

# LEGALFOXES LAW TIMES

## WRONGFUL PROSECUTION: A TRAVESTY OF JUSTICE

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## INTRODUCTION

*“We’ve all been acculturated into accepting the inevitability of wrongful convictions, unfair sentences, racial bias, and racial disparities and discrimination<sup>1</sup> against the masses.”*

*- Bryon Stevenson*

India, despite being the most populous democratic republic in the world which has the most promising objectives of ensuring justice, liberty, equality and fraternity vide the Preamble of the Indian Constitution, has failed miserably at implementing such objectives. The entire mechanism of our justice works on the principle of presumption of Innocence until proven guilty.

Imparting justice is very important but do the ends of justice lie only on the two extreme points of conviction and acquittal or there is something in between these that needs to be looked upon, from the perspective of the victims of wrongful conviction.

The people who have spent the crucial years of their lives behind bars, can their life be returned by the mere order of acquittal? They are left to their devices without any hope of reintegration into society or rehabilitation since the best years of their life have been detracted.

‘Once a man is convicted of an offence, and particularly once he goes to prison, he will begin to lose the approval and support of his law-abiding family and friends. His ties to them will be cut or weakened. He cannot, however, exist without a degree of social approval from another and less scrupulous source.’<sup>2</sup>To him the sorrow of being wrongfully prosecuted is much more than the joy of being acquitted.

Country like India, still lacks a proper legal framework for providing compensation to the victims of wrongful prosecution. It is very common to come across cases where the victims after fighting a long battle for justice are finally acquitted by the court. This current scenario puts a big question mark on our courts, as to how they have failed to protect the fundamental right to life

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<sup>1</sup> Bryon Stevenson.

<sup>2</sup> J.P MARTIN D WEBSTER, THE SOCIAL CONSEQUENCES OF CONVICTION (CAMBRIDGE STUDY IN CRIMINOLOGY) 218 (Ashgate Pub Co 1971).

and personal liberty, right of protection against arbitrary arrest and illegal detention of so many victims

*This research paper focuses on the issue of wrongfully prosecuted and for this purpose the research paper has been broadly divided into four parts, the first part will be dealing with the concept of miscarriage of justice under consideration, second part delves deep into the standards of miscarriage of justice, third part of this research paper will help the reader to understand the broad contours of current Indian legal framework and the final part discusses the recommendations followed by the conclusion.*



## MISCARRIAGE OF JUSTICE: ISSUE UNDER DELIBERATION

The expression “miscarriage of justice” is of wide amplitude. It has been defined as an error of justice meaning ‘errors in the interpretation, procedure, or execution of the law – typically, errors that violate due process, often resulting in the conviction of innocent people.’<sup>3</sup>In simple words, Miscarriage of justice is described as a highly unfair outcome of any judicial proceeding, for example whenever any defendant gets convicted despite the lack of evidence on an essential element of crime. Miscarriage of justice arises when in any situation, a person is punished by law courts for the crime which has never been committed by him.

‘Whenever there is any unreasonable judgment which is based on any inaccurate understanding of the law and facts of the case then the occasion is said to be of miscarriage of justice, Miscarriage of justice is what arises from misconception of law, irregularity of procedure, neglect of proper precaution leading to apparent harshness of treatment or some -underserved hardship to individuals.’<sup>4</sup>

The Privy Council in *Bibhabati Devi v. Ramendra Narayan Roy*<sup>5</sup>, ‘defined the contours of the term, miscarriage of justice, as a departure from the rules that permeates all judicial procedure so as to make the resulting proceedings not in the proper sense of the word, judicial procedure at all, The Court highlighted two scenarios: one, where violation of law or procedure must be of such erroneous proposition of law that if that proposition were to be corrected, the finding could not stand; and the other, where the neglect is of such principle of law or procedure, whose application will have the same effect.’<sup>6</sup>

Miscarriage of justice has been witnessed on multiple occasions in India. It may occur due to many reasons such as flagrant negligence by the police during the investigation, deliberate fabrication of evidence, errors of due process and impunity. If a court’s approach in dealing with

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<sup>3</sup> BRIAN FORST, ERRORS OF JUSTICE NATURE, SOURCES AND REMEDIES 3 (Cambridge University Press 2004).

<sup>4</sup>Janata Bal v. H. S. Chowdhary &Ors., AIR 1993 SC 892.

<sup>5</sup>Bibhabati Devi v. Ramendra Narayan Roy, AIR 1947 PC 19.

<sup>6</sup>*Id.*

the evidence is found to be patently illegal, with findings recorded to be perverse, and the conclusions arrived thereto contrary to the evidence on record, it leads to miscarriage of justice.<sup>7</sup> Miscarriage of justice is the phenomenon of attaining the ends of justice through faulty means.

