

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

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**Volume 3 | Issue 5**

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**2020**

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# Travesty of Justice Consequences of Wrongful Prosecution and Incarceration

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## ABSTRACT

*“Better that ten guilty person’s escape than that one innocent suffer”*

**- William Blackstone**

*“The purpose of this article is to gain a better understanding of the impact of incarceration on victims who are unlawfully incarcerated or prosecuted; relevant legal provisions i.e. reviewed the laws existing in the western countries and India. The proposed exercise has also attempted to know as to what are the consequences of wrongful prosecution. Are there any laws regarding this issue? A systematic probe into some of these questions has been made in the study. The issue has been examined in the light of significant cases and judgements. Finally, the study also took a critical view of the existing provisions and at those which have been recommended by certain authorities. Besides, the study also endeavoured to recommend some effective solutions and ways to curb or eliminate this problem. The article has critically analysed the various instances of this problem in our country and has also reviewed the data of National Crime Records Bureau and the literature documenting the 277th Law Commission Report to gain information about the relationship between wrongful prosecution and increase in the number of under-trial prisoners year after year”.*

**Keywords:** Wrongful Prosecution, Wrongful Incarceration, Miscarriage of Justice, overcrowding, specific statutes, and under trial prisoners.

## I. INTRODUCTION

Dispute Delivery of justice is a grave problem in the Indian Justice system. Article 21 of the Constitution of India vests every person with the fundamental right of life and personal liberty. It states “No person shall be deprived of his life or personal liberty except according to the procedure established by law”.

The Hon’ble Supreme Court in *Maneka Gandhi v. Union of India*<sup>2</sup> opined that the procedure

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<sup>2</sup>(1978) 1 SCC 248.

proposed under this Article is required to be “right, fair and just” and not “arbitrary, fanciful or oppressive”. Further, in *Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>3</sup>, it was held that “The procedure which does not ensure a reasonably quick trial cannot be considered as “reasonable, fair or just” and it would be violative of Article 21”. Also, the Indian justice system works on the principle of “Fiat Justitia ruat Caelum” that means “Let justice be done though the heavens fall”.

“Despite this, instances of malicious prosecution and the wrongful incarceration of innocent persons are quite common. In all such cases, individuals who are wrongfully prosecuted and incarcerated for several years of their lives, even on an honourable acquittal, have not much to gain. Besides, absence of statutory provisions or state mechanisms providing for rehabilitative, restorative and compensatory measures to such victims and their family members aggravates their agony<sup>4</sup>.”

“The Instances of those being acquitted by the High Court or the Supreme Court after many years of imprisonment are not infrequent, ” said a bench of Justices S. Muralidhar and I.S. Mehta. They are left to their own devices without any hope of reintegration into society or rehabilitation since the best years of their life has been spent behind bars”.<sup>5</sup>

Research has demonstrated how the criminal justice process has failed and how several factors, mainly the procedural misconduct; contribute to the wrongful prosecution and imprisonment due to which an individual has to go through so many psychological, social and economic problems. Many people especially from the backward classes of the society have had to spend time in jail despite being innocent. Individuals are falsely framed and prosecuted for offences. It is important to tackle this issue otherwise it will continue to ruin the lives of the people.

## II. A COMPARATIVE STUDY OF THE ISSUES IN LIGHT OF THE NCRB REPORT

“The National Crime Records Bureau’s (NCRB) annual statistical report called the ‘Prison Statistics India’ contains information concerning prisons, prisoners and prisons infrastructure. According to PSI 2019, there were 4, 78,600 prisoners across the country out of which 69.05% that is 3, 30,487 were the under trial prisoners subsequently higher than the convict population that is 30.11% (1, 44,125) of the total prisoners<sup>6</sup>.”

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<sup>3</sup>(1980) 1 SCC 81.

<sup>4</sup>Sanjeev Kumar & Abhishek Goyal, India: Wrongful Prosecution- Victim’s Rights and State’s Obligations, mondaq (Feb 01, 2019), <http://www.mondaq.com/india/x/777794/trials+appeals+compensation/Wrongful+ProsecutionVictims+Rights+And+States+Obligations>.

