



Compensating The Innocent: A Critical Analysis Of The Regulatory Framework For Wrongful Prosecution

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ABSTRACT

In this paper, the author has sought to critically analyse the regulatory framework in India that addresses compensation for victims of Wrongful Prosecution. The victims of Wrongful Prosecution are victimized in a variety of ways by the Indian criminal justice system, such that there are no provisions in the existing laws governing the grant of compensation to assist and support them. In the present situation, they are completely at the mercy of the State, society, and the courts. The currently available solutions are complex and insufficient, and the current state restitution processes are atrociously deficient. The development of the notion of welfare states reflects the need to compensate such innocent victims to a great extent.

The paper analyses the international-level mechanism for the right of compensation. The role and the approach of the Supreme Court of India to grant compensation in cases involving false accusations, unjustified detention, and physical damage has been discussed. It also looks into the existing gaps in the relevant statutes. An important part of this paper is determining whether a statutory law or legal mechanism is required to provide victims of Wrongful Prosecution with prompt, efficient, and cost-effective justice.

In conclusion, this paper highlights the many problems and difficulties associated with compensation in the Indian Legal system and offers recommendations to address the inadequate remedies available to those who have been wrongfully prosecuted. This paper highlights the urgent need for an effective statutory framework mandating compensation for victims of Wrongful Prosecution, alongside necessary amendments to the existing laws governing compensatory provisions.

Key Words: Wrongful Prosecution, Victim Compensation, Justice, Sentence.

INTRODUCTION

*"It is better that ten guilty persons escape than that one innocent suffer"*¹

These words observed by Sir William Blackstone still stand relevant such that they're recognised as a Fundamental principle in almost every legal system today. It highlights the need for the protection of innocent people who become victims at the hands of the State for the latter's wrongful actions. Similarly, The basis of these principles lies in the fact that Law is referred to as a tool for promoting social justice. It is thus crucial that innocent people not be prosecuted wrongfully. However today, in India, due to Wrongful Prosecution, innocent people are suffering and the law has no answer for this. This is leading to a miscarriage of justice. As per the Law Commission of India,

*"Miscarriage of justice means malicious or Wrongful Prosecution and it does not make any difference whether or not it results into a conviction by any court of law or whether or not it leads to any incarceration."*²

These are the cases where the accused was not at all at fault for any crime, but the investigation, prosecution, and/or imprisonment were all carried out while the police and/or the prosecution (State officials) were engaged in some type of misconduct or fraudulent act or there was some negligence or fault on their part. It would cover both situations in which the accused was sent to jail and those in which he was not, as well as situations in which the subordinate court found the accused not guilty or in which the accused was found guilty by one or the other court but was ultimately acquitted by the Higher Court.

Recently, many cases have been reported for such Wrongful Prosecution leading to miscarriage of justice. To name a few: *Madhubala Mondal*, a victim of mistaken identity who had to spend three years in jail before being released in 2019, *Md. Ali Bhat*, who was released in 2019 after spending 23 years in prison after being wrongfully accused of terrorism; *Md Amir Khan*, who was put in jail for 14 years after he was kidnapped by the Kashmir Police and was falsely accused of being a terrorist or the case of ISRO's ex-scientist *Dr Nambi Narayanan's* unfair prosecution by the Kerala Police.³

Needless to mention, such victims of wrongful prosecution go through serious psychological after-effects. It not only results in the loss of years but also results in social stigma and ostracism even after the individual is released. As per the

¹ 4 BI Comm 352.

² Law Commission of India, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (Law Com No 277, 2018) 21.

