

MISCARRIAGE OF INDIAN CRIMINAL JUSTICE SYSTEM AND SEQUELAE OF WRONGFUL PROSECUTION

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ABSTRACT

The effectiveness and honesty of India's criminal justice system are key considerations in establishing the legitimacy of the system. The effectiveness of the system can be assessed by its ability to detect and probe illicit behaviour, as well as identify offenders and administer suitable penalties. The justice system's capacity to convict the culpable and absolve the blameless, along with its meticulousness in conducting trials and its commitment to ensuring fairness, providing competent legal counsel and safeguarding the accused throughout all proceedings, enables it to ascertain guilt and innocence. The objective of this research is to gain a more comprehensive understanding of the consequences of imprisonment on those who have been falsely incarcerated or prosecuted. This will involve examining relevant legal regulations, specifically a comparative analysis of legislation in Western nations and India. The proposed research is aimed to ascertain the consequences of an unfair prosecution. Is there any existing legislation pertaining to this subject? The study undertook a comprehensive examination of some of these difficulties. The topic has been examined in relation to significant cases and legal decisions. Ultimately, the study analysed both the current provisions and the ones suggested by other entities. Furthermore, the study endeavoured to propose practical remedies and strategies for mitigating or eradicating this issue. The author conducted a thorough analysis of the different forms of this issue in our nation, while also examining data from the National Crime Records Bureau and relevant literature pertaining to the 277th Law Commission Report. The objective was to gain a deeper understanding of the correlation between wrongful prosecution and the yearly rise in the population of under-trial prisoners.

Keywords: *Criminal Law, Miscarriage of Justice, Right to Life and Liberty, Wrongful Incarceration, Under Trial Prisoner.*

INTRODUCTION

Although India has a comparatively low incarceration rate compared to other countries, there are prevalent issues in its prisons that are likely to be similar or even worse in many underdeveloped nations. In the past two years, since the beginning of the era of Covid-19 pandemic, physical courts were moved online and began limiting their hearings to cases of the utmost importance. Therefore, the likelihood of hearing the cases reduces as the number of cases that are heard in a given day. Delivery of justice to disputes is one of the essential and core duties of the Indian judicial system, which is recognized by *Article 21 of the Constitution of India*. Article 21 confers “a fundamental right to life and personal liberty” by stating that “no person shall be deprived of his life or personal liberty except according to the procedure established by law”. Two of the primary causes for the alarming growth in the number of

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people being held in jail awaiting trial are their precarious financial situations and their general ignorance of the law. A prisoner has the right to bail in the event that they have been charged with an offence that can be released on bond, yet there are some people who are unaware of this privilege. Some of individuals are incarcerated for extended periods of time for very minor offences, yet they are unable to adequately defend themselves in court.¹

The Indian judicial system follows the *principle of "Fiat Justitia ruat Caelum"*, which means "Let justice be done though heaven's fall". In the case of *Maneka Gandhi vs. Union of India*², the Hon'ble Supreme Court of India passed an opinion that the provision under Article 21 is subject to a procedure that is "right, fair and just", and eliminates any scope of procedure that is "arbitrary, fanciful or oppressive". This concept was further explained in the case of *Hussainara Khatoon v. Home Secretary, State of Bihar*³. The court held that if the judicial procedure is creating an unnecessary delay, then such a judicial procedure cannot be considered as "reasonable, fair and just, and it would be in violation of Article 21".

Despite the clear provisions, there are instances of malicious prosecutions and it is a common incident that innocents still face wrongful incarceration. The wrongfully prosecuted and incarcerated face harassment for several years, and even if they get acquitted, it becomes difficult for them to get compensated for the loss they have already suffered. Moreover, there is no strong and stringent state mechanism or statutory provisions, and the rehabilitation, restoration, and compensation go almost unattended, which increases their agony.⁴

