

A Comprehensive Legislation in False Prosecution in India

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Introduction

The process of criminal justice endlessly advances in reply to the varying economic and social conditions of the wrongfully prosecuted. It is the primary obligation of the judiciary to maintain the equilibrium. Criminal law that is guided with societal fortification and recommends guidelines of conduct and on other side the freedom, safety, and stability of the individual in the society.¹

Criminal procedural law is instrumentally valuable, since it is responsible for bringing the criminal justice ideals and objectives into reality. The normative considerations outlined in the procedural law serve as guidelines at every step of criminal adjudication. They describe the functions, define the powers, and prescribe the procedural standards that are to be followed at every stage of pre-trial and trial.

Invariably, the objective of Criminal Procedural Code is to ensure that justice is delivered on time to the victims of crime. Justice can only be rendered effectively when the actual offender is arrested and charged with offense he committed. This can be ensured by obligating the police, investigating agencies, the prosecutors, and the judges to fulfil their responsibilities and duties efficiently as per the laws devoid of any intended error. For establishing faith in the people of any country towards the legal institutions, the veracity and ethos of the criminal justice system need to be safeguarded. This endeavour can only be realized when the guilty are condemned and the innocents are exonerated from punishment.

It is an established principle that “searing injustice and consequential social injury is caused when the law turns upon itself and convicts an innocent person”²

Various fundamental principles like presumption of innocence and other principles have been incorporated in the criminal procedural code, to ensure that such injustice is not caused. One of such grave injustice is when an innocent is accused for a crime, he never committed. Although there is evidence of its occurrence in most criminal justice systems, wrongful conviction remains underdeveloped from a criminological perspective. The result of a confluence of factors and actors, wrongful conviction stands as evidence that criminal justice systems are not immune to error.³ Erroneous convictions can have immeasurable consequences for exonerees, original crime victims, and families.

The wrongful conviction is a growing problem in Indian criminal justice system. The Incident of wrongful prosecution involves a situation where a person is wrongfully prosecuted and convicted and found not guilty at the appellate stage. This situation leads to a large number of issues and problems to such person as they not only suffer the coercion, torture and forced confession during the police investigation but are also adjudged to be guilty based on flimsy grounds. Despite found not guilty in the end, their tale of victimization remains horrific. Apart from experiencing unfair deal in the criminal justice system, they tend to suffer a secondary victimization in the form of stigmatization by the community. The present study was done to examine such instances of victimization as a serious miscarriage of justice to understand the factors responsible for this problem. The idea is also to develop some insights into a possible legal regime to make arrangements for compensation, rehabilitations and other entitlements of the victims of crime.

This Dissertation comprises of five chapters in total which starts from the Introduction in Chapter one, the second Chapter talks about Inadequacy of Compensation. The third Chapter is in depth about Stigmatization and Victimization through False Prosecution. In the fourth Chapter there has been a detailed discussion about the theory of justice i.e., Criminal Justice System and False Prosecution – An Institutional Perspective. The fifth chapter talks about Existing Legal Framework around India. The dissertation ends with a chapter articulating the suggestions and conclusions on the title False Prosecution in India: The dire need for a comprehensive legislation.

¹ Jo Anne m. Wemmers, victims in the criminal justice system studies on crime and justice: a series from the Dutch research and documentation centre (of the ministry of justice), Kugler Publications, 1996, pg.- 43.

²Van Der Meer v The Queen (1988) 82 ALR 10, 31 (Deane J).

³ Walker, C. (1993). Introduction. In C. Walker & K. Starmer (Eds.), *Justice In Error* (Pp. 1–16). Oxford: Oxford University Press

The present study is predominantly based on data and information collected from a number of cases decided by Supreme Court. Doctrinal model is used to study and analyse this research with the help of identification of cases.

In order to analyse the data, the following doctrinal techniques are used. Data identification was done for the identification of specific cases where instances of failure of criminal justice system Identification of courts /categories/themes was done in such a way that cases were selected from almost every state jurisdiction in such a way to balance the quantum of legal proceedings and travesty of justice.