³ Tanmay Malik, 'Making the case against Wrongful Prosecution' (*The Leaflet*, 9 September 2021) <<https://theleaflet.in/making-the-case-against-wrongful-prosecution/>> accessed 1 September 2022.

research done at the University of Cleveland (US), these effects eventually result in depression, paranoia, and post-traumatic stress disorder (PTSD).⁴ Even after being absolved from the charges, the effects limit the victim's ability to live a normal life. Additionally, such a person experiences harm to their health, a loss of income or wages, a loss of property due to the expense of legal fees, as well as other indirect costs brought on by such prosecution.⁵ One such 'victim' named *Anjum Zamarud Habib* in her book *'Prisoner No. 100: An account of my days and nights in an Indian Prison'* narrated the horrifying experiences of spending 5 years in prison before she was released by the Delhi Court. She wrote, *"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."*⁶ Therefore, they require additional assistance and support by the way of compensation, immediately following his acquittal, including medico-legal and financial assistance.

In light of the above, this paper aims to critically examine the laws and legislations in the Indian Legal system in this regard as well as various interpretations provided by High Courts and the Supreme Court of India in terms of compensatory jurisprudence from time to time.

INTERNATIONAL FRAMEWORK

Various international covenants and enactments, statutes, and acts recognise and enforce the right to compensation for Wrongful Prosecution, incarceration and convictions in jurisdictions around the world. Internationally, the issue is referred to as a "miscarriage of justice" that occurs when a person is wrongfully convicted but is later proven to be factually innocent based on the discovery of new evidence/facts.⁷ A study of these will help us understand the miscarriage of justice and the development in this regard. It will also help us realise the obligations if any, that India holds under International Law.

Conventions and Treaties

International Covenant on Civil and Political Rights under Article 14(6),⁸ Victims of wrongful convictions who have their sentences overturned or are granted pardons after new evidence proves there was a miscarriage of justice have the right to compensation under the law. It 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".

Article 9(5) further provides, *"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".*⁹

The UNHRC discussed Article 14 of the ICCPR in its General Comment No. 32 (2007). While talking about the state's responsibilities in 'Cases of Miscarriage of Justice', it states:

*"It is necessary that States parties enact legislation ensuring that compensation, as required by this provision, can, in fact, be paid and that the payment is made within a reasonable period of time."*¹⁰

It requires that such victims of proven misconduct are to be compensated 'according to law'. Article 5(5)¹¹ of ECHR lays down the right to compensation for wrongful arrests and detention. It states, "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Laws in different Jurisdictions

A comparative analysis of the laws in various jurisdictions can assist the legislature in enacting reform. In consonance with the above-mentioned, many countries enacted various laws aiming to provide relief to the victims of Wrongful Prosecution. For instance, the UK incorporated the obligation under Article 14(6) into its domestic legislation namely *'Criminal Justice Act 1998'* under section 133¹² which provides for compensation for miscarriage of justice.¹³ UK has also enacted *'UK Police Act, 1996'* that deals with the liability for the wrongful acts of constables. In United States and Germany as well, this commitment has been codified into law, with the state assuming legal responsibility for compensating victims of such injustices. In Canada, *"Federal/Provincial Guidelines on Compensation for Wrongfully*

⁴ Priyanshree, 'Wrongful Conviction: The tale of victimization' (2020) 2(2) Indian Journal of Integrated Research in Law <<https://ijirl.com/Wrongful-Prosecution-content/uploads/2022/03/WRONGFUL-CONVICTION-THE-TALE-OF-VICTIMIZATION.pdf>> accessed 25 August 2022.

⁵ *ibid.*

⁶ Anurag Bhaskar, 'Jailed for Years: Why India needs a right to compensation of wrongful arrests and detention' (*The Print*, 1 July 2019) <<https://theprint.in/opinion/jailed-for-years-why-india-needs-a-right-to-compensation-for-wrongful-arrests-detention/260336/>> accessed 1 September 2022.

⁷ Anurag Bhaskar (n 6).

⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 177 (ICCPR) art 14(6).

⁹ ICCPR (n 8) art 9(5).

¹⁰ Law Commission of India (n 2) 16.

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) (1950) 5 (European Convention on Human Rights, as amended) art 5(5).

¹² UK Criminal Justice Act, 1988 s 133.

¹³ D McLellan and Myles Frederick, 'Innocence Compensation: An International Comparative Analysis on Compensation Wrongful Convictions and Miscarriages of Justice' (2019) <<https://ssrn.com/abstract=3423024>> accessed 2 September 2022.