Various systemic factors are responsible for the significant and increasing number of undertrial individuals in India. These factors include the authority of the police and magistrates to arrest and admit new cases, the capacity and infrastructure of courts to facilitate hearings, the availability of legal aid, and the effectiveness of bodies such as HPCs and the Undertrial Review Committee (UTRC) in each district. These bodies are responsible for preventing unnecessary pre-trial detention and making recommendations for bail. Both Justices *S Muralidhar* and *I.S. Mehta* said that, the examples of being acquitted by the High Court and Supreme Court after spending long years behind bars are frequent in India, and neither they nor the society or government can keep much hope for their rehabilitation,⁵

Multiple research studies have consistently demonstrated that the criminal justice system has proven to be ineffective due to various variables, including procedural misbehaviour and the adverse social, psychological and economic challenges experienced during and following unjust prosecution and imprisonment. Specifically, individuals who are economically and socially disadvantaged are frequently subjected to victimisation and oppression to a greater extent. The prompt resolution of this matter is imperative for the well-being of persons who have been wrongly charged and prosecuted for

¹ Kumud Tomar, *Impact of Wrongful Incarceration*, JUS CORPUS (Sept. 14, 2021), <https://www.juscorpus.com/impact-of-wrongful-incarceration/>.

² (1978) 1 SCC 248.

³ (1980) 1SCC 81.

⁴ Sanjeev Kumar & Abhishek Goyal, *India: Wrongful Prosecution - Victim's Rights and State's Obligation*, MONDAQ (Feb. 1, 2019), <https://www.mondaq.com/india/trials-appeals-compensation/777794/wrongful-prosecution-victim39s-rights-and-state39s-obligations>.

⁵ SR, *Law needed for those wrongfully imprisoned: Delhi HC*, THE HINDU (Dec. 3, 2017), <https://www.thehindu.com/news/cities/Delhi/law-needed-for-those-wrongfully-imprisoned-delhi-hc/article21254828.ece>.

crimes they did not commit. Furthermore, erroneous prosecution and wrongful imprisonment contribute to the rise in the population of individuals awaiting trial, exacerbating the issue of overcrowding in prisons.

A STUDY BASED ON THE NCRB REPORT

The *National Crime Records Bureau* (NCRB) annual statistical report regarding the “*Prison Statistics India*” conveys information concerning prisons, prisoners and the infrastructure of the prisons. In their report for 2019, they stated that 4,78,600 prisoners are reported to be behind bars across the country, out of which 3,30,487 constitute 69.05% of the trial prisoners. It is clear that the undertrial prisoners constitute a larger population than the convicted population behind bars.⁶

The necessary concern regarding wrongful incarceration mainly involves the duration of incarceration that an undertrial prisoner spends in jail. The data by NCRB⁷ shows that

Table No. 1

The Period of Incarceration	Number of under Trial Prisoners
Up to 3 months	1,11,154
3-6 months	68,447
1-2 years	44,135
2-3 years	22,451
3-5 years	14,049
>5 years	5,011

Out of these under trial prisoners, 61,359 were acquitted, in the first instance and 21,895 were acquitted on appeal.

COMPARATIVE LEGISLATIVE ANALYSIS OF INDIA AND THE WORLD

A. How are other nations regulating the process of trial for prisoners?

The International Covenant on Civil and Political Rights (ICCPR) was enacted in 1996, mandates that governments have a duty to uphold justice and avoid any unjust methods that may lead to a false conviction. It stipulates that the state must provide appropriate reparation to a citizen who has experienced unjust imprisonment. Contingent upon the ultimate determination that the defendant is genuinely not guilty.

⁶ MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, PRISON STATISTICS INDIA (2019).