<sup>5</sup> Law needed for those wrongfully imprisoned: Delhi HC, THE HINDU, Dec 04, 2017.

<sup>6</sup>National Crime Records Bureau, Prison Statistics India (2019), <http://ncrb.gov.in/StatPublications/PSI/Prison2019/PrisonStat2019.htm>.

“Concerning wrongful incarceration, the period of incarceration of the under trial prisoners needs to be taken into consideration, the data shows that among the under trial prisoners, 1, 22,254 prisoners were confined for up to 3 months, 68,447 prisoners were confined for 3-6 months, 54,140 prisoners were confined for 6-12 months, 44,135 prisoners were confined for 1-2 years, 22,451 were confined for 2-3 years, 14,049 were confined for 3-5 years, followed by 5,011 prisoners who were confined for above 5 years<sup>7</sup>. Out of these a total of 61,359 under trial prisoners were released based on acquittal on the first instance and 21,895 under trial prisoners were released after the acquittal on appeal rest 15,98,218 were released on bail, 14 were extradited to foreign countries and a total of 635 under trial prisoners were released under Section 436A of CrPC during 2019<sup>8</sup>.”

### III. RECOGNITION AND LEGISLATION THROUGH THE YEARS

- **Obligations under International Laws**

“The International Covenant on Civil and Political Rights 1996 (‘ICCPR’) discusses the obligation of the state in cases of miscarriage of justice resulting in a wrongful conviction. It requires the state to compensate the person who has suffered punishment on account of a wrongful conviction provided that the conviction was final, and was later reversed or pardoned on grounds of miscarriage of justice that is a new fact proving that the accused was factually innocent.”

Following the international obligations under ICCPR, the United Kingdom, United States of America, and Australia has incorporated the aforesaid provision into their domestic legislation with certain criteria, rules and regulations<sup>9</sup>.

“In Canada, though no legislation has been enacted to give effect to the covenant, a joint set of guidelines relating to compensation for the wrongfully convicted, formulated by the Federal and Provincial Ministers of Justice in 1988<sup>10</sup>.”

“In New Zealand, wrongful conviction and imprisonment are dealt by way of compensation granted ex-gratia by the state. These ex-gratia payments are granted in conformity with the guidelines provided by the Ministry of Justice’s ‘Compensation for Wrongful Conviction and Imprisonment (May 2015)’ (‘Guidelines’)<sup>11</sup>.”

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<sup>7</sup>Prison Statistics India (2019), *Ibid*, at 17.

<sup>8</sup>Prison Statistics India (2019), *Supra* note 5, at 18.

<sup>9</sup>Law Commission Report No. 277, Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (Aug 30, 2018), at 15-27, 32.

<sup>10</sup>Law Commission Report No. 277, *Supra* note 8, at 28-29.

<sup>11</sup>Law Commission Report No. 277, *Supra* note 8, at 30-32.

“In Germany as well, the issue of a miscarriage of justice resulting in wrongful conviction is primarily taken care by allocating the state with the liability and by providing compensation to those who are wrongfully convicted but there is an act of the Parliament of Germany states that “The state shall compensate a person who has suffered damage as a result of a remand order or certain other types of detention, provided he or she is acquitted, or the prosecution is suspended or abandoned.<sup>12</sup>”

“Also, The German Criminal Code in its sections 97a and 97b deals with the cases of suffering caused due to excessive length of the proceedings before the Federal Constitutional Court, providing for adequate compensation to victims of such delays; where the reasonableness of the length of the proceedings shall be established on a case-by-case basis, taking into account the Federal Constitutional Court’s tasks and position.<sup>13</sup>”

### • Obligations under The Indian Laws

The remedies available in India concerning miscarriage of justice that results in wrongful prosecution, incarceration or conviction are:

“Public Law Remedy- Miscarriage of justice on account of wrongful prosecution, incarceration or conviction is the violation of fundamental rights under Article 21 and Article 22 of The Constitution of India that invokes the writ jurisdiction of the Supreme Court and the High Court under Article 32 and 226 of the Constitution respectively, which provides for the grant of compensation to the victim who has suffered illegal detention or harm<sup>14</sup>.”