Convicted and Imprisoned Persons” in adherence to ICCPR, specify the eligibility requirements and the method for determining the amount of compensation.

India has also ratified the ICCPR in 1968 with certain reservations. One of the reservations made by India was that the right to compensation for victims of unlawful arrest and detention was not recognised by the Indian Legal System.

ICCPR stands out to be a relevant international convention dealing with the issue. But obligations under ICCPR are yet to be complied by India and enact legislation like other jurisdictions by laying down the law for compensation to victims because of a miscarriage of justice. Due to the declaratory nature of the covenant, it does not provide any effective mechanism specifying the enforcement of the right to compensation.

JUDICIAL PRONOUNCEMENTS

In recent times, the Indian judiciary has taken an active role in investigating the plight of these victims and has issued a number of landmark decisions that have in some instances awarded compensation and in others denied the same. In the absence of any comprehensive legal provision, one is always required to rely on judicial decisions.

The approach of the Court: Pro Compensation

As per the dictionary meaning, “*Compensation means payment of damages, or any other act that court orders to be done by a person who has caused injury to another and must therefore make the other whole.*”¹⁴

In India, there is no enforceable right to compensation for victims of unlawful State actions. However, Supreme Court in various cases has read this remedy under violation of Articles 21 & 22¹⁵ of the Constitution.

In *Rudul Shah v State of Bihar*¹⁶, the Supreme Court awarded a compensation of Rs. 30,000 to the petitioner who was wrongfully detained for 14 years.

Subsequently, in *Bhim Singh, MLA v State of J&K*¹⁷, the Supreme Court awarded a compensation of Rs. 50,000 for illegally detaining and preventing an MLA from attending a session of the Legislative Assembly thereby violating his Fundamental Right under Articles 21 & 22(2) of the Constitution.

In the case of *Nilabati Behera v. State of Orissa*¹⁸, the court issued a landmark ruling that is often credited with crystallizing the principle of vicarious liability of the State and that of sovereign immunity vis-à-vis the violation of Fundamental Rights by State officials. The Court held, “*Award of compensation in writ proceedings is a remedy under public law, based on strict liability for contravention of Fundamental Rights.*” It further noted that the principle of sovereign immunity is inapplicable in cases involving the violation of Fundamental Rights.

Also, in the case of *S Nambi Narayanan v Siby Mathews*¹⁹, the Court awarded the former ISRO scientist, compensation of 50 lakhs, 24 years after he was wrongfully detained on charges of disclosing official secrets to a spy network. Additional compensation of Rs 1.3 crore was also paid to him in 2020.

The approach of the Court: Against Compensation

However, there has also been a number of cases where the Court has taken a strict approach and tried to limit the scope of the remedy of compensation in cases of violation of Fundamental Rights under the Constitution.

In *Sube Singh v State of Haryana*,²⁰ the Court laid down the proposition that compensation should not be awarded in all cases of violation of Article 21. In this case, the petitioner alleged illegal detention and custodial torture but the Court refused to award any monetary compensation in this case.

Similarly, in *Adambhai Sulemenbhai Ajmeri v State of Gujarat*²¹, the Highest Court acquitted few accused persons who were imprisoned for 10 years when “instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing”, it did not award any compensation to the victims as it would have set a ‘dangerous precedent.’

As discussed above, awarding compensation is solely at the court's discretion. Due to lack of any standard framework, the remedy provided by the Court varies on the facts and circumstances of the cases. The episodic nature of the remedy granted by the Courts in India leads to uncertainty in the minds of victims and their family members. Denial of the available public law remedy by the Courts in various instances shows the necessity of an effective mechanism for compensating innocents. Although the law commission recommended guidelines for standardizing the same but none are implemented.

INDIAN LEGAL FRAMEWORK

The most availed remedy to seek compensation is in the form of a petition for violation of FRs under the Constitution. While National and State human rights commissions also hear cases *suo motu* and recommend compensation, states only comply in 20% of all the cases. Thus, in India, there is no comprehensive legislation or well-designed statutory scheme that allows a victim of power abuse to seek compensation from the State.²² However, a careful reading of the

¹⁴ Black's Law Dictionary (11th edn, 2019).