⁷ *Ibid.*

The United Kingdom, the United States of America and Australia implemented their separate legislation in accordance with the international mandates set forth by the ICCPR, incorporating specific norms and regulations.⁸ *Canada* has not implemented any legislation, but a joint set of guidelines has been formulated by the *Federal and Provincial Ministers of Justice in 1988* relating to compensating citizens who have faced wrongful incarceration.⁹ Whereas, in *New Zealand*, wrongful incarceration is compensated by the grant of ex-gratia by the state in conformity with the guidelines issued by the Ministry of Justice's "*Compensation for Wrongful Conviction and Imprisonment (May 2015)*".¹⁰

In Germany, if there is a failure to provide justice and someone is wrongfully imprisoned, the responsibility for handling such matters lies primarily with the state authorities. They are responsible for providing compensation to those who have been wrongfully incarcerated. According to the German Parliament's legislation, the government is responsible for compensating those who are wrongfully imprisoned as a result of a pretrial detention order or any form of custody that highlights the accused person's acquittal or the suspension of their prosecution.¹¹ Sections 97a and 97b of the *German Criminal Code* address situations where individuals experience harm due to the prolonged duration of trial before the Federal Constitutional Court. The court provides adequate reparation to individuals who have experienced difficulties as a result of delays, by the duties and authority of the Federal Constitutional Court, which operates on a case-by-case basis.¹²

B. Obligations Induced by the Existing Indian Laws

The Indian laws concerning the unfair delivery of justice that results in wrongful incarceration, prosecution or conviction are categorised under two categories:

Table No. 2

CATEGORY	DEFINITION	CASE STUDY
Public Law Remedy	The unfair delivery of justice in the case of wrongful incarceration, prosecution or conviction actually violates the fundamental rights conferred under Articles 21 and 22 of the Constitution of India. The provision invokes that the High	In the matter of <i>Khatri & Ors. vs. State of Bihar & Ors.</i> ¹⁴ , the allegation was raised against the police that they had tortured some prisoners so that they turned blind, and it was the liability of the state to compensate for their loss. The court passed an order that the state must take care of the expenses of the victims in a blind home in

⁸ LAW COMMISSION OF INDIA, REPORT NO. 277, WRONGFUL PROSECUTION (MISCARRIAGE OF JUSTICE): LEGAL REMEDIES (2018).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Article 2, the Law on Compensation for Criminal Proceedings 1971.

¹² The German Criminal Code. § 97(a) and 97(b) 'Betrayal of illegal secrets: Whoever communicates a secret which is not a state secret on account of one of the violations indicated in § 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 § 94 (1) no. 1, applies accordingly to secrets of the kind indicated in the sentence. Betrayal based on the mistaken assumption that secret is illegal. (1) If, in the cases under § 94 to 97, the offender mistakenly assumes that a state secret is a secret of the kind referred to in § 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 § 353b (2).

¹⁴ (1981) 1 SCC 627.

	<p>Court and Supreme Court shall be hearing the Writ petitions under <i>Articles 226 and 32 of the Constitution</i> respectively, to secure the fundamental right of the person who has been wrongfully detained.¹³</p> <p>The violation of the fundamental right cannot be absolutely compensated, but the violation is not acceptable and gross.,</p>	<p>Delhi.¹⁵</p> <p>In the matter of <i>Rudal Sah v. the State of Bihar</i>¹⁶, the petitioner faced wrongful incarceration for 14 years, though he was acquitted. Therefore, the Supreme Court passed an order instructing the state to compensate the victim accordingly.</p> <p>In the matter of <i>Bhim Singh, MLA vs. The State of J & K & Ors</i>¹⁷ The The Supreme Court passed an order saying that the illegal arrest and wrongful incarceration could not be let go so easily and awarded a compensation of Rs. 50,000 to compensate for the suffering.</p> <p>In the matter of <i>Sube Singh vs. the State of Haryana</i>¹⁸, the court laid down that the compensation cannot be awarded in all cases. The custodial torture is subject to be proved by the medical report, visible marks, scars or any disability.</p>
<p>Private Law Remedy</p>	<p>The private remedy is delivered in the form of a civil suit filed against the state for financial compensation against the negligence and unlawful work of the public servants.</p> <p>There are several incidents when the accused are subjected to harassment, and the state is liable to maintain law and order.</p>	<p>In the matter of <i>State of Bihar vs. Rameshwar Prasad Baidya & Anr</i>¹⁹, if any criminal proceeding is faced by the accused with the intention of harassing him, then the state is liable to pay compensation to the harassed person for this malicious prosecution by the government servants.</p>
<p>Criminal Law Remedy</p>	<p>This remedy is explained in the <i>Chapter XI of the Indian Penal Code 1860</i>, which states that offences are punishable if an innocent person is involved in a</p>	<p>In a matter before the special court in Nasik, Maharashtra ruled that 11 men who were arrested in 1994 in Bhusawal, were accused of sedition and terrorism. It was actually the police who invoked the</p>

¹³ *Supra* note 8.