Miscarriage of justice arises from a faulty and erroneous appreciation of evidence.<sup>8</sup>

In *Ramesh Harijan v. State of Uttar Pradesh*<sup>9</sup>, ‘the Court overturning an acquittal order, noted that undue importance to, insignificant discrepancies and inconsistencies, by the trial court observing that such a course tantamount to miscarriage of justice – and preventing the same is of paramount importance.’<sup>10</sup>

‘In *Ayodhya Dube & Ors. v. Ram Sumar Singh*, the Supreme Court held that lack of judicial approach, non-application of mind, non-consideration or improper consideration of material evidence inconsistencies with faulty reasoning such that amounts to perversity amounts to grave miscarriage of justice.’<sup>11</sup>

Manifest injustice erodes the esteem of legal institutions. There is a paradigm shift in people's mentality from pretending that mistakes never happened to realizing the importance of admitting the mistakes that lead to miscarriage of justice. *Nothing enhances justice more than the rigorous pursuit of error*<sup>12</sup>. One cannot deny the very existence of miscarriage of justice in the criminal legal machinery of India that is ruthlessly affecting the lives of thousands of guiltless people. In many instances even after the correction of a miscarriage of justice, terrible personal tragedies continue to traumatize guiltless people who have witnessed the entire agony. Even today we have numerous examples of people who despite being guiltless are caged in the bleak and sordid prison cells.

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<sup>7</sup>State Of Punjab v. Madan Mohan Lal Verma, AIR 2013 SC 3368.

<sup>8</sup>State of Uttar Pradesh v. Nawab Singh, AIR 2004 SC 1511.

<sup>9</sup>Ramesh Harijan v. State of Uttar Pradesh, AIR 2012 SC 979.

<sup>10</sup>Allarakha K. Mansuri v. State of Gujarat, AIR 2002 SC 1051.

<sup>11</sup>Ayodhya Dube & Ors. v. Ram Sumar Singh, AIR 1981 SC 1415.

<sup>12</sup>LAW TEACHER, <https://www.lawteacher.net/free-law-essays/english-legal-system/changes-in-relation-to-miscarriages-of-justice-law-essay.php#ftn59> (last visited June 12, 2021).

Judicial decisions discussed above provides us with a wide view of the term miscarriage of justice but in the context of this issue addressed in the research paper, it is basically referring to wrongful prosecution, regardless of the final order and whether or not it amounts to any sort of incarceration by any court. The instances discussed above, paints an explicit picture where the innocent person is forced to undergo punishment for a crime which he never committed because of the erroneous conduct of investigation by the investigating agencies and/or by the dodgy tactics adopted by the prosecution for wrongfully prosecuting the guilt-free person.



## FACTS AND FIGURES

National Crime Records Bureau (NCRB) released a report in early 2019 which highlighted the prisoners' statistics, the report also compared the statistics with the previous years. The important information from the report released by NCRB in early 2019 has been given below for a quick reference:

YEAR	NUMBER OF PRISONS	ACTUAL CAPACITY OF PRISONS	OCCUPANCY RATE AT THE END OF THE YEAR	TOTAL PRISONERS	NO. OF CONVICTS	NO. OF UNDERTRIAL PRISONERS
2017	1361	3,91,574	115.1%	4,50,696	1,39,149	3,08,718
2018	1339	3,96,223	117.6%	4,66,084	1,39,488	3,23,537
2019	1350	4,03,739	118.5%	4,78,600	1,44,125	3,30,487

Table 1: Comparison of Prison Statistics from 2017 to 2019 (all figures as of 31st December of the respective year; the table excludes detunes and other prisoners)

‘Uttar Pradesh has reported the highest number of prisoners (1, 01,297) in its jails contributing 21.2% followed by Madhya Pradesh (44,603), Bihar (39,814), Maharashtra (36,798), Punjab (24,174) and West Bengal (23,092) as on 31st December, 2019. These States together are contributing around 56.4% of total prisoners in the country.’<sup>13</sup>

<sup>13</sup> Ministry of Home Affairs, *Prison Statistics India 2019*, NATIONAL CRIME RECORDS BUREAU (June 12, 2021, 4:25 PM), <https://ncrb.gov.in/sites/default/files/Executive-Summary-2019.pdf>.

‘Uttar Pradesh has reported the maximum number of under trials (22.2%, 73,418 under trials) in the country followed by Bihar (9.5%, 31,275 under trials) and Maharashtra (8.3%, 27,557 under trials) at the end of 2019.’<sup>14</sup>

An international study by the World Prison Brief<sup>15</sup> has noted that India with 69.1% of pre-trial detainees is currently at the 13th highest position<sup>16</sup> out of the total 253 countries of the world and the 4th<sup>17</sup> highest among 29 countries in Asia. During the year 2018, India held 16th rank with 67.2% pre-trial detainees. There is an increase of 1.9% of such detainees as compared with the number of 2018.

The final order of determination of their guilt, keeps the under trials waiting for a long period of time. This can be clearly seen as a result since there are a huge number of under trial cases every year with long detention periods. The lingering becomes a miscarriage of justice in the case of people who have been wrongfully accused and are taken into custody even though the trial are still unsettled and pending, although the people should have never had to go through any of this in the first place.

Although the data does not explicitly mention the exact number of under trials who were incarcerated wrongfully or were ultimately acquitted after being implicated in a case of wrongful prosecution or conviction, but the figures are huge enough to call for the attention of the lawmakers to urgently develop a statutory remedial framework in order to provide justice to the victims of miscarriage of justice.

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<sup>14</sup>*Id.*

<sup>15</sup> Institute for Criminal Policy Research, *Highest to Lowest – Pre-trial detainees / remand prisoners*, WORLD PRISON BRIEF (June 12, 2021, 4:35 PM), [https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field\\_region\\_taxonomy\\_tid=All](https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All).