After understanding the loopholes in criminal justice system that lead to False Prosecution in India and other countries, few measures can be suggested for decreasing the incidences of miscarriage of justice. The role played by the instruments of criminal justice machinery viz. police, prosecutors, defence lawyers, judges etc. in pursuit of a fair trial is very crucial. Certain prominent wrongful practices in the trial process have been recognized which if corrected can help to reduce or completely eradicate the dispute of False Prosecution.

Ensuring Fair trial:

The following measures can be taken to ensure that an innocent is not convicted for a crime he never committed.

1. Statements given by Eyewitness

Most of the study conducted for wrongful conviction, have suggested that majority of the cases where innocents are convicted owe their roots to misidentification by the witnesses. Factors like psychological, social and cultural factors can significantly influence the eyewitnesses and their statements. Thus, concerns regarding the fairness of their statement needs the judges through several parameters by the police officers and the judges. The credibility of the statements given by eyewitnesses shall be appropriately tested.

2. Police and Prosecutorial Misconduct

It is often observed, that in certain cases the police officers are biased towards the accused or they have immense pressure to arrest a person responsible for a crime, that they knowingly hide the exculpatory evidence of the accused. These include mishandling of physical evidence (includes hiding, destroying or tampering with the evidence, case files and case records); failing to disclose exculpatory evidence; Threatening, badgering or tampering with witnesses; using false or misleading evidence; harassing etc. Any variant of such misconduct should be checked and appropriately dealt with.

3. False and Coerced Confessions

The confession statements given by the accused shall be thoroughly checked during trial. Sometimes police officers 'conduct interrogation for more than 24 hours at a stretch. In such situation, the accused is under duress to sign his confession statement, because he becomes mentally and physically tired of negating his claim. He should be given adequate opportunity to explain himself during trial.

4. Inadequate Assistance by Defence Counsel

The resources with the defence lawyers are scant, which worsens their interest in the case. Sometimes defence lawyers are overloaded with cases and they cannot devote their full attention for investigating a particular case. The accused is not only inadequately represented by his defence lawyer, but also vulnerable to —plea-bargaining tool used by many such defence lawyers. Attorneys who don't have sufficient time for investigating a case, often lure their clients with false promises in the name of plea bargaining. Such practises shall be checked.

5. Errors in Forensic Evidence

The techniques and methods involving DNA testing needs to be used with caution by only the trained expertise. One cannot blindly rely on forensic evidence given the factors like quality control, training and in some cases ethics of those working in forensic labs, must be considered.

In some cases, it was observed during later stages of trial that the forensic experts can tamper with the evidence for numerous reasons. They can intentionally distort evidence, to prove an innocent defendant as a guilty convict. Such practices need to be curbed.

Rights of Accused

Knowledge of the accusations:

It is common knowledge that a person will be in a better position to defend himself if the person has a comprehension of the charges against him or her. But the right to fair trial right will remain to be dead letter of law if the person who is asked

to defend himself in the court is not informed of the accusations against him. There are numerous provisions in Criminal Procedural Code stating the same principle as Sections 228, 240, 246 and 251.

Aid of Counsel:

This precondition of fair trial has a two-pronged requirement i) the accused has had a fair and legitimate avenue to secure for himself a counsel of his/her own choice and ii) It is the prerogative of the state to provide a counsel and to utilize the suggestions of the Law Commission of India, used in its the 14th report, as —a service which a welfare state owes to its citizens . Further the mandatory-ness of this right can be ascertained by the fact that it has been further enshrined in the constitution under Article 22(1) which in clear terms states that no individual will be denied the right to take legal assistance from an advocate and will be given the right to be defended by a legal practitioner. This right is recognized as being *sin que non* with a fair trial because it is a fact that, coupled with the general illiteracy and ignorance prevalent in India, it cannot be expected that the accused has knowledge of the law and also that the accused cannot be expected to defend himself in a court where the prosecution is conducted by an experienced and competent prosecutor, because alas he lacks the professional skills to do the same. In Indian legal system, the right to fair trial has been recognized under section 303 of Criminal Procedural Code which gives a statutory right to any individual accused of criminal charges to consult a legal practitioner, of his or her choice.