“In *Khatari & Ors. v. State of Bihar & Ors.*<sup>15</sup>, it was alleged that the police had blinded certain prisoners and that the state was liable to pay compensation to them. The court ordered the state

<sup>12</sup>Article 2, The Law on Compensation for Criminal Prosecution Proceedings 1971.

<sup>13</sup>Section 97(a) and 97(b,) The German Criminal Code. ‘*Betrayal of illegal secrets* Whoever communicates a secret which is not a state secret on account of one of the violations indicated in section 93 (2) to a foreign power or one of its intermediaries, and thereby creates the risk of serious detriment to the external security of the Federal Republic of Germany, incurs the same penalty as if they had committed treason (section 94). Section 96 (1), in conjunction with section 94 (1) no. 1, applies accordingly to secrets of the kind indicated in sentence.

*Betrayal based on the mistaken assumption that secret is illegal.*

(1) If, in the cases under sections 94 to 97, the offender mistakenly assumes that a state secret is a secret of the kind referred to in section 97a, a penalty is incurred as required by those provisions if 1. the offender can be blamed for the mistake, 2. the offender did not act with the intention of preventing the supposed violation or 3. The act is, under the circumstances, not an appropriate means to accomplish that purpose. The act is typically not an appropriate means if the offender did not previously seek a remedy from a Member of the Bundestag’. 2) If the state secret was confided or made accessible to the offender acting in the capacity as a public official or soldier in the Federal Armed Forces, criminal liability is also incurred if the offender did not previously seek a remedy from a supervisor or, in the case of a soldier, from a superior disciplinary officer. This applies analogously to persons entrusted with special public service functions and to persons under a duty within the meaning of section 353b (2).’

<sup>14</sup>Law Commission Report No. 277, *Supra* note 8, at 35.

<sup>15</sup>AIR 1981 SC 928.

to meet expenses of housing the blinded victims in a blind home in Delhi.” “In *Rudal Sah v. the State of Bihar*<sup>16</sup>, the petitioner was illegally detained in prison for 14 years after the order of acquittal. The Supreme Court passed an order of compensation for the violation of Article 21 and Article 22 of the Constitution.” “In *Bhim Singh, MLA v. State of J & K & Ors.*<sup>17</sup> “The Supreme Court held that the mischief, malice or invasion of an illegal arrest and imprisonment cannot just be “washed away or wished away” by releasing the person so arrested or imprisoned”. “The court awarded a sum of Rs. 50,000/- as compensation for illegal detention”. In *Sube Singh v. the State of Haryana*<sup>18</sup>, “the court laid down the proposition that the compensation is not to be awarded in all cases. It limited the compensation to be awarded in cases where “ the violation of Article 21 is inconvertible, the violation is gross and of a magnitude to shock the conscience of the court, or 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 members of the petitioner. Applying the above criteria the court did not award and compensation in this case.”

“Private Law Remedy- This remedy exists in the form of a civil suit against the state for monetary damages against the negligence and tortious acts of the public servants.”

“In *State of Bihar v. Rameshwar Prasad Baidya & Anr*<sup>19</sup>, criminal proceedings were initiated against the accused of 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.”

“There have been a plethora of such cases where the court did not hold the state liable to pay damages since the functions of maintaining law and order were solely performed by the state or its delegates and held it to be a sovereign function rendering the state not liable<sup>20</sup>.”

“Criminal Law Remedy- Chapter XI of the Indian Penal Code, 1860 makes punishable offences involving fabrication of records, of perjury, illegal confinement and commitment to the trial of innocent persons by a police officer.” “Particularly, Section 211 IPC states that it is an offence if a person to cause injury to another, either institutes criminal proceedings against such person; or falsely charges him of having committed an offence, knowing that there is no just or lawful ground for such proceedings or charge<sup>21</sup>.”