<sup>16</sup>*Id.*

<sup>17</sup> Institute for Criminal Policy Research, *Highest to Lowest – Pre-trial detainees / remand prisoners*, World prison brief (June 12, 2021, 4:42 PM), [https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field\\_region\\_taxonomy\\_tid=16](https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=16).

Taking note of this alarming situation, honorable Supreme Court expressed torment over the sufferings of accused persons withering in the prison cells for indefensibly long time, in ***Thana Singh v. Central Bureau of Narcotics***<sup>18</sup>, observing:

*'The laxity with which we throw citizens into prison reflects our lack of appreciation for the tribulations of incarceration; the callousness with which we leave them there reflects our lack of deference for humanity. It also reflects our imprudence when our prisons are bursting at their seams. For the prisoner himself, imprisonment for the purposes of trial is as ignoble as imprisonment on conviction for an offence since the damning finger and opprobrious eyes of society draw no difference between the two.'*<sup>19</sup>

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<sup>18</sup> Thana Singh v. Central Bureau of Narcotics, (2013) 2 SCC 590.

<sup>19</sup>*Id.*

## **STANDARDS OF MISCARRIAGE OF JUSTICE**

*Though the Indian justice system is governed by the principle of 'Fiat justitia ruat caelum'<sup>20</sup>, the instances of miscarriage of justice are not uncommon. Post understanding the basic concept of miscarriage of justice it is paramount to identify what exactly are the cardinal standards to determine miscarriage of justice, with respect to the Indian legal framework. Whether it will just be wrongful conviction or wrongful incarceration or wrongful prosecution or will it be a combination of all three above stated standards. We will also be discussing the actual meaning and implication of the word 'wrongful'.*

### **A. Wrongful Conviction**

Around the world, the concept of wrongful conviction is seen to be invariably rooted in the criminal machinery since time immemorial. The international law standard as laid down in the International Covenant on Civil and Political Rights ("ICCPR"), recognize miscarriage of justice as resulting in wrongful conviction.

#### **Article 14(6) of International Covenant on Civil and Political Rights states:**

*'When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.'*<sup>21</sup>

The standards recognized by ICCPR and its consequent adoption by the western countries in their laws bars the compensation to the victims where the conviction was either partly or fully attributable to the claimant. This standard of miscarriage of justice is limited in its sweep, since it comes into play only when the factual innocence of a claimant conclusively proves miscarriage of justice by the establishment of a new fact after a final decision of conviction is given by the court of supreme authority which means all the mechanisms to appeals must have been exhausted, only in such case the claimant qualifies for the relief of compensation.

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<sup>20</sup>Legal Maxim meaning, "*Let justice be done though the heavens fall.*".

<sup>21</sup>International Covenant on Civil and Political Rights, 19 December 1966, § 14(6), 999 UNTS 171, Can TS 1976 No. 47, 1976 (ICCPR).

Even after the ratification to the covenant, India deliberately chose not to convert the commitment under article 14(6) into laws since this standard, if applied, will fail to cater to the current needs of mending the systematic shortcoming of Indian criminal system. In this regard the Law Commission of India, through its 277th Report proposes the following reasons for the non-application of the said Article:

- A) Firstly, Article 14(6) imposes a necessary mandate of wrongful conviction which ultimately excludes the cases where miscarriage of justice is observed by an accused who suffers even if he has been being acquitted eventually. By doing so, the Article rampantly ignores the plight caused to such persons through long incarceration, denial of bail and the like. Setting establishment of factual innocence of a claimant by the establishment of a new fact after a final decision of conviction is given by the court of supreme authority exhausting all the avenues of an appeal as a pre requisite to conclusively prove miscarriage of justice does not work in Indian conditions since there is already a deferral in disposing the cases at the stage of trial and appeal, leading the accused person to be behind the bars for a period that can be much longer than the sentence for the offence for which he is ultimately acquitted.
- B) Secondly, factual innocence is very difficult to prove in India. In contrast to the developed forensic investigation machinery of the western countries, India is still thriving with the developing forensic investigations system and the minimal use of DNA based technology which limits our criminal machinery to establish factual innocence post the final conviction.
- C) Thirdly, it eliminates the claim of compensation of the victims in the cases of partial or whole conviction of the accused person resulting from the forced confession of guilt.

‘Further, if wrongfulness is understood as convicting a person of an offence of which they were factually innocent, it will create a hierarchy of acquittals – those who were factually innocent and

those who were not. Currently, the Indian legal system presumes anyone who is not convicted of an offence to be innocent of it. This presumption of innocence would be in jeopardy by creating categories of innocent persons, and would seriously disadvantage those who cannot show that they were factually innocent. This is especially problematic because, as noted above, factual innocence is very difficult to prove.<sup>22</sup>

We can thus conclude that having wrongful conviction as the only standard of miscarriage of justice would be a too high and an under inclusive approach for the Indian legal scenario as there are numerous cases where non conviction also results in different dimensions of miscarriage of justice.

### **B. Wrongful incarceration**

In simple words, when a person is forced to spend the best of his years in prison for an offence for which they may ultimately not be convicted, prosecuted or even charged for, amounts to wrongful incarceration which is the second standard of miscarriage of justice. This standard suffers from major drawbacks as its application would be both over inclusive and under inclusive as it entreats miscarriage of justice in every case of acquittal whether or not resulting to wrongful prosecution.

