse than the being convicted for a crime itself. Malicious prosecution could be understood as a stage, or like an outcome one might say, of an error in criminal justice system (CJS). This error is not just present in one particular country's' CJS but all systems globally, but that thing that must be noted is the way these systems compensate their victims of this error. Recently, Allahabad High Court- Uttar Pradesh, India- declared Vishnu Tiwari, 43-Year-old, innocent in the rape case after he had served 20 years behind the bars. According to reports, Vishnu never has resources back in the year 2000 to hire lawyers and the fact that there was negligible amount of evidence against him was ignored blatantly and the case was solely based on the female's testimony. During the time that he (Vishnu Tiwari) served in jail, he lost his whole family and property. Now at the age of 43 he has nothing but a rock strong will to rebuild his life back from scratch. The judicial system merely apologized for the inconvenience caused to him. An apology for wasting 20 years of his life seems quite less, don't you think so?*

*This research paper explores the cases of malicious prosecution in India and takes references from legislations and compensation systems around the world to illustrate a need of appropriate compensatory system in India too. The research also highlights how malicious prosecution cases are a concern of basic human rights violations and need to tackle them with same level of seriousness. The research paper also sheds light upon various remedies available currently in different Indian laws.*

## I. INTRODUCTION

The ultimate purpose of the national as well as international law is to safeguards the human rights of the people. It is the constitutional mandate of judiciary to protect human rights to the citizens. Supreme court and High court are empowered to take action to enforce these rights. Machinery for redress is provided under Article 32 and Article 226 of the constitution. An aggrieved person can directly approach the Supreme court and High court of the concerned

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state for the protection of his/her fundamental rights, redress of grievances and enjoyment of the fundamental rights. In such cases court are empowered to issue appropriate order, directions and writs in the nature of Habeas Corpus, Mandamus, Certiorari, Quo-warranto and prohibition. Judiciary is ultimate guardian of the human rights.<sup>3</sup>

Human rights are the basic right available to any human being by virtue of his birth in any human race. It is inherent in all human beings irrespective of their nationality, religion, sex, caste, colour or creed. The Protection of Human Rights Act, 1993 defines Human Rights as: “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. The Constitution of India guarantees basic human rights to each and every citizen of the country. The framers of the Constitution have put their best efforts in putting down the necessary provisions.

Over the last few years, there has been a gradual increase in the rate of wrongful convictions in the country. Today, more innocent people are in prisons than ever before. The pre-eminent jurist William Blackstone once said: “Better that ten guilty persons escape than that one innocent suffers.” India borrows a substantial part of the UK’s legal system, but the ‘ethos’ of Blackstone’s formulation seems to be violated.<sup>4</sup> This article focuses on the appalling condition of Wrongfully Convicted Victims and the State’s responsiveness, thereby indicating the dire need of a uniform compensation legislative framework in India. The Law Commission, in its latest report, identifies key criteria for compensation and provides a framework for computing it.

Article 14 (6) of the International Covenant on Civil and Political Rights makes it mandatory for countries to have a statutory framework for providing compensation and rehabilitation to those who have been wrongfully prosecuted by the State. This provision, adopted by many countries across the world – but not yet by India that is otherwise a party to the treaty – stems from a simple, natural principle: If the State, in its performance of sovereign functions, has wrongfully taken away the life or liberty of an individual, it needs to remedy it.

## **II. THE PROTECTION OF HUMAN RIGHTS ACT, 1993**

The need for the protection of human rights issues both at national and international level led to the enactment of an act which specifically deals with the protection of human rights called

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<sup>3</sup> Amartish Kaur (2017), “Protection of Human Rights in India – A Review”, *Jamia Law Journal*, Vol.2.

<sup>4</sup> SIR WILLIAM BLACKSTONE, commentaries on the laws of England in four books, 2 ONLINE LIBRARY OF LIBERTY 1753.

‘The Protection of Human Rights Act,1993’.

### **Malicious Prosecution**

As per the commission, maliciousness means prosecution without reasonable or probable cause. This includes levying a charge of negative intent on the investigative agency or certain police officers – and has always constituted a central criterion for remedial action from the State. Deliberate fabrication of charges, planting of evidence, conscious suppression of evidence that speaks of the innocence of the accused, as well as the use of torture to coerce statements, or to get an accused to turn approver despite knowing that the accused are innocent all constitute malicious prosecution by the State.