In *Mohd. Sukur Ali v. State of Assam*⁴, the Supreme court observed that : —We are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or deliberately, even then the court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation the court should appoint another counsel as *amicus curiae* to defend the accused. This is because liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important fundamental right of the fundamental rights guaranteed by the constitution. Article 21 can be said to be the heart and soul of the fundamental rights .

The Apex Court also held in the case of *Suk Das v. Union Territory of Arunachal Pradesh*⁵, that a conviction of an accused without being provided the opportunity of legal representation is wrongful conviction and is unconstitutional. It observed —the High Court persisted in taking the view that since the appellant did not make an application for free legal assistance, no unconstitutionality was involved in not providing him legal representation at State cost. It is obvious that in the present case the learned Additional Deputy Commissioner did not inform the appellant that he was entitled to free legal assistance nor did he inquire from the appellant whether he wanted a lawyer to be provided to them at State cost. The result was that the appellant remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. This was clearly a violation of the fundamental right of the appellant under Article 21 and the trial must accordingly be held to be vitiated on account of a fatal constitutional infirmity, and the conviction and sentence recorded against the appellant must be set aside.

Criminal Liability for Malicious Prosecution:

We despite being a good lawyer, judges, citizens choose to remain silent. It is the duty of attorney in England that he/she will attend the arrested person within one hour of his arrest and he has the rights to access police station any time he wants. This is a factor of other developed countries that apart us from them and make our criminal system less smooth and efficient, factors like this should be adopted by our constitutional machineries and relevant upgrades necessarily be done. Charge a person of an investigating agency for falsifying a case with an evil intention has been made exceptionally inconvenient by the current legal system. The UAPA is required to displace the provisions of section 197 of the CrPC which require the government authorisation before registration of case, alter and to comprise of a charge which enforces criminal liability upon investigating officers who are accountable for wrongful prosecutions.

The Right to Compensation

Modalities of Awarding Compensation:

Courts are the only platform where an offended individual can look for compensation and we have witness very less attention when it comes to the cases of wrongful prosecution. The entire phenomena legal system when into consideration

⁴ (2011) 4 SCC 729.

⁵ (1986) 10 ACR 345 SC.

can take the aggrieved individual to experience the trauma of wrongful conviction all over again. The question which arises here is, what is the most transparent and efficient way of rewarding rehabilitation and remuneration?

It has already been acknowledged that at present there are no framework which are up to mark. If the government helps in identifying the harm of wrongfully convicted individual, it will fasten up the healing process. The person who has not committed faults and errors will get occupied.

Devaki Nanda V. State of Bihar attained a remarkable achievement. In this case pension of petitioner was detained for twelve years. Inspired, Purposive and Deliberate, harassment of the petitioner were few of the reasons for which Exemplary costs were awarded.

Police had blinded definite prisoners and it was supposed that state was responsible to compensate the victims. This supposition was made in the leading case of Khatri V. State of Bihar (the Bhagalpur binding case).

As articulated by Justice Verma, cure is accessible in public law in the form of compensation under Articles 32 or 226. Principle of sovereign immunity cannot be given to state for the breach of Fundamental Rights.

As stated in Rudal Shah v. State of Bihar, before awarding compensation the courts must be convince that the power by the authorities was transparently exceeded and acted with absolute ignorance of law. The court took reference from Article 9(5) of the International Treaty on civil and Political Rights, 1966, i.e.: —Enforceable Right to compensation shall be given to the victims of Illegitimate arrest or detention; to buttress its belief that award for compensation is not distant to the method of enforcement of an assured Fundamental Rights.

In Sebastian Hongray V. Union of India, Rs. 1 lakh were awarded to the widows as an exemplary cost by the court. The Supreme Court also awarded compensation in respect of persons who went missing from army custody.

In Mohanlal Sharma V. State of U.P., it has been perceived that under Article 21 prisoners are bound to the right to Monetary compensation.

