

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 4 | Issue 1

2021

© 2021 *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 International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Miscarriage of Justice: A Judicial Analysis

NIKITHA SURESH¹ AND LUCY SARA GEORGE²

The Miscarriage of Justice refers to the wrongful prosecution and conviction of innocent people. It is a result of faulty and erroneous appreciation of evidence. The ambit of wrongful prosecution, herein, would include

- (i) Malicious prosecutions; and
- (ii) Prosecutions instituted without good faith.

The claim for compensation can be brought by the accused person so injured; or by any agent duly authorized by the said accused person; or where the accused person died after the termination of the wrongful prosecution, by all or any of the heirs or legal representatives of the deceased.

In *Ramesh Harijan v. State of Uttar Pradesh*³, the Court overturned an acquittal order, noting undue importance to “*insignificant discrepancies and inconsistencies*” by the trial court. The court observed that such a course tantamount to miscarriage of justice – and preventing the same is of paramount importance. Further in *Allarakha K Mansuri v. State of Gujarat*⁴, the Supreme Court held that in a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the appellate court to re-appreciate the evidence in appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. These judicial pronouncements discuss a broad view of the expression “miscarriage of justice.” The above mentioned cases are few where the accused was not guilty of the offence and the police and the prosecution engaged in some form of misconduct in investigating thereby prosecuting the person.

The function of maintaining law and order has been held to be a sovereign function. According to the traditional classification, arrest and detention were classified as “sovereign” functions, whereby any person who suffered undue detention or imprisonment at the hands of the State was not entitled to any monetary compensation and, the courts could only quash an arrest or detention if it was not according to law. This, however, changed with the *Maneka*

¹ Author is an Assistant Professor at Amity Law School Amity University Haryana, India.

² Author is an Assistant Professor at Amity Law School Amity University Haryana, India.

³ Ramesh Harijan v. State of Uttar Pradesh AIR 2012 SC 979,

⁴ Allarakha K Mansuri v. State of Gujarat, AIR 2002 SC 1051

Gandhi V. Union of India⁵, 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 was that the courts started to consider awarding compensation in cases of undue detention and bodily harm

According to the National Judicial Grid (NJDG) shows that 26.55% of the appeals are against the convictions have been pending before High Courts for more than 10 years. The reason why the numbers of cases are increasing gradually is due to lack of knowledge, awareness, literacy and lack of proper legal aid being provided to these victims. Since many of these victims are not provided with proper legal aid they are generally unaware of any alternative remedy available to them for a speedy trial in the cases of wrongful prosecution, the years that pass and the expense of victim's family cannot be surpassed by the compensation which is provided to them. The person alone isn't the victim here but also the people whose life is dependent on him. In **Mohd. Jalees Ansari v Central Bureau of Investigation**⁶, when the victim's brother filed a petition for compensation saying that they were financially and mentally drained and have no will to fight another dubious legal battle; sacrificing everything to get their brother acquitted.

In **Rudal Shah v State of Bihar**⁷ the court awarded compensation for the first time to the wrongfully convicted victims whose fundamental rights were violated by such conviction. The petitioner was unlawfully detained for 14yrs. The Supreme Court awarded Rs.30, 000 as compensation and in doing so held that the scope of Article 32 of the Constitution is sufficiently broad enough to include the power to grant compensation for infringing the rights.

In **Ram Lakhan Singh v State of UP**⁸, an amount of Rs.10 Lakhs was given to the victim who was wrongfully accused for 10yrs and put in jail for 11 days. In **S.Nambi Narayan v State of Kerala**, the Supreme Court awarded Rs.50 Lakhs as compensation to an ISRO scientist who was wrongfully accused of espionage after a long battle of 24yrs ended in acquittal.

The fact that Rudul Shah was granted compensation in the amount of Rs. 30,000 for being captive for 14 years in prison and that Ram Lakhan Singh was granted compensation in the amount of Rs. 15 Lakhs for being imprisoned for 11 days reflects the lack of consistency of the Judiciary's approach to these cases, thereby highlighting the need of a 'uniform compensation legislative framework'.