- As comparison between PSI reports of 2015 and 2019 it shows that during the year 2019, a total of 18,86,092 inmates were admitted in various jails in the country.
- A total of (4,78,600) prisons as 31st Dec,2019 were confined in various jails across the country.
- The number of undertrial prisoners has increased from 3,23,537 in 2018 to 3,30,487 in 2019 (as on 31st Dec to each year), having increased by 2.15% during this period.
- The number of detenues has increased from 2,384 in 2018 to 3,223 in 2019, having increased by 35.19% during this period.<sup>5</sup>

### **III. WHAT IS THE NEED FOR PROPER COMPENSATION SYSTEM AND WHY?**

The Law Commission of India in its 277th report, has now recommended that the right to liberty be recognised by the Indian state in the form of a law. It has urged the Union government to honour its commitments internationally and nationally (to its citizens) by acknowledging its accountability to law. The commission has also recommended the prosecution of erring government officers found to have maliciously prosecuted an innocent citizen. Most importantly, it has provided a framework for computing compensation and calculating the monetary value of the loss to a citizen in case of wrongful prosecution. At present, going by the legal precedents around compensation in India, which are mainly confined to cases of illegal detention, this process is not structured. While the report’s recommendations are imbued with the right constitutional spirit, it is – in these times where life and liberty can have such little value – truly radical in its scope.

Under the International Covenant on Civil and Political Rights (ICCPR), signatories are

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<sup>5</sup> Prison statistics India (2019) NATIONAL CRIME RECORDS BUREAU (AUG 26, 2020).

required to take steps to ensure the right to compensation for wrongful imprisonment and detention. While India had expressed reservations while ratifying the ICCPR that the Indian legal system does not recognise the right to compensation for victims of unlawful arrest and detention, the jurisprudence created by the Supreme Court of India has made this reservation redundant.

#### IV. VICTIMS RIGHT TO COMPENSATION

“If I was asked to name any particular Article the most important in this constitution-an Article without which this Constitution would be a nullity- I could not refer to any other article except this one...it is the very soul of the Constitution and very heart of it.”<sup>6</sup>

-Dr. Ambedkar (Speaking in Constituent Assembly Debate on the importance of Article 32 of the Constitution)

The declaration of fundamental rights is meaningless unless efficient state machinery backs it for enforcement.<sup>7</sup> The maxim “ubi jus ibi remedium” which means “where there is a right there is a remedy”

Therefore, it was in the interest of justice that our lawmakers introduced Article 32 and 226 of the Constitution, where ‘fundamental rights’ are provided for an appropriate solution for their compliance.

The Judiciary in India plays the role of a guarantor and sentinel of the ‘Rule of Law principle’, which in turn represents the importance of peace, security, and harmony between citizens. The Supreme Court has often played an authoritative role and protected the fundamental rights of its citizens, which have been violated due to the lack of awareness of State by way of monetary compensation. It is therefore vital to review the role of the Judiciary in cases where the fundamental rights of wrongfully convicted victims have been violated.

- It was in 1983 when the Supreme Court in **Rudul Shah v. State of Bihar**<sup>8</sup>, for the first time, faced a dilemma to whether or not award compensation to the wrongfully convicted victim whose fundamental rights were violated.

The petitioner was unlawfully detained in prison for ‘14 years’ and filed a Habeas Corpus

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<sup>6</sup> CONSTITUENT ASSEMBLY DEBATES, Vol. VII, (Nov. 09, 1948) [https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/7/1948-11-09](https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-09) (last accessed Sep. 23, 2020, 11:04 PM).

<sup>7</sup> Seri Irazola ET AL., Study of Victim Experiences of Wrongful Conviction. No. 244084, U.S. DEPARTMENT OF JUSTICE (Nov. 2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/244084.pdf> (last accessed Aug. 26, 2020, 7:40 PM).

<sup>8</sup> 1983 SCC (4) 141 (India).

petition before the Supreme Court under Art.32 of the Constitution demanding for compensation along with other reliefs. The Court believed that Article 21, would be denuded if the Court ordered for mere acquittal of the petitioner without any grant of compensation.