¹⁵ The Constitution of India, 1950 arts 21 and 22.

¹⁶ *Rudul Sah v State of Bihar* (1983) 4 SCC 141.

¹⁷ *Bhim Singh v State of Jammu and Kashmir* AIR 1986 SC 494.

¹⁸ *Nilabati Behera v State of Orissa* AIR 1991 SC 871.

¹⁹ *S Nambi Narayanan v Siby Mathews* 2018 SCC Online SC 1500.

²⁰ *Sube Singh v State of Haryana* 2006 SCC Online SC 160.

²¹ *Adambhai Sulemenbhai Ajmeri v State of Gujarat* 2014 SCC Online SC 465.

²² Law Commission of India (n 2) 73.

Code of Criminal Procedure (CrPC) (as amended), reveals that a few sections directly deal with providing compensation.

Compensatory provisions under CrPC

Sections 357, 357A, 358 and 250 of the CrPC, 1973 contain provisions related to compensation.

Section 357²³ deals with 'Order to pay compensation. It authorizes the court to award compensation to the victim and to order payment of the prosecution's costs.²⁴ Section 2(wa)²⁵ defines victim as, "*a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.*"

Thus, in the Indian context, an aggrieved person will not be called a victim unless the accused is charged for his actions. As per Section 357, the categories of victims eligible for compensation are the complainant victims or those people who have suffered loss or injury as a result of the offence. The compensation is awarded regardless of whether the offense is punishable by a fine or not and whether the fine is actually imposed, but the compensation can only be awarded if the accused is convicted and sentenced.²⁶ It also stipulates that an order for compensation must be included in the sentence. If a fine is part of the sentence and the court passes a sentence without mentioning the fine, then the accused cannot be ordered to pay compensation because it can only be collected from the fine recovered. Further, under Section 357, State is not liable to compensate the victims.²⁷ Thus, the bare reading of the provision suggests that even an order under Section 357(3) will be futile if the accused doesn't have the financial resources to meet the fine imposed.²⁸

To overcome these problems of section 357, Section 357A²⁹ was introduced in 2008. This amendment expanded the right to compensation for victims. The compensation from State funds in cases where the accused could not be located was acknowledged by the Code for the first time. Section 357A deals with 'Victim Compensation Scheme'. This scheme is made applicable to the victims irrespective of the outcome of the prosecution.

However, the word victim as defined earlier does not include the victims of Wrongful Prosecution at the hands of State. In 2021, a writ petition³⁰ was filed in the Supreme Court addressing the question "Whether the term 'victim' under Section 2(wa) and section 357A of the CrPC is violative of Articles 14 and 2 as the victim can be the person who is acquitted and a victim of wrongful malicious prosecution and incarceration by prosecuting agency/vexatious complainant".

Further, section 358³¹ which provides compensation to those who have been groundlessly arrested, is also worth mentioning in this regard. The section appears to primarily target groundless arrests that are initiated by one person against another. If a person is instrumental in causing a groundless police arrest, the court may order that person to compensate the arrested person for his time and money. To invoke this section, there must be a direct and proximate link between the complainant's complaint/information and the arrest.³² There must be proof that the informant caused the accused's arrest without cause. The maximum amount that can be awarded as compensation is only Rs.1000.

This section addresses wrongful (groundless) arrests, but it does not address the police officer(s) making such an arrest, even if they were acting in collusion with the person who happened to cause the wrongful arrest.³³ Also, the maximum compensation provided in the section is neither in the form of relief for the wrong done nor a deterrent to prevent future wrongs.

Section 250³⁴ provides for the payment of compensation to the accused when he is discharged or acquitted for lack of reasonable cause to prosecute. It covers only those cases where a case has been instituted when a complaint or the information was given to police or to the Magistrate by accusing some person for having committed a certain act.