¹⁵ AIR 1981 SC 928.

¹⁶ AIR 1983 SC 1086.

¹⁷ (1985) 4 SCC 677.

¹⁸ (2006) 3 SCC 178.

¹⁹ AIR 1980 Pat 267.

	<p>matter with fabricated records, perjury, illegal confinements, or trial commitments by the police officer.</p> <p>Sec. 211 of the Indian Penal Code states that if a person falsely accuses another of committing an offence, causing injury to the latter by the former is punishable.</p>	<p>charges under the <i>Terrorist and Disruptive Activities (Prevention) Act</i> against them. The court granted them bail in 1994 itself, but for 25 years of their lives, they were tagged as terrorists, because they were not acquitted with respect.²⁰</p>
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SOCIAL ANALYSIS OF THE ISSUE

An examination of the PSI (Prison Statistics India) data indicates that there is a persistent disparity between the number of under-trial prisoners and convicts throughout the nation. The data on imprisonment, release, and the consistent growth in the number of under-trial prisoners each year further highlights this disparity. The duration of trial proceedings is considerably prolonged while they await the verdict of their case. When the trial proceedings are ongoing and concern an individual who is falsely charged and incarcerated, it exacerbates the mistreatment. The delay and waiting proved to be a significant mistake. While the figures may not explicitly focus on the quantity of individuals subjected to unjust prosecution, they do shed insight on the amount of individuals who have been incarcerated or acquitted due to a wrongful prosecution or conviction.

The implicit presumption seems to be that prisoners, and even individuals awaiting trial, are devoid of any entitlements. Throughout India, prisons are occupied by those who are awaiting trial. Frequently, individuals find themselves incarcerated for a duration that exceeds the prescribed maximum penalty for the offence they are being charged with. The large quantity of people exacerbates the burden on infrastructure. Each prison accommodates a far larger number of inmates than its designated capacity. The initial allocation of funds for prisoner sustenance is not sufficient, and the situation deteriorates further when corruption becomes a factor. However, there is a lack of concern from others. Each offender should be given the opportunity to rehabilitate. A society that regards individuals, regardless of their offence, as subhuman can hardly assert its adherence to the law. However, the majority of the responsibility must be attributed to the administration, specifically to those individuals who are responsible for ensuring justice for everyone. Based on a study carried out by the ‘*Quill Foundation's Centre for Research and Advocacy*’, it has been found that a significant number of the over 460 individuals charged with terrorism in Maharashtra since 1993 have been acquitted after spending an average of three to six years in jail. According to the report, “*Only 42 of 93 cases filed against SIMI (with over 200 accused) have been heard and resolved, indicating that both the judicial process and the conviction rate in terror-related cases are extremely low. Only three of the 42 cases culminated in convictions (each with a two-year term) and 39 in acquittals*”.²¹

²⁰ Bilal Kuchay, *The Maharashtra Muslims acquitted of ‘terrorism’ after 25 years*, ALJAZEERA (Mar. 15, 2019), <https://www.aljazeera.com/features/2019/3/15/the-maharashtra-muslims-acquitted-of-terrorism-after-25-years>.

²¹ Sonam Saigal, *Prisoners of the system*, THE HINDU (Feb. 20, 2017), <https://www.thehindu.com/news/cities/mumbai/prisoners-of-the-system/article17333262.ece>.