It is over inclusive because under the guise of protecting those who were falsely implicated under the case, it may also extend to shield those who through their foul play such as that of turning the witness hostile, succeed to trick the system and get themselves acquitted. The legal system shall indeed not adopt such a standard to compensate the victims of miscarriage of justice which will overshoot its intended objective.

This standard is under inclusive as it will lead to the exclusion of the accused who were granted bail and/or did not spend any time in prison but were victims of prolonged trials, social stigmas, legal expenses, mental and physical harassment among others.

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<sup>22</sup> Law Commission of India, Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (277 2018).

Thus, it can be unambiguously concluded that 'wrongful incarceration' solely cannot be adopted as a standard of miscarriage of justice.

### C. Wrongful Prosecution

The third standard is wrongful prosecution. In simple words the standard recognizes miscarriage of justice as malicious or negligent investigation or prosecution of an innocent person due to police or prosecutorial misconduct.

Since the sine qua non of the standard is wrongful prosecution unlike previous standards discussed above, it includes cases both where the person was imprisoned and where he wasn't; the standard is very inclusive in nature as it also counts the cases where the trial court adjudged the accused as innocent or where in the findings of one or more courts the accused was proclaimed convicted although eventually the accused was found to be guilt free.

In accordance with the existing legal system of India, the adoption of this standard of miscarriage of justice will be the most efficacious and revolutionary step, since it will give a sound solution by targeting the procedural misconduct of the investigation machinery and prosecution, which is the prime underlying origin of factual inaccuracy that finds the guilt free person guilty of an offence that was never committed. It has been evidently found in many cases that even after being innocent, a person is erroneously prosecuted because of negligent, malicious or false investigation on the part of the police or prosecution.

Reference can be made to the following case in order to understand the gravest form of wrongful prosecution which terribly resulted in long wrongful incarceration due to negligent behavior of police during the investigation. In the case of *Mohd. Jalees Ansari & Ors. v. Central Bureau of Investigation*<sup>23</sup>. 'The accused Mohammad Nissarudin was taken into police custody in the year 1994, then booked for a bomb blast in Hyderabad (October 1993), later booked under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) for bomb blasts in five trains in Mumbai (December 1993). Subsequently, after a confession, Nissarudin was sent to a prison

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<sup>23</sup> Mohd. Jalees Ansari & Ors. v. Central Bureau Investigation, AIR 2016 SC 2461.

in Ajmer, where he spent the next 23 years - during which time, in 2005 a TADA court at Ajmer convicted him and gave him a life sentence. In 2016, the matter reached the Supreme Court, where the Apex court, overturning the TADA court's decision, ruled that the confession (which was taken in police custody) and formed the basis of the conviction did not have legal sanction and was inadmissible. And, after suffering through 23 long years of wrongful incarceration, Nissarudin was exonerated of all charges.'<sup>24</sup>

Similarly, in *Adambhai Sulemanbhai Ajmeri & Ors. v. State of Gujarat*<sup>25</sup>,

'In an appeal against conviction order based primarily on the confessions of the accused, the Supreme Court highlighted various peculiarities and deficiencies in the method of investigation - the nature of confessions, the absence of independent evidence etc. The Apex Court specifically noted that there was fabrication of evidence, an attempt on the part of the investigating agency to fabricate and make a case against the accused person since they had not been able to solve the case even after almost a year of the incident.'<sup>26</sup>



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<sup>24</sup>*Id.*

<sup>25</sup>*Adambhai Sulemanbhai Ajmeri & Ors. v. State of Gujarat*, (2014) 7 SCC 716.

<sup>26</sup>*Id.*

## **WHAT LEADS TO WRONGFUL PROSECUTION?**

The standard of wrongful prosecution emphasizes on the sentiment that the victim of wrongful prosecution should not have been forced to face the proceedings in the first place.

The court through various pronouncements has recognized certain types of misconducts depending on the facts and circumstances of the individual cases. However, there is no extensive list of these misconducts that would amount to wrongful prosecution. Thus through such comparative examples the misconducts can be classified broadly as follows:

- ‘Improper disclosure of information
- Withholding suppressing or destroying exculpatory evidence
- Falsifying or planting or fabrication evidence
- Coercing confessions or recovery, or any such other forms of abuse.’<sup>27</sup>

The provisions contained in Chapter IX and XI of the Indian Penal Code can be referred to in order to decide the issues that could amount to misconduct.

‘Based on the aforesaid, an illustrative list of procedural misconduct would include the following:

- Making or framing a false or incorrect record or document for submission in a judicial proceeding or any other proceeding taken by law;
- Making a false declaration or statement authorized by law to receive as evidence when legally bound to state the truth - by an oath or by a provision of law;
- Otherwise giving false evidence when legally bound to state the truth - by an oath or by a provision of law;
- Fabricating false evidence for submission in a judicial proceeding or any other proceeding taken by law
- Destruction of an evidence to prevent its production in a judicial proceeding or any other proceedings taken by law
- Bringing a false charge, or instituting or cause to be instituted false criminal proceedings against a person;

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<sup>27</sup>Law Commission of India, Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (277 2018).