⁵ Maneka Gandhi V. Union of India, AIR 1978 SC 597

⁶ Mohd. Jalees Ansari v Central Bureau of Investigation Criminal Appeal No 546 of 2004

⁷ Rudal Shah v State of Bihar (1983) 4 SCC 141

⁸ Ram Lakhan Singh v State of UP Writ Petition (Civil) No 933 of 2014

Delhi High Court in the landmark case of ***Babloo Chauhan @ Dabloo v. State Government of NCT of Delhi***,⁹ specifically stressed the need for a comprehensive legislative framework to compensate the wrongfully convicted victims. The Court opined that:

*“There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated. The instances of those being acquitted by the High Court or the Supreme Court after many years of imprisonment are not infrequent. They are left to their devices without any hope of reintegration into society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls. There is an urgent need, therefore, for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration.”*¹⁰

The amount of compensation is not defined under any system thereby fostering ambiguity in the Indian law. This is evident through a catena of cases.¹¹ Some of the landmark cases discussed below further reflect the jumbled approach of the Judiciary. The infamous ***Akshardham terror case***,¹² 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 that languished in jails for ‘more than a decade’ for no fault of their own.¹³ Senior Advocate K.T.S Tulsi (then counsel for the petitioner) rightly asked the bench, *“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.”*¹⁴

The Law Commission of India submitted a report on August 2018 titled ‘*Wrongful Prosecution (Miscarriage of Justice): Legal Remedies to the Government of India*’¹⁵. This report looks at the issue from the context of Indian Criminal Justice system and recommends ‘wrongful prosecution’ to be the standards of miscarriage of justice, as against ‘wrongful conviction’ and ‘wrongful incarceration’. ‘Wrongful prosecution’ would include cases where

⁹ *Babloo Chauhan @ Dabloo v. State Government of NCT of Delhi* 247 (2018) DLT 31

¹⁰ *Ibid*

¹¹ *K. Chinnaswamy Reddy v State of Andhra Pradesh*, AIR 1962 SC 1788

See Also: *State of Rajasthan v Smt. Vidhyawathi*, A.I.R. 1962 S.C.933;

State v Mohd. Naushad&Ors., AIR 1980 Pat 267.

¹² *AdambhaiSulemanbhaiAjmeri&Ors.v State of Gujarat*, (2014) 2 MLJ (CrL.) 670 (SC)

¹³ <https://indianexpress.com/article/india/india-news-india/akshardham-terror-attack-case-sc-refuses-compensation-plea-of-acquitted-persons-2895251>

¹⁴ *Supra* at N7

¹⁵ Law Commission Report No. 277

the accused and not guilty of the offence, and the police and / or the prosecution engaged in some form of misconduct in investigating and / or prosecuting the person. It would include both the cases where the person spent time in prison as well as where he did not; and cases where the accused was found not guilty by the trial court or where the accused was convicted by one or more courts but was ultimately found to be not guilty by the Higher Court.

The Report gives an overview of the remedies available under the existing laws and discusses their inadequacies (also noted by the High Court in the aforementioned Order). The Commission, accordingly, recommends enactment of a specific legal provision for redressal of cases of wrongful prosecution – to provide relief to the victims of wrongful prosecution in terms of monetary and non-monetary compensation (such as counselling, mental health services, vocational / employment skills development etc.) within a statutory framework. The Report enumerates the core principles of the recommended framework- defining ‘wrongful prosecution’ i.e., cases in which claim for compensation can be filed, designation of a Special Court to decide these claims of compensation, nature of proceedings – timeline for deciding the claim, etc., financial and other factors to be considered while determining the compensation, provisions for interim compensation in certain cases, removal of disqualification on account of wrongful prosecution / conviction etc.¹⁶

It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilized society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expedition. As far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Allen:

"I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is

¹⁶ <https://www.scconline.com/blog/post/2018/09/08/wrongful-prosecution-miscarriage-of-justice-legal-remedies-law-commission-of-india-report-no-277/>

obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos.¹⁷"

¹⁷ Sir Carleton Allen "The Proof of Guilt" Glanville Williams, Second Edition page 157