In the field of international law, it is acknowledged that a miscarriage of justice occurs when someone is found guilty by a court and later, new evidence emerges that proves their innocence. In such cases, measures are taken to compensate the wrongly convicted individual, both financially and through other forms of assistance, in order to provide relief to the victim of the wrongful conviction. Moreover, in instances where the courts granted compensation, there was a lack of transparency regarding the methodology used to determine the amount of compensation. Several inmates lack both familial support and a place of residence upon their release, rendering them homeless and financially susceptible. They confront numerous obstacles in their job search because of a lack of education and work experience, as well as the fact that their criminal histories prevent them from reintegrating into society due to social stigma and preconceptions.

Unemployment and social alienation are factors that contribute to the development of “*anxiety disorders, depression, and post-traumatic stress disorder (PTSD)*”. They are incapable of restoring communication with themselves and others. The repercussions of wrongful incarceration include fractured relationships, profound emotional distress and social exclusion among their communities. They are geographically separated from their families and social networks, which hinders their ability to establish interpersonal connections. The victims may experience a range of psychological impacts, including clinical personality change, anxiety disorders, melancholy, suicidal thoughts, anger, grief, paranoia, dependence on alcohol or drugs, memory impairments, traumatic memories or dreams, restlessness, persistent insomnia and other related symptoms.²²

Nothing can compensate for the loss of status and identity, incarceration and humiliation, ruined relationships, and loss of advancement experienced by people who have been labelled as outcasts by the police.²³ Unlawful incarceration not only costs money and time but also leads to social shame and marginalization following release. This is clear from the testimonies made by victims who have themselves been the victims of bogus prosecutions.²⁴

Western legal systems are insufficient in addressing the problem of unjust imprisonment, where individuals have endured many years of their lives prior to being found guilty, as they are restricted to offering redress only in cases of mistaken convictions. Given the limited resources available, a significant number of individuals in India are unable to access the Supreme Court or High Courts to seek compensation for cases of unlawful detention. Therefore, it is necessary to establish a statutory right or provision that can offer a legal remedy to these individuals. Additionally, this provision should establish a systematic framework to determine the amount of compensation to be paid to the victim, taking into consideration various factors.

The Law Commission of India has presented the Union Government with its 277th report. The report is titled “*Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*,” and it was based on a reference made by the High Court of Delhi in the case of *Babloo Chauhan v. State Government of NCT*

²² Christina Iannozzi, *A Day in the Life the long-term effects and psychological aftermath of wrongful conviction*, SSRN (2015).

²³ Ridhima Chandani, *Travesty of Justice consequences of wrongful prosecution and incarceration*, 3(5) IJLMH 590-599 (2020).

²⁴ Anurag Bhaskar, *Jailed for years: Why India needs a right to compensation for wrongful arrests and detention*, THE PRINT (Jul. 9, 2019, 10:13AM), <https://theprint.in/opinion/jailed-for-years-why-india-needs-a-right-to-compensation-for-wrongful-arrests-detention/260336/>.

Delhi. It has provided various guidelines for determining the quantum of compensation, as well as suggested certain amendments to the *Code of Criminal Procedure, 1973*, by enacting the *Code of Criminal Procedure (Amendment Bill), 2018*, recommending the It also made recommendations on compensation, the operation of special courts and appeals, and the elements to be considered when providing compensation.

DISCUSSION ON EFFECTIVE RESOLUTION

When the fundamental principles of a legal system are feeble, it is inevitable that it will eventually collapse. This accurately depicts the current situation in India. The process of justice is characterised by a lack of swiftness and a lack of obvious trajectory in its consequences. These structural issues are exacerbated due to a widespread disregard for fundamental rules in India. Simultaneously, Indian legislators frequently enact rules and regulations that are burdensome, complex, and grant regulatory and investigative agencies extensive and discretionary authority. The regulators and investigators can exhibit excessive enthusiasm in their handling of affairs, often without sufficient accountability.