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<sup>16</sup>AIR 1983 SC 1086.

<sup>17</sup>(1985) 4 SCC 677.

<sup>18</sup>(2006) 3 SCC 178.

<sup>19</sup>AIR 1980 Pat 267.

<sup>20</sup>Law Commission Report No. 277, *Supra* note 8, at 46.

<sup>21</sup>Law Commission Report No. 277, *Supra* note 8, at 54, 57.

“Human Rights Commission- The National Human Rights Commission and State Human Rights Commission established, under The Protection of Human Rights Act, 1993 have the power to inquire suo motu or on petitions filed for matters about human rights violations, which is often the case in matters of illegal detentions, wrongful investigations, wrongful incarcerations, etc.” “However its role and powers are limited to advising the government to prosecute the concerned persons or grant relief to the victim because of which it is deemed to be weak mechanism/institution<sup>22</sup>.”

- **Various Instances**

“A 59-year old woman was set free after almost three years; she was arrested by wrong means as a result of “mistaken” identity from a detention camp established to keep the foreigners in western Assam’s Kokrajhar. The woman, Madhubala Mandal was finally released after the police acknowledged before a Foreigner’s Tribunal that they made a mistake and picked her up instead of Madhumala Das in 2016 as both belong to the same village that is Bishnupur in western Assam’s Chirang district<sup>23</sup>”

“In November 2013, after being incarcerated for more than two years, tribal teacher Soni Sori was released from jail. She received an interim bail from the Supreme Court. In jail, she was brutally tortured and sexually assaulted, and alleged that she was raped. Sori was arrested in October 2011 in Delhi by the Chhattisgarh police on the charges of being a Maoist agent. She was eventually named in half-a-dozen cases, including an attack on a police station. She was acquitted in all the cases eventually”. “Similarly, her husband, Anil Futane was arrested in 2011 for allegedly planning and executing an attack on a local Congress party leader. He was also acquitted in May 2013, after spending three years in jail. Futane also complained of torture during incarceration. He died in August 2013, while Sori was still lodged in jail. Her plea for temporary bail to perform her husband’s last rites was rejected. Apart from Sori and Futane, their nephew, journalist-activist Lingaram Kodopi, was incarcerated for several years on forged charges and eventually acquitted.<sup>24</sup>”

“On February 27, 2019, a special court in Nasik, Maharashtra, ruled that 11 men from the minority community, who had been arrested in 1994 in Bhusawal for sedition and planning terrorist acts, were innocent. The police had invoked the Terrorist and Disruptive Activities (Prevention) Act against them, but a court decided in 1994 that the law had been improperly

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<sup>22</sup>Law Commission Report No. 277, *Supra note 8*, at 69-71.

<sup>23</sup>Rahul Karmakar, Freedom for Assam woman wrongly sent to jail as foreigner 3 years ago, THE HINDU, Jun 27, 2019.

<sup>24</sup>Mahtab Alam, Why Wrongful Prosecution Should Become an Electoral Issue, The WIRE, (Apr 04, 2019), <https://thewire.in/rights/jail-wrongful-prosecution-electoral-issue/amp/>.

applied and they were freed on bail. For 25 years, a major part of their adult lives, the men-a doctor, three engineers, a municipal councillor and a doctorate holder were known as terrorists. The police's charge sheet was made in 1999 but the trial ultimately began in 2018.<sup>25</sup>

"The Supreme Court recently acquitted an ISRO scientist Nambi Narayanan awarding him a compensation of Rs. 50 lakh for implication in a fabricated case. Narayanan was appointed the head of ISRO's team to develop a cryogenic engine, required if ISRO was to develop a powerful rocket. Since India did not possess the technology, and Narayanan had just been hired to develop it, it was obvious he could not have been guilty of espionage and leaking the technology to the Maldivian Mariam Rashida. Yet, he was convicted on this charge.<sup>26</sup>"