There is no provision in CrPC which can remedy the victims of Wrongful Prosecution by way of compensation. The problem in the above-mentioned sections lies in the limited scope and application of the word 'victim' itself.

CONCLUSION AND SUGGESTIONS

After analyzing different sources, the researcher has discovered that the absence of any effective legal mechanism for providing compensation to victims of Wrongful Prosecution infringes their Fundamental Rights guaranteed under the constitution and also puts them in a pathetic situation. These victims of State misconduct not only lose their livelihood, jobs and precious years after falling into this vicious trap but they also lose their dignity. In addition, due to the stigma associated with prosecution, an individual and his family also experience social isolation and reputational harm. In such cases, even a subsequent acquittal or discharge does not completely restore the lost status. Thus, when the state fails to

²³ Code of Criminal Procedure, 1973 (2 of 1974) (CrPC) s 357.

²⁴ KN Chandrasekharan Pillai (ed), *R.V. Kelkar's Criminal Procedure* (6th edn, EBC 2008) 634.

²⁵ CrPC (n 23) s 2(wa).

²⁶ KN Chandrasekharan Pillai (n 25) 635.

²⁷ *ibid.*

²⁸ Shubhanshu Aggarwal, 'Is Victim Compensation Scheme in India Sufficient?' (2021) 4 *Intl J of L Mgmt & Humanities* (IJLMH) 2952.

²⁹ CrPC (n 23) s 357 A.

³⁰ *Ashwini Kumar Upadhyay v Union of India* WP (C) No 327/2021.

³¹ CrPC (n 23) s 358.

³² Shubhanshu Aggarwal (n 28).

³³ *ibid.*

³⁴ CrPC (n 23) s 250.

fulfil its responsibility, it must provide a way for victims to receive compensation. Years lost, social stigma, mental, emotional and physical harassment, expenses incurred, etc. need to be compensated.

Though this problem has been dealt with by the higher courts in several cases but due to the discretionary nature of the remedy, the problem has not been fully solved. Most of the legal systems have some mechanism following the *jus cogens* norms to address the issue. The existing statutory provisions dealing with the compensation also face several lacunae. In this respect, the 277th Law Commission Report recommended a specific legislative framework for the redressal of cases leading to miscarriage of justice that result in Wrongful Prosecution by covering both the substantive and procedural aspects that is a statutory and legal framework for establishing the mechanism for adjudicating upon the claims of Wrongful Prosecution, and resultant payment of compensation by the State,³⁵ but till now it has not been implemented. Very recently, the Supreme Court disposed of the plea seeking framing Uniform Compensation guidelines to provide relief to victims of Wrongful Prosecution, observing, that “it will create a lot of complications”.³⁶ Hence, the recommendations of the 277th Law Commission Report must be implemented as early as possible so that a statutory obligation can be created for the State to compensate the victims of Wrongful Prosecution and a corresponding statutory right can also be created for the victims. Thus, the hypothesis with which the researcher started stands proved. In light of this the researcher suggests the following:

- Although the report majorly covers all aspects of victim compensation in its recommendations, but it doesn't take into account the fact that a long legal battle also takes a toll victim's family. So, nonpecuniary awards like counselling, rehabilitation, and mental health services should be made available to the victim's immediate family if needed and must be created as a statutory obligation on the state.
- Till the time a statutory framework incorporating the recommendations of the commission is enacted, necessary amendments in the current provisions must be made. The definition of 'victim' under CrPC must be widened to include the victims of Wrongful Prosecution so they can be directly compensated under the compensatory provisions of the Code. Similarly, the amendment must also be made in the provisions mentioning the maximum fine, in light of the present-day context.

Scope of Future Research

The researcher has sought to outline the need for a general framework and the problems associated with a particular statute that recognizes the rights of victims of Wrongful Prosecution and holds the State accountable for the same. However, there are many lacunae and problems in the other statutes as well, which the researcher is unable to address in this project and which can be dealt with in the future.

³⁵ Law Commission of India (n 2).

³⁶ *Ashwini Kumar Upadhyay v Union of India* WP (C) No 327/2021.