The Supreme Court awarded Rs. 30,000 as compensation to the petitioner and held that the scope of Art.32 is sufficiently broad to include the 'power to grant compensation' for infringements of fundamental rights only in cases where the infringement of rights is gross.

The grant of reimbursement by the Supreme Court, according to Art.32 and the High Court under Art.226 of the Constitution, is collective reparation dependent on the strict liability of breaches of constitutional rights.

- The Court, while hearing a writ petition in the case of **Ram Lakhan Singh v State of UP**<sup>9</sup>, ordered a compensation amount of Rs.10 lakhs to the petitioner who fought a prolonged legal battle for ten years and also spent 11 days in jail. In another case, a nine-year-old child died due to police's atrocities whose kin was awarded a compensation amount of Rs. 75000.[28]

- The Court in **Ayodhya Dube & Ors. v. Ram Sumar Singh**<sup>10</sup>, held that the omission of a proper procedure, the lack of disciplinary intervention, and the insufficient evaluation of sufficient facts lead to perversity, which may lead to the severe obstruction of justice.

- In another landmark case of **S. Nambi Narayanan v. State of Kerala**<sup>11</sup>, the Supreme Court awarded Rs. 50 lakhs as compensation to the ISRO scientist who was wrongfully accused of espionage after a long legal battle of 24 years. The fact that restitution was granted 24 years post the wrongful conviction significantly reminds us of the need to 'rectify wrongdoings promptly'.

- The infamous **Akshardham terror case**<sup>12</sup>, smears upon the judicial literature of wrongful convictions. In this case, the Supreme Court reprimanded the authorities for conducting the investigation of terror attacks in an injudicious manner and levying severe allegations against innocent persons.

Astoundingly, the Court 'refused' to entertain the victims' plea for compensation who languished in jails for 'more than a decade' for no fault of their own. Senior Advocate K.T.S

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<sup>9</sup> 2015 16 SCC 715, ¶ 15 (India).

<sup>10</sup> AIR 1981 SC 1415, ¶ 1 (India).

<sup>11</sup> ISRO spy case: after 24 years, Supreme Court orders Rs 50 Lakh compensation for Ex- Scientist Nambi Narayan in false espionage case, FIRST POST (Sep 14, 2018). WP(C). No. 30918 of 2012 (L)(India).

<sup>12</sup> Akshardham terror attack: Supreme Court refuses compensation plea of acquitted persons, THE INDIAN EXPRESS (July 05, 2016).

Tulsi (then counsel for the petitioner) rightly asked the bench,<sup>13</sup> “The Apex Court gave them back freedom but who can give them back the ten years they spent behind bars for no-fault? The State must adequately compensate them as it violated the right to life brazenly.”

Astonishingly to our lamentation, the Court denied the appeal for compensation on the ‘basis’ that the acquittal of the victims by the Court would not automatically give them the right to compensation and would set a ‘dangerous precedent’ if the appeal was allowed.

- Following the footsteps of Supreme Court, Hyderabad Court in the year 2017 acquitted ten accused persons in the **Hyderabad 2005 suicide bombing case**<sup>14</sup>. In this case, the accused were charged for a conspiracy behind the suicide attack that took place in Police task force office on Oct. 12, 2005, thereby killing two officials.

The Court accentuated that the police arrested the suspects without any concrete evidence and has subsequently failed to prove conspiracy on the part of accused. The innocents lost ‘ten years’ of their lives due to authorities’ negligence.

Neither was any compensation granted to the victims nor was any coercive action taken against the investigators. It is not the first time when police committed such a faux pas. These cases are often viewed as high profile cases.

The Judiciary has been retrospectively aware of the factors leading to ‘Miscarriage of Justice’. Furthermore, their lack of action to frame a uniform legislative framework for compensation indicates their ignorance towards the degraded status of these victims. The lack of action on the part of Judiciary continues to undermine the country’s judicial system.

## V. UNIFORM LAW REGARDING COMPENSATION FOR WRONGFUL PROSECUTION

The Law Commission of India (LCI) in its 277th report titled ‘Wrongful Prosecution (Miscarriage of Justice): Legal Remedies’ headed by Hon’ble Justice Dr B.S Chauhan has recommended certain amendments to the Criminal Procedure Code, 1973 (CrPC). While it is beyond the reach of this article to objectively examine all the recommendations made by LCI in the aforementioned report, it will briefly analyse the recommendations made concerning the Compensation Legislative Framework only.