- Committing a person to confinement or trial acting contrary to law; or
- Acting in violation of any direction of law in any other manner not covered in (i) to (vii) above, resulting in an injury to a person.<sup>28</sup>



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<sup>28</sup>Law, *supra* note 22.

## **CURRENT FRAMEWORK OF INDIA**

By reviewing the current scenario of laws in our country, the court based remedies to deal with miscarriage of justice which results in wrongful prosecution, conviction or incarceration etc. are:

1. Public Law Remedy
2. Private Law Remedy
3. Criminal Law Remedy

‘The public law remedy and the private law remedy mentioned above are victim centered remedies which provide monetary relief from the side of the State to the person who unfortunately had to suffer due to wrongful prosecution.’<sup>29</sup> On the other hand, the criminal law remedy is based on initiating criminal action against the accountable officers of the state for their wrongdoing.

### **PUBLIC LAW REMEDY**

The public law remedy to deal with miscarriage of justice which results in wrongful prosecution, conviction or incarceration find its origin in the constitution of India. Writ jurisdiction of the Apex court and the high courts under article 32 and 226 of the constitution respectively is invoked in such cases, when there is a violation of fundamental rights under Article 21 and Article 22

The Maneka Gandhi judgment<sup>30</sup> gave a dynamic interpretation to article 21. The major findings of the apex court led to a change, earlier the victim of undue detention or imprisonment by the state had no right to pecuniary compensation and the court could only cancel their arrest or detention when it was not in accordance with the law which left the victims in a very dreadful condition. This judgment set the principle of awarding monetary compensation to the victims of miscarriage of justice due to undue detention and bodily harm.

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<sup>29</sup>Law, *supra* note 22.

<sup>30</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597.

There have been a string of Supreme Court judgments which propounded on the vicarious liability of the state, which acted as the reason for the development of the essential principle of holding the state accountable for its employees' abusing power including police and investigating agencies' misconduct.

Leading judgment of *Rudal Sah v. State of Bihar*<sup>31</sup> set the precedent by developing the foundational principle of awarding compensation for violation of article 21 and 22 of the Constitution. The petitioner even after the order of acquittal of the guilt free victim had to undergo unlawful detention for the period of 14 years. 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. (Emphasis Supplied).'*<sup>32</sup>

The Court further observed that this remedy is independent of the rights available under the private law in an action based on tort, or that under criminal law via criminal proceedings against the wrongdoer.<sup>33</sup>

As the principle of granting compensation for violation of Article 21 was gaining ground, the scope of cases covered under this remedy once again came under review in the case of *Sube Singh v. State of Haryana*<sup>34</sup>, 'which laid down the proposition that compensation is not to be awarded in all cases. This case limited the award of compensation to cases where: (i) the violation of Article 21 is patent and inconvertible; (ii) the violation is gross and of a magnitude to shock the conscience of the court; or (iii) the custodial torture alleged has resulted in death, or the custodial torture is supported by medical report or visible marks or scars or disability. In this case, the petitioner alleged illegal detention, custodial torture and harassment to the family

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<sup>31</sup>Rudal Sah v. State of Bihar, AIR 1983 SC 1086.

<sup>32</sup>*Id.*

<sup>33</sup>*Id.*

<sup>34</sup>Sube Singh v. State of Haryana, (2006) 3 SCC 178.

members of the petitioner. Applying the foregoing criteria, the Court did not award any compensation in this case on the ground of lack of clear and incontrovertible evidence.’<sup>35</sup>

Through the above cases it can be firmly analyzed that the power to award compensation to the victims of wrongful conviction, incarceration or prosecution and deciding the quantum thereof is solely left on the discretion of the court making this remedy irregular, erratic and inconsistent. It is a remedy determined and decided on case-to-case basis dependent on the facts of each case, the disposition of the court hearing the case etc.’<sup>36</sup>

Compensation for violation of fundamental rights in aforementioned cases is a public law remedy but there is no express provision in the Constitution of India for grant of compensation by the State in such cases.’<sup>37</sup>

Such inconsistency in granting compensation can be seen through the case of *Adambhai Sulemenbhai Ajmeri & Ors. v. State of Gujarat*,<sup>38</sup> (*the Akshardham Temple Case*) ‘where the accused persons were refused grant of compensation despite identifying that the police had caught innocent people under serious charges and had intentionally let the real culprits free. The plea for compensation was rejected on the grounds that acquittal by a court did not automatically entitle those acquitted to compensation and if compensation is to be awarded for acquittal, it will set a “dangerous precedent”, post which the petition was withdrawn.’<sup>39</sup>

‘Perhaps it was owing to this kind of variance in the decisions on otherwise similar facts that the High Court of Delhi in its Reference to the Commission noted that these (awards of compensation for wrongful incarceration under public law) are episodic and are not easily available to all similarly situated persons.’<sup>40</sup>

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<sup>35</sup>*Id.*

<sup>36</sup>*Inder Singh v. State of Punjab*, (1995) 3 SCC 702.

<sup>37</sup> *Vibin P.V. v. State of Kerala*, AIR 2013 Ker 67.

<sup>38</sup> *Adambhai Sulemenbhai Ajmeri & Ors. v. State of Gujarat*, (2014) 7 SCC 716.

<sup>39</sup> THE WIRE, <https://thewire.in/law/cops-judges-andterrorists> (last visited June 13, 2021).