With the exception of a small number of laws, there are no specific timeframes in which regulators or investigators conclude their investigations. Consequently, the outcome is a prolonged state of unresolved issues and ambiguity. Moreover, the delay in question poses challenges in mounting a defence, as the preservation, upkeep, and acquisition of documents become increasingly arduous with time. It is frequently observed that many agencies investigate the same issue, which can lead to unnecessary harassment. Currently, it is common to attribute responsibility to the judiciary and hold it accountable for this unfortunate state of affairs. This perspective is myopic and inaccurate. The crisis has been contributed to by all the stakeholders, including the Bar, the litigants, and the government. The following recommendations should be implemented to reduce the number of cases of false prosecution and wrongful incarceration.²⁵

- i. A statutory provision should be developed to provide victims with a legal remedy and to decide the amount of compensation to be paid, taking into account various monetary and non-monetary aspects. The provision or right should be such that the responsible officers they are severely punished; they should be safeguarded by the state's sovereign function.
- ii. Fast track courts should be formed to expedite the resolution of cases, which would not only reduce the number of people awaiting trial in jail, thereby reducing overcrowding, but also bring relief to those who are currently incarcerated.
- iii. If the victims of wrongful prosecution and incarceration are not financially compensated, they should be supplied with work possibilities and educational resources.
- iv. If the victim develops a mental or physical illness as a result of the unlawful conviction and wrongful incarceration, the police authorities responsible shall offer appropriate medical treatment.
- v. Strict arrangements should be made to ensure that policies are implemented effectively and efficiently, as well as to ensure that those who are responsible are punished.

²⁵ Ajay Bahl and Vijayendra Pratap Singh, "Reforming the judicial process in India: Principle-based solutions", *Bar & Bench*, July. 27, 2020, <https://www.barandbench.com/columns/reforming-the-judicial-process-in-india-principle-based-solutions>.

CONCLUSION & SUGGESTIONS

The principle of legal governance is intended to be safeguarded, preserved, and enforced through a framework known as the criminal justice system. Maintaining order consistently, ensuring swift dispensation of justice, appropriately penalising criminals, and facilitating their rehabilitation are all vital. Malicious convictions are a significant issue that afflicts our criminal justice system, which also suffers from other deficiencies. Both the prosecution and the defence are obligated to conduct a comprehensive investigation of the case to ensure that there are no occurrences of malpractice, deceit, or corruption. The criminal justice system is obligated to maintain equilibrium and ensure that it exclusively penalises individuals who are genuinely accountable for the offence, while preventing the wrongful imprisonment of innocent individuals due to their association. The main goal of the system is to offer victims of crime with compensation and contentment. Attaining this objective remains unattainable until the individual who genuinely perpetrated the offence is apprehended, subjected to legal proceedings, and ultimately incarcerated for their deeds.

Wrongful prosecutions possess the capacity to inflict irreversible damage upon the personal and social life of an innocent individual, and this reality must be constantly acknowledged. The Law Commission of India, headed by Justice B.S. Chauhan, published a study called "Wrongful Prosecution (Miscarriage of Justice): Legal Remedies" on August 30, 2018. In 2016, the Delhi High Court commissioned a report that instructed the Commission to examine the solutions for unlawful incarceration. The Commission highlighted the absence of a current legal framework to provide redress for individuals who have been unjustly convicted. The primary suggestions of the Commission encompassed a modification to the CrPC in order to offer reparation in cases of unjust prosecution resulting from a miscarriage of justice. A miscarriage of justice refers to the wrongful or intentional prosecution of an individual, irrespective of their conviction or imprisonment.

According to many experts, the criminal justice system has proven ineffective, with factors such as procedural misconduct contributing to erroneous conviction and incarceration. As a result, individuals are confronted with a multitude of psychological, social, and economic problems. Many individuals, especially those from lower socioeconomic backgrounds, have been incarcerated. It is imperative to tackle this issue promptly to prevent further impoverishment of lives and families. Moreover, prior empirical studies in this field have confirmed that unjust prosecution and imprisonment exert a substantial influence on all aspects of an individual's life, encompassing social, economic, physical, and mental well-being. A significant number of these individuals suffer from psychiatric conditions such as chronic insomnia, depression, and anxiety disorders, among others. While numerous laws have provisions, none of them directly address this issue through a single legislation or statutory provision. Consequently, the problem persists and escalates year. On many occasions, the court has granted compensation without a valid or satisfactory framework or procedure for determining the precise amount of compensation to be provided.