The Commission recommends setting up of ‘Special Courts’ in each district for delivery of

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<sup>13</sup> PTI, Akshardham Terror Attack Case: SC Refuses Compensation Plea of Acquitted Persons, THE INDIAN EXPRESS (Jul. 05, 2016, 5:29 PM), <https://indianexpress.com/article/india/india-news-india/akshardham-terror-attack-case-sc-refuses-compensation-plea-of-acquitted-persons-2895251>

<sup>14</sup> Srinivasa Rao Apparasu, 10 Suspects in Hyderabad Suicide Bombing Case Acquitted, HINDUSTAN TIMES (Aug. 10, 2017, 6:21 PM), <https://www.hindustantimes.com/india-news/10-suspects-in-2005-hyderabad-suicide-bombing-acquitted/story-fII02EQzHjVARjq3WhFDdO.html> (last accessed Aug. 22, 2020, 1:09 PM).

expedient and speedy justice to victims. These courts shall solely entertain the Compensation Pleas filed by wrongfully accused victims and their family members. The jurisdiction of these courts has been classified based on;

- The place in which the wrongful prosecution took place;
- District in which the victim resides.
- The nature of proceedings to be followed by Special Courts shall be Summary Procedures as prescribed under Order XXXVII of the Civil Procedure Code, 1908. The burden of proof shall lie on the petitioner to prove misconduct on the part of the defendant which led to Wrongful prosecution.
- The most important part of the recommendation is the Compensation legislative framework set out by LCI in its report. The LCI observed that it might not be feasible to set out a fixed amount of compensation for these victims; they recommended the inclusion of ‘Guiding Principles’ to be followed by Courts while deciding the quantum of compensation. The guiding principles shall be included in the amendments prescribed by LCI. These principles include the “seriousness of the offence, severity of punishment, length of detention, damage to health, harm to reputation, and loss of opportunities.”

The LCI also prescribes grant of interim compensation by the State to the victims. The compensation shall be of ‘Pecuniary’ and ‘Non-Pecuniary nature’; Pecuniary being the amount of the compensation decided by Courts based on Guiding principles; the non-pecuniary compensation shall mean measures taken by the State for the reintegration of the victim into society, in particular employment opportunities, the removal of social stigma associated with the crime that the victim has never committed.<sup>15</sup>

## **VI. INTERNATIONAL HUMAN RIGHTS AND FUNDAMENTAL RIGHTS (PART III OF COI)**

India had signed the Universal Declaration on Human Rights January 01, 1942. Part III of the Constitution India ‘also referred as magna carta’ contains the Fundamental rights. These are the rights which are directly enforceable against the state in case of any violation. Article 13(2) prohibits state from making any law in violation of the Fundamental Rights. It always provides that if a part of law made is against the Fundamental Rights, that part would be declared as void. If the void part cannot be separated from the main act, the whole act may be declared as

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<sup>15</sup> LAW COMMISSION OF INDIA, Report No. 277(recommendations)

void.

In the case of **Keshvanand Bharti v. State of Kerela**,<sup>16</sup> the apex court observed: “The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted.”

Provisions of Universal Declaration of Human Rights along with corresponding provisions in Constitution of India are as follows:

<b>Brief Description of Provision</b>	<b>UDHR</b>	<b>COI</b>
Equality and equal protection before law	Article 7	Article 14
Remedies for violation of Fundamental Rights	Article 8	Article 32
Right to Life and personal liberty	Article 9	Article 21
Protection in respect for conviction of offences	Article 11(2)	Article 20(1)
Right to property	Article 17	Earlier a Fundamental Right
Right to freedom of conscience and to practice, profess and propagate any religion	Article 18	Article 25(1)
Freedom of speech	Article 19	Article 19(1)(a)
Equality in opportunity of public service	Article 21(2)	Article 16(1)
Protection of minorities	Article 22	Article 29(1)
Right to education	Article 26(1)	Article 21A

Many of the civil and political rights contained in the International Covenant on Political and

<sup>16</sup> (1973) 4 SCC 225; AIR 1973 SC 1461

Civil Rights, 1966 (ICCPR) are also contained in the Part III of the Constitution of India. India has signed and ratified the ICCPR.