<sup>40</sup> I(2018) CCR 482 (Del.).

**PRIVATE LAW REMEDY**

The private law remedy deals with the institution of a civil suit against the State for pecuniary damages for delinquent acts of its officials. This remedy is distinct from the Constitutional remedy discussed above and additionally provides remedy in private law for damages against the tortious acts of public servants with special emphasis on negligence by a public servant during the course of his employment.

The case *State of Rajasthan Vs. Vidyawati Mst*,<sup>41</sup> regarded as the predecessor of a new trend in the State liability's area, scrutinized the question of tortious liability of the state. In this case the Supreme Court held that:

*'The State was vicariously liable for the rash and negligent acts of a driver of a State official car that fatally injured a pedestrian. Rejecting the State's plea of exercise of sovereign powers/defense of sovereign immunity, the Supreme Court laid down the proposition that the government would be liable to pay damages for the negligence of its employees if the negligence was such as would render an ordinary employer liable.'*<sup>42</sup>

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The apex court however in '*Kasturi Lal Ralia Ram Jain v. State of U.P*' curtailed the widened scope of the state's liability and the government was not liable to pay damages as the sovereign function was performed by the police officers. The police in exercise of sovereign power has immunity from tortious liability; a stark contrast from judicial pronouncements under public law where the defense of sovereign immunity was rendered inapplicable in cases of police misconduct.<sup>43</sup>

In *State of Bihar v. Rameshwar Prasad Baidya & Anr.*,<sup>44</sup> 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

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<sup>41</sup>State Of Rajasthan v. Vidhyawati And Another, AIR 1962 SC 933.

<sup>42</sup> *Id.*

<sup>43</sup>Kasturi Lal Ralia Ram Jain v. State of U.P, AIR 1966 SC 1039.

<sup>44</sup>State of Bihar v. Rameshwar Prasad Baidya & Anr., AIR 1980 Pat 267.

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.’<sup>45</sup>

The Constitutional Courts have also on various occasions emphasized public law remedy as the remedy for calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the remedy by way of a civil suit or criminal proceedings.<sup>46</sup> One of the prime reasons for resorting to public law remedy heavily is that it warrants violation of fundamental rights covered under the constitutional remedy which has a speedier upshot in contrast to the ordinary civil proceedings.

Public law remedy can be differentiated from the private law remedy as following:

1. Purpose: The public law remedy aims to civilize public power and seeks to build an environment wherein the rights and interests of the citizens are protected and preserved and fixes the liability for the violation of article 21 on the state.
2. Damages: Private law remedy is an action based on tort, while the public law remedy is based on awarding compensation in the form of exemplary damages, by providing monetary relief which makes the damages under civil action different from the grant of compensation under Article 32 or Article 226.

## CRIMINAL LAW REMEDY

The above mentioned remedies for miscarriage of justice due to wrongful incarceration, prosecution or conviction did not focused on liability of the wrongdoers, whereas the criminal law remedy emphasizes on the very important foundational principle of holding the wrongdoers liable for their misconducts. These provisions have been extensively laid down under our criminal legal framework in the Indian Penal Code, 1860, The Criminal Procedure Code, 1970. Under this section of the research paper we will be dealing with the outlines of substantive and procedural action that can hold the wrongdoer liable for their misconduct.

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<sup>45</sup> State of Madhya Pradesh v. Saheb Dattamal &Ors., AIR 1967 MP 246.

<sup>46</sup> *Id.*

**INDIAN PENAL CODE, 1860**

In order to hold the wrongdoer liable for their misconduct it is very important to curtail the powers of police, investigating agencies and public servants, and to achieve the same Indian Penal Code, 1860 have incorporation of chapter IX and XI.

**Offences by or relating to public servants**

Section 166, 166 A, 167 of chapter IX and Section 218, 219, 220 of Chapter XI are to be taken note of.

- Section 166 deals with disobedience of law with an intent to cause injury to any person by public servant
- Section 166 A penalizes non recording of information by public servant
- Section 167 deals with framing of an incorrect document by a public servant with an intent to cause injury.
- Section 218 deals penalizes the public servant who frames incorrect record or writing with a malicious intention of saving a person from punishment or forfeiture of property.
- Section 219 deals with any public servants malicious carrying out of powers and for a public servant who knows it to be opposing the law it criminalizes the unscrupulous or malicious pronouncing of any report, verdict, order etc.
- Section 220 deals with punishment and imprisonment of a person having legal authority to commit persons for trial or confinement maliciously commits another person to trial or confinement knowing that the act is contrary to law.

There have been a plethora of cases where the court has notably used the above sections for holding the wrongdoers liable for their misconduct. Some of them have been discussed below

1. *State v. Mohd. Naushad & Ors (the 1996 Lajpat Nagar Bombing Case)*<sup>47</sup>

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<sup>47</sup>Delhi High Court Order dated 22 November 2012 in Criminal Appeal Nos. 948, 949,950 and 951 of 2010.