"A study by Quill Foundation's Centre for Research and Advocacy on terror prosecution in Maharashtra since 1993 found that an overwhelming number of the more than 460 accused of terrorism in Maharashtra have been declared innocent after spending an average of three to six years in prison. The study found that both the judicial process and the conviction rate in terror-related cases have been very low: only 42 of 93 cases filed since 2001 against SIMI (with more than 200 accused), have been heard and concluded. Of these 42, only three saw convictions (with a sentence of two years each) and 39 have resulted in acquittals.<sup>27</sup>"

#### IV. ANALYSIS OF THE ISSUES IN VIEW OF VARIOUS CASES AND INSTANCES

"A review of the data in the PSI shows that across the country under trial prisoners continue to be higher in number than the convict population, also the data of the period of incarceration, release, and increase in the number of under-trial prisoners year after year shows that under trials spent a substantial period awaiting trials/ judicial determination of their case. When the person is wrongfully accused and incarcerated due to the pending trials/ proceedings to which he should not have been subjected, the delay and wait turns out to be a gross miscarriage of justice." "Though the data does not specifically highlight the number of under trials wrongfully incarcerated or acquitted according to a wrongful prosecution or conviction the number of prisoners released on acquittal at the first instance and appeal implies that many of such were the victims of wrongful prosecution and incarceration."

"The study of the international laws understands the miscarriage of justice to take place only when the accused has been convicted by a final court, and a new fact comes to light that proved that the accused did not commit the offence and they provide the relief to the victim of wrongful

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<sup>25</sup>Can Rs 5 lakh compensate for 16 years of wrongful confinement, The Telegraph, Mar 11, 2019.

<sup>26</sup>'Wrongful prosecution' law for Isro-type cases sound, Financial Express, Sep 25, 2018.

<sup>27</sup>Sonam Saigal, Prisoners of the system, THE HINDU, Feb 20, 2017.



conviction through monetary compensation and non-monetary measures.”

*“The study of Indian laws shows that though the courts have the power to award compensation in cases of wrongful incarceration, imprisonment, etc , there is no set framework or statutory provision within which the right to compensation or the quantum of compensation is determined. This is one of the main reasons due to which this problem is increasing year after year.”*

“Further, in cases where the compensation has been given by the courts, it did not provide much clarity as to the basis of how the amount of compensation was determined.”

Wrongful prosecution and imprisonment have a significant impact on an individuals’ lives in every aspect be it mental, physical or social. Once a person is released from jail after spending so many years of his life the trauma does not end on the day of release itself, it becomes so difficult for them to reintegrate back into society because the society makes no distinction between an accused and a convict.

Some of the prisoners either don’t have a family or a home to return to and when they are released they are homeless and face financial insecurity. While looking for employment they face a lot of barriers due to lack of education and work experience, also the criminal records do not allow him to get back in the society due to the presence of social stigma and stereotypes. Unemployment and social exclusion lead to problems of depression, anxiety disorders and PTSD. They are not able to reconnect with themselves and others. The aftermath of wrongful incarceration includes problems of ruptured relationships, emotional toll and a lack of acceptance in their communities. They experience dislocation from their family and social circles, building relationships for them is very difficult.

*“Such people are susceptible to a wide range of psychological consequences like a clinical personality change, anxiety disorders, depression, suicides, anger, grief, paranoia, alcohol or drug dependence, memory deficits, traumatic memories or dreams, restlessness, chronic insomnia, among others.”<sup>28</sup>*

*“The scale of the indifference towards the reputation or even livelihood of people turned into outcasts by a police label is truly staggering and nothing can compensate for the loss of status and identity, for confinement and humiliation, for damaged relationships and loss of advancement.”<sup>29</sup>*

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<sup>28</sup>Christina Iannozzi, “A Day in the Life the long-term effects and psychological aftermath of wrongful conviction,” (Apr, 2015).