Provisions of ICCPR along with corresponding provision of Constitution of India are as follows:

<b>Brief Description of Provision</b>	<b>ICCPR</b>	<b>COI</b>
Right to life and liberty	Article 6(1) & 9(1)	Article 21
Prohibition of trafficking and forced labour	Article 8(3)	Article 23
Protection against detention in certain cases	Article 9(2), (3) and (4)	Article 22
Freedom of movement	Article 12(1)	Article 19(1)(d)
Right to equality	Article 14(1)	Article 14
Right not to be compelled to be a witness against own self	Article 14(3)(g)	Article 20(3)
Protection against double jeopardy	Article 14(7)	Article 20(2)
Protection against ex-post facto law	Article 15(1)	Article 20(1)
Right to freedom of conscience and to practice, profess and propagate any religion	Article 18(1)	Article 25(1) & 25(2)(a)
Freedom of speech and expression	Article 19(1) & (2)	Article 19(1)(a)
Right to assembly peacefully	Article 21	Article 19(1)(b)

Right to form union/ association	Article 22(1)	Article 19(1)(c)
Equality in opportunity of public service	Article 25(c)	Article 16(1)
Equality and equal protection before law and no discrimination on the basis of any ground such as race, colour, sex, language, religion etc.	Article 26	Article 14 & 15(1)
Protection of interests of minorities	Article 27	Article 29(1) & 30

Some of the rights which were not earlier included in Fundamental Rights but were available in ICCPR. They were considered as Fundamental Rights by various judicial pronouncements. Some of them are Right to fair trial, Right to privacy, Right to legal aid, Right to travel abroad.

## VII. REMEDIES UNDER LAW: VARIOUS ASPECTS

A review of the existing laws and the case law brings forward three categories of court-based remedies with respect to miscarriage of justice resulting in wrongful prosecution, incarceration or conviction etc.:

- (i) Public Law Remedy;
- (ii) Private Law Remedy; and
- (iii) Criminal Law Remedy.<sup>17</sup>

The first two of the aforementioned remedies are victim-centric providing for pecuniary relief from the State to persons who have suffered on account of wrongful prosecution, conviction and/or incarceration. The third remedy, available under criminal law, is on the lines of holding the wrongdoer accountable, i.e., proceeding with criminal action against the concerned officers of the state for their misconduct.

### 1. Public Law Remedy

<sup>17</sup> LAW COMMISSION OF INDIA, Report No. 277, Wrongful Prosecution (Miscarriage of Justice): Legal Remedies

Public law remedy for miscarriage of justice on account of wrongful prosecution, incarceration or conviction finds its roots in the Constitution of India. In such cases, it is the violation of fundamental rights under Article 21 (the right to life and liberty), and Article 22 (protection against arbitrary arrests and illegal detention etc.) that invokes the writ jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution respectively; which includes the grant of compensation to the victim, who may have unduly suffered detention or bodily harm at the hands of the employees of the State.

**1.1.** In **Maneka Gandhi judgment**<sup>18</sup>, where the Supreme Court gave a dynamic interpretation to Article 21, a new orientation to the concept of personal liberty. One of the important offshoots of the foregoing were that the courts started to consider awarding compensation in cases of undue detention and bodily harm.

**1.2.** In this respect, the case of **Khatri & Ors. v. State of Bihar & Ors.**,<sup>19</sup> (the Bhagalpur Blinding case), was one of the earlier cases where the question was raised as to whether a person who has been deprived of his life or personal liberty in violation of Article 21 can be granted relief by the Court, and what could such relief be. In this case, it was alleged that the police had blinded certain prisoners and that the State was liable to pay compensation to them.

**1.3.** In **Rudal Shah v. State of Bihar**<sup>20</sup>, where the Supreme Court, exercising its writ jurisdiction, 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.

## **2. Private Law Remedy**

The private law remedy for errant acts of State officials exists in the form of a civil suit against the State for monetary damages. The Supreme Court has time and again emphasised the above discussed Constitutional remedy of a claim based on strict liability of the State being distinct from and in addition to the remedy available in private law for damages on account of tortious acts of public servants – especially negligence by a public servant in the course of employment.

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<sup>18</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597.