‘The Delhi High Court in its order noted that the police showed casualness, and that there were grave lapses on the part of the police – not recording the statement of witnesses support its case, complete absence of diary entries to corroborate the movements of the police – “all betray(ing) a slipshod approach.” The Court further noted that the flaw is in the understanding and implementation of the law by the police force. Highlighting prosecutorial misconduct, the Court noted that there was a flaw in the presumption of guilt, a violation of the principle that the burden of proof is on the prosecution - to prove the accused person’s guilt and not on the accused to prove his innocence.’<sup>48</sup>

2. *Mohd. Jalees Ansari & Ors v. Central Bureau of Investigation*<sup>49</sup>

‘The accused Mohammad Nissarudin was taken into police custody in the year 1994, then booked for a bomb blast in Hyderabad (October 1993), later booked under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) for bomb blasts in five trains in Mumbai (December 1993). Subsequently, after a confession, Nissarudin was sent to a prison in Ajmer, where he spent the next 23 years - during which time, in 2005 a TADA court at Ajmer convicted him and gave him life sentence. In 2016, the matter reached the Supreme Court, where the Apex court, overturning the TADA court’s decision, ruled that the confession (which was taken in police custody) and formed the basis of the conviction did not have legal sanction and was inadmissible. And, after suffering through 23 long years of wrongful incarceration, Nissarudin was exonerated of All charges.’<sup>50</sup>

‘The report by Jamia Teachers Solidarity Association noted a certain pattern of procedural lapses and misconducts in investigations and prosecutions/proceedings of the cases discussed therein:

- Illegal detention, where the time and date of the actual “picking up” of the accused, as revealed during the trial, is earlier than that alleged in the police’s case.
- Secret information, often central to the police’s case leading them to the accused cannot be verified or disclosed.

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<sup>48</sup>*Id.*

<sup>49</sup>*Mohd. Jalees Ansari & Ors. v. Central Bureau of Investigation, AIR 2016 SC 2461.*

<sup>50</sup>*Id.*

- Public and independent witnesses are rarely joined in the actual operation, even in cases where the accused were apprehended in public places with people around.
- Private vehicles used in the operation doing away with the need of maintaining logs, making it difficult to verify the information about the operation.
- Delayed seizure memos – not made at the time of actual seizure – made later in the police station, often found to be in the same handwriting and ink as the FIR.<sup>51</sup>

### CODE OF CRIMINAL PROCEDURE, 1973

Sections 132 and 197, CrPC entail safeguards to protect judges and public servants from vexatious litigation with respect to their actions while performing a public function.<sup>52</sup>

*Section 132*, CrPC requires that sanction be received from the Central or the State Government for prosecuting any police officer for any act that is claimed to be done under section 129 to 131 of the CrPC.

*Section 197* mandates sanction of the Central or the State Government before instituting any criminal proceedings against the alleged police officer.

In *P.P. Unnikrishnan v. Puttiyottil Alikutty*<sup>53</sup>, ‘a case of illegal detention and custodial torture, the Supreme Court discussing the scope of section 197(1), CrPC held that there must be a reasonable connection between the act in question and the discharge of official duty. The act must bear such relation to the duty that the accused could lay a reasonable, and not just a pretended claim, that he did it in the course of his duty. The Court illustrated the foregoing with an example: if a police officer wrongly confines a person in lock-up for more than 24 hours without sanction of the court or assaults a prisoner, he is acting outside the contours of his duty, and therefore, not entitled to protection under section 197, CrPC.’<sup>54</sup>

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<sup>51</sup> A Report by Jamia Teachers’ Solidarity Association, Framed, Damned and Acquitted: Dossiers of a Very Special Cell, Jamia Journal (June 13,2021, 4:37 PM), <https://www.jamiajournal.com/wp-content/uploads/2012/09/JTSA-Report-Framed-Damned-and-Acquitted-Dossiers-of-a-Very-Special-Cell.pdf> .

<sup>52</sup> Jaysingh Wadhu Singh v. State of Maharashtra, 2001 CrLJ 456 (Bom).

<sup>53</sup> P.P. Unnikrishnan v. Puttiyottil Alikutty, AIR 2000 SC 2952.

<sup>54</sup> S.S. Khandwala (I.P.S) Addl. D.G.P & Ors. v. State of Gujarat, (2003) 1 GLR 802.

On the same lines, it was held in *Rajib Ranjan & Ors. v. R. Vijaykumar*<sup>55</sup>, as follows:

*'Even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct such misdemeanor on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted.'*<sup>56</sup>

It is often seen that the safeguards under Section 197 have been misused by the police officials. They do so by not allowing lodging of First Information Report (FIRs) or complaints which results in hampering the procedure of providing remedy for the police and prosecutorial misconduct.



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<sup>55</sup> Rajib Ranjan & Ors. v. R. Vijaykumar, (2015) 1 SCC 513.

<sup>56</sup> *Id.*

## HUMAN RIGHTS COMMISSION

The Protection of Human Rights Act, 1993 empowers the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs), with the power of inquiring about filed petitions or suo motu regarding the matters dealing with human rights violations. Such are often the case in matters concerning wrongful investigations, incarcerations, illegal detentions, etc. It is mandatory to report every custodial death to the NHRC for examination, regardless of the death being natural or not.

Even after being empowered with such a crucial role of safeguarding human rights, the Human rights Commission remains a toothless tiger. Section 18 of the Act presents one such instance wherein the Human Rights Commission remains merely an institution for providing recommendations and can do nothing more for their implementations.