<sup>29</sup> The Telegraph, *Supra* 14.

Unlawful detention not only causes loss of years but also creates social stigma and exclusion even after being released. This can be very apparent from the statements given by the victims who themselves once have been victims of false prosecutions. For instance, “*Anjum Zamarud Habib in her book Prisoner No. 100: An Account of my Nights and Days in an Indian Prison recounts her experiences of having spent five years in jail before being released by the Delhi High Court*”. She has written in her book that “*I am a free person today but the wounds and scars that jail has inflicted on me are not only difficult but impossible to heal*”. Another narrative “*Framed as a Terrorist: My 14-Year Struggle to Prove My Innocence is of a young Indian Muslim man, Mohammad Aamir Khan, who was kidnapped by the police, falsely accused of being a terrorist, framed, and kept in jail for almost 14 years.*<sup>30</sup>”

“Laws in the western countries are inadequate to address the issue of wrongful prosecution and incarceration where individuals have spent several years of their lives before conviction because they are limited to providing relief in instances of wrongful conviction. Also in India, many people are not able to approach the Supreme Court or the High Courts to seek compensation in case of such unlawful detention due to lack of resources so a statutory right or provision is required which will thereby provide a legal remedy to the people and also a systematic framework or means to determine the quantum of compensation to be paid to the victim keeping various factors in consideration.”

“The Law Commission of India has submitted its 277<sup>th</sup> report to the Union Government. The report is titled “Wrongful Prosecution (Miscarriage of Justice): Legal Remedies”, it was based on a reference made by the High Court of Delhi in the case of Babloo Chauhan v. State Government of NCT Delhi, it has provided for various guidelines for determining the quantum of compensation also have suggested certain amendments to the Code of Criminal Procedure, 1973 by enacting the Code of Criminal Procedure (Amendment Bill), 2018 recommending addition of clear and unambiguous definitions of the terms wrongful prosecution and malicious prosecution. Further, it has recommended the application of compensation, functioning of special courts and appeals and factors to be taken into account while granting compensation.”

## V. RESOURCES FOR EFFECTIVE RESOLUTION OF THE ISSUES

Following are the recommendation that should be adopted to curtail the number of instances of wrongful prosecution and incarceration:

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<sup>30</sup>Anurag Bhaskar, Jailed for years: Why India needs a right to compensation for wrongful arrests and detention, The Print, (Jul 09, 2019).

- a) “A Statutory provision should be made to provide a legal remedy to the victims and also to determine the quantum of compensation to be paid keeping in account various factors both monetary and non-monetary. The provision or right should be such which strictly punishes the police officials and the authority liable; they should be protected by the defence of the sovereign function of the state.”
- b) Fast track courts should be established for the speedy disposal of cases which will not only reduce the number under trial prisoners in jail curbing the problem of overcrowding but will also provide relief to the people who are wrongfully incarcerated from the sufferings of the prison.
- c) The victims of wrongful prosecution and incarceration should be provided with employment opportunities and educational resources to make them financially stable in case they are not.
- d) If due to such wrongful prosecution and incarceration, the victim is suffering from any health disorder be it mental or physical, he/she should be provided with adequate medical treatment by the police officials liable.
- e) Strict provisions should be made to ensure the effective and efficient implementation of the policies and also make sure that the person liable is punished.

## **VI. CONCLUSION**

The research shows and proves that the wrongful prosecution and incarceration has a severe impact on an individual's life in every way be it social, economic, physical, mental, etc. Many such victims suffer from various psychological problems such as chronic insomnia, depression, anxiety disorders, etc. Wrongful prosecution and incarceration lead to an increase in the number of under-trial prisoners which further lead to the problem of overcrowding in prisons. There are provisions mentioned in various laws but no specific law or statutory provision is dealing solely with this issue because of which this problem is increasing year after year. Court has granted compensation in several cases but there was no reasonable ground or means for determining the amount of compensation to be paid. Also, this problem is leading to the pendency of cases in the appellate forums.

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