<sup>19</sup> AIR 1981 SC 928

<sup>20</sup> AIR 1983 SC 1086

**2.1.** For instance, in cases of malicious prosecution, such as in **State of Bihar v. Rameshwar Prasad Baidya & Anr.**<sup>21</sup>, where criminal proceedings were initiated against an accused for the purpose of harassing him, the Court held the State liable to pay damages to the accused person for his malicious prosecution by the State employees. At the same time, there is a plethora of such civil suits where the function of maintaining law and order, since performed only by the State or its delegates, has been held to be a sovereign function, rendering the State to not be liable for consequences ensuing therefrom. The Law Commission also looked into the scope of immunity of the government for the tortious acts of its employees in its 1st Report on „Liability of State in Tort“ (1956); and recommended that “the old distinction between sovereign and non-sovereign functions should no longer be invoked to determine the liability of the State.”

### **3. Criminal Law Remedy**

In terms of the remedy for wrongful prosecution, incarceration on account of police and prosecutorial misconducts, the applicable criminal law provisions focus on the other end of the miscarriage of justice i.e. wrongdoers - the concerned public officials. These provisions, as contained in the Indian Penal Code, 1860 (IPC) and the Criminal Procedure Code, 1973 (CrPC), lay down the substantive and procedural contours of the action(s) that can be taken against the wrongdoers.

**3.1.** In the case of **State v. Saqib Rehman & Ors.**<sup>22</sup>, the Sessions Court, Dwarka, New Delhi, vide its order dated 2 February 2011, made a finding that the concerned police officials had framed the persons accused in a false criminal case, fabricating evidence etc., and ordered lodging of a complaint against the concerned officials under sections 166 and 167, IPC, among others. In this case, the persons accused were already in illegal custody when the police officials scripted an encounter basing it on a „fake secret informer“ and showing an arrest of a later date.

**3.2.** In **Ranjit Singh v. State of Pepsu**<sup>23</sup> in a matter concerning illegal detention of a person by the police, the accused, a police officer when called upon to make a statement against an application under Article 226 of the Constitution for a writ of habeas corpus, filed a false affidavit denying that the man was ever arrested by the police or was in his custody. The Court held that the accused had committed the offence of giving false evidence under section 191, IPC.

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<sup>21</sup> AIR 1980 Pat 267.

<sup>22</sup> Unique Case ID 02405R1310232005.

<sup>23</sup> AIR 1959 SC 843.

**3.3.** In the case of **Mohd. Aamir Khan**<sup>24</sup>, who was wrongfully incarcerated for 14 years as the main accused in multiple terror cases, there appeared a uniform noting in all the cases against him with regard to the lack of incriminating evidence connecting the accused with the explosions. The Delhi High Court in one of the said cases **Mohd. Aamir Khan v. State**, noted the above and setting aside the conviction, held that the prosecution has “failed to adduce any evidence to connect the accused with charges framed much less prove them”.

**3.4.** With respect to the issue under consideration, reference needs to be made to **Uttarakhand Sangharsh Samiti v. State of U.P.**<sup>25</sup>, where the Court specifically held that acts of wrongful restraint and detention, planting weapons to show fake recoveries, deliberate shooting of unarmed agitators, tampering with or framing incorrect records, commission of rape and molestation etc., are neither acts done, nor purported to be done in the discharge of official duties; and that no sanction of the Government is required in ordering prosecution of such police officials. The Court also granted exemplary damages to the victims of police atrocities.

## **VIII. WHAT AMOUNTS TO WRONGFUL PROSECUTION?**

Wrongful prosecution, as noted above, are the cases of miscarriage of justice where procedural misconducts - police or prosecutorial, malicious or negligent – resulted in wrongful prosecution of an innocent person, who was ultimately acquitted, with a court making an observation or recording a finding to that effect. The underlying sentiment being that such person should not have been subjected to these proceedings in the first place.

The man lost ‘23 years’ of his life due to the combined negligence of Judiciary and the authorities. The Court did not grant him any compensation. He was rendered impoverished, and the broken financial condition prevented him from filing a plea for compensation.

In another case of Assam, **Madhumala Das**<sup>26</sup> was arrested and held in the detention centre for three years for a crime she had never committed. Her deaf and dumb daughter wandered through the village looking for her mother, and she soon went into trauma. The case turned out to be one of ‘mistaken identity’ in the investigation. Madhumala lost three years of her life due to her fateful resemblance to the killer. Police’s negligence also caused an irreparable loss to

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<sup>24</sup> 138 (2007) DLT 759.