Section 18 (c) reads as follows:-

*Recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary.<sup>57</sup>*

The dependence of NHRC on government or authorities for the compliance of its recommendations make it a rather weak institution. There is insufficiency of power in order to acquire compliance, this makes the remedy inefficacious on both the parameters that is compensating the victims and holding the public official responsible.

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<sup>57</sup>Protection of Human Rights Act, 1993, § 18(c), No. 10, Acts of Parliament, 1993 (India).

## IMPACT ON EXONEREES

Is it actually possible for a victim of wrongful prosecution, conviction or incarceration , even after being liberated from the bleak and sordid prison cells , to go back unaffected to the life which itself has drastically gotten affected. The life of such a victim after exoneration becomes a dwelling place for a plethora of issues which can be equated with no amount of compensation. To the victim, the sorrow of being wrongfully prosecuted is much more than the joy of being acquitted.

For a person who has been accused of a crime, who underwent criminal proceedings (often long drawn), whose name and reputation has been affected for being accused and/or convicted of a crime he did not commit, who has spent time in prison for a crime he did not commit, there still lies an uphill battle even after acquittal.<sup>58</sup> When a person is wrongfully held liable for an offence that was never committed by him or her in the first place, it causes serious negative outcomes not only for the victim of wrongful conviction but also to his or her family.

When they get back to their normal life and try to return to the society they majorly face discrimination when it comes to getting employment. They fall victim to poverty and even societal discrimination. Even the victims who are subjected to minimum prison time face the same kind of trauma in the society.

Victims of manifest injustice suffer countless forms of psychological trauma from their incarceration or conviction to struggles of a normal life after exoneration. In addition to the penalty of crimes they have not committed, victims undergo typical psychological adverse effects resulting from several years of incarceration, isolation from loved ones, and a loss of autonomy<sup>59</sup>, they fight daily with the ordeal of wrongful prosecution.

Therefore, there should be a strong compensatory assistance by the state to help these innocent victims of manifest injustice, in order to help them in getting adjusted to their new life after

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<sup>58</sup>Thana Singh v. Central Bureau of Narcotics, (2013) 2 SCC 590.

<sup>59</sup> Scott Leslie, "It Never, Ever Ends": *The Psychological Impact of Wrongful Conviction*, 5 American University Criminal Law Brief 10, 10-22 (2010).

acquittal and blend back into the society. There is a need to provide for the lost years, for the social discrimination, the harassment whether physical or emotional as well as for the expenses that have been incurred.



## RECOMMENDATIONS

The Law Commission of India recommended the need of a legal framework that should explicitly provide compensation as a matter of right to the victim of wrongful prosecution and not as an ex gratia grant by the state. It also emphasized the requirement of a quick and fair compensation mechanism therefore, proposed establishment of special courts in each and every district for effectively dealing with the same. It also recommended the cause of action to be wrongful prosecution which should include malicious prosecution along with prosecution instituted without good faith which is still an alien ground for the institution of proceeding in India and lacks a base in reality.

The recommendations of the LCI further identified the relief provided to the victims of wrongful prosecution as the quintessential statutory response since it backs the fundamental intention and object of this law, which was to rehabilitate and to readjust to the life after by covering damages to body, mind, reputation or property resulting from such miscarriage of justice.

The Commission also proposed to follow the summary procedure as the nature of proceeding for such cases by special court and ensure timely payment of compensation and disposal of cases. The standard of proof in these proceeding on probabilistic threshold will be that of 'balance of probabilities'<sup>60</sup> with the burden of proof on the accused of unlawfulness which led to wrongful prosecution.

The Commission recommended inclusion of pecuniary and non-pecuniary assistance under the framework of compensation covering interim compensation too. The commission affixed a draft bill with an objective of articulating the proposed recommendations which the Parliament has not yet passed.

Though the legal system in India already has preventive measures to counter such miscarriage of justice but the implementation of these seems to be negligent in real sense. Considering the current scenario, it is of immense importance to bring these provisions along with the curative

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<sup>60</sup>Mahesh Dattatray Thirthkar v. State of Maharashtra, AIR 2009 SC 2238.

measures proposed by the Commission into life which can prove to be the best possible healing balm to the wounds of the victims of miscarriage of justice who are probably the sole breadwinner of their families.



## CONCLUSION

In India, despite decades of struggles for life after acquittal or conviction, victims of wrongful prosecution continue to face the stigma and penalization for the offences never committed by them. In spite of being an issue of aboriginal and sensitive nature, there is only an ex gratia obligation on the State to compensate the victims leading to the glaring inadequacies of the available remedies.

Moreover, numerous judicial precedents granting compensation to the victims of miscarriage of justice unfortunately could not succeed to pave a way for the incorporation of the statutory right of compensation. It is a travesty of justice that the misconduct of police and prosecution violating fundamental rights of the victims is worthy of invoking State liability; but this does not ensure transparency and lack of arbitrariness as the quantum of compensation is to be determined by the discretion of the Court having no guidelines to refer to.

There is a pressing need that absence of remedy for the victims of miscarriage of justice should no longer be the vindication for not protecting the rights of an individual and a guiding set of principles need to be established for the justice to the victims of wrongful prosecution. Setting aside the predicament and absence of statutory provisions of victims of wrongful prosecution can no longer be disregarded by the state. Claim and grant of compensation engendered through miscarriage of justice still lacks certainty and lucidity.