<sup>25</sup> (1996) 1 UPLBEC 461, this case involved mass human rights violations including firing by the police and paramilitary forces on an assembly of protestors, resulting in the loss of many lives, mass scale molestation and rape, illegal detentions and incarceration of large number of persons.

<sup>26</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/> (last accessed Aug. 28, 2020, 11:05 PM).

her daughter.

Not only unlawful arrests and imprisonment contribute to the loss of years, but victims are also subjected to even social isolation and ostracism after release. For years separated from friends and families and the lost opportunity to skill oneself, the fearsome convictions will not end with liberty.

With no income, lodging, conveyance, comfort, or advertising, and with a negative identity record that, despite innocence, is rarely cleaned, the charge of being accused lingers even after the pardon.

## **IX. SCHOLAR'S OPINION**

According to the report of U.S. Department of Justice, wrongfully convicted victims face long-term psychological, social, emotional and financial consequences over their lifetimes following their release. The psychological and emotional effects include, inter alia, terror, mistrust, anxiety, psychiatric illness, and sleepless nights.<sup>27</sup>

Victims also undergo financial difficulties when they have lost the opportunity to skill themselves and end up unemployed in society. Furthermore, the financial crisis prevents them from becoming involved in social activities. These victims never recover from the trauma of being imprisoned for years while being innocent. No amount of compensation can restore the lost years of victims' life. According to the Innocence Project report, the majority of victims often have Post-Traumatic Stress Disorder (PTSD).<sup>28</sup>

PTSD is a condition in which the person suffers consequences such as loss of interest in enjoyable things, hyper-vigilance (a condition in which he remains alert all the time), frightening thoughts, and negative feelings due to a life-changing event. The list of consequences is non-exhaustive and varies from case to case. Sometimes it can take years for PTSD to get away, and sometimes it does not.

The challenges faced by victims post their exoneration arise after they have convinced the Court about their innocence, implying they have surpassed the arduous judicial process, overcame expenses of affording a quality legal aid, taken care of family's expenses while in prison.

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<sup>27</sup> Seri Irazola ET AL., Study of Victim Experiences of Wrongful Conviction. No. 244084, U.S. DEPARTMENT OF JUSTICE (Nov. 2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/244084.pdf> (last accessed Aug. 26, 2020, 7:40 PM).

<sup>28</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-ee-ginny-lefever-shares-illuminating-research-on-ptsd> (last accessed Aug. 20, 2020, 7:05 PM).

## X. CONCLUSION

In our criminal justice system, the survivor of the false conviction suffers in two ways. First, it is psychological and personal, since the person who has suffered incarceration is the one who has served the jail time for the crime he never committed. Secondly, the perpetrator of a false conviction is sentenced to lifelong societal hatred and condemnation due to the incompetence of the criminal justice system.<sup>29</sup>

Therefore, it is right to stress that these victims are subject to double jeopardy. The principle of Double jeopardy originates from the common law rule of “**nemo debet vis vexari**” which means that ‘no man should be put in peril twice for the same offence.’<sup>30</sup>

These victims of the State’s culpability are put in peril twice for the offence they have never committed. Article 20(2) of the Constitution of India provides that “**no person shall be prosecuted and punished for the same offence more than once**”. Although these victims are not prosecuted twice, their endurance towards societal hatred is none less than prosecution. Furthermore, the unlawful detention of these innocent persons infringes their Right to Freedom, enshrined as a ‘fundamental right’ in Part III of the Constitution.

Wrongfully accused victims are deprived of their basic fundamental rights. The appalling state of the victims, following their conviction, manifests the state’s unwise approach to these victims. After their release from prison, the victims depend on the state’s mercy.

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<sup>29</sup> Ashley Nicole Miller, Life after Exoneration, AMERICAN PSYCHOLOGY LAW SOCIETY, <https://www.apadivisions.org/division-41/publications/newsletters/news/2014/03/exoneration> (last accessed Jul. 24, 2020, 1:27 PM).

<sup>30</sup> DR. J. N. PANDEY, CONSTITUTIONAL LAW OF INDIA 257 (Dr. S. S. Srivastava ed., ed. 55, Central Law Agency 2018).