Compensatory justice is defined as Therapeutic and constructive in nature and tendency by the criminologists and penologist. It is bound to ensure enforcement of other Human Rights and Fundamental Freedoms as stated in constitutional and statutory laws. It covers few methods of restitution, restoration, correction, and rehabilitation. Justice is delivered to the abuse of power and victims of crimes as the right to compensation stays elementary when it comes to its mechanism. The constitutional and Human rights Jurisprudence is worth praising as it explains logical balancing of the principles of rule of law with the different modes of administration and its rising oppression.

Victims go through most troublesome experiences like illegitimate imprisonment and abuse (physical and psychological), trial and detention, the loss is very deep. Family members are broken, businesses destroyed, children have to often abandon their studies overall normality of life is hampered.

Psychological costs:

“The failure of justice requires long term psychological stress at the initial stage of arrest in custody, it also includes sufferings of overwhelming threat. There was also long-term psychological trauma: years of fear, separation, and dishonour in the claims of innocence. It was concluded by the Adrian Grounds reports.

The acquitted ones went through severe psychological deficiencies which includes encountering change in personality after disastrous experiences and PTSD. Out of 18, 16 cases showcased panic disorder, paranoid symptoms, and depressive disorders. It was concluded that “A firm clinical impact of irreparable damage which cannot be cured. Psychological Consequences of Wrongful Conviction and Imprisonment by Adrian Grounds, Canadian Journal of Criminology and Criminal Justice, 2004, 46:165-182.

The idea of justice states that no person should be victimised due to failure of any criminal justice procedure. The public prosecution system that is been followed and is developing with every progressive year in United Kingdom – where the prosecution lawyer or the defence lawyer have a right to interact and counsel the person arrested within one hour of his arrest. it's the duty of the arresting officer to immediately inform the state prosecution services, so that the process can be initiated and the criminal justice process can be initiated.

The conventions pronounced in the Shahejadjkhan Mahebubkhan Pathan v State of Gujarat⁶ shall be referred efficiently by the machinery of criminal justice system.

⁶ Criminal Appeal No. 1592 of 2012.

The judgment in (Akshardham bomb blast case), where the accused have been denied compensation, has left many of us confused. The court being the custodian of rights and liberties of the vulnerable, especially those who are the victims of wrongful conviction, raised the question on courts responsibility irrespective of provisions and precedents. This role of the court has been pronounced by Justice Bhagwati in the landmark judgement of *Khatri v. State of Bihar*.⁷

There should be some necessary steps that should be followed and adhered the kind of crime committed, the time and situation in which the offence was done, the societal standard of the person may be monetarily and his character aspect. Overcharging and undercharging of the accused. Requirement of a public prosecution service in India on the lines of United Kingdom. Prosecutor are a link between the system and the society. Ethical duties of the prosecutor must be in mind and be adhered to. There working should be made more accountable and transparent.

There is a concept that is safeguarded in Article 14 with right to equality i.e., Reasonableness. This reasonableness being written here is in such a manner that every individual should be supported and considered equal as accordingly and every person whether an accused or victim possess rights including right to be reasonably and efficiently represented in the eyes of law.

The individuals who have served many years in jail for wrongful conviction have faced many sufferings of jail life and the loss of liberty. This terrifying thought doesn't end upon freedom they were dispossessed for years of people and families and the capacity to craft oneself efficiently. With no shelter, capital, transport, well-being, insurance or service and a bad character which is seldom cleared notwithstanding blamelessness. As a democratic Nation it is our duty to reinstate the life of wrongfully convicted. To conclude the prospects of this thesis, the study that is framed rolls around the below result and find.

The Need to Provide Assistance to the Wrongfully Convicted

The struggle of returning in the society is very difficult for these wrongfully convicted persons and not providing compensation to them is worsening their condition. State should have the responsibility to set this right by providing them compensation in the given ways:

Compensation – a minimum total can be calculated at least on the basis of minimum wages

Provision of Immediate Services can be:

- Funds for daily necessities, transport, food
- Provision for affordable housing;
- Measures to take for providing counselling services and medical assistance;
- Helping with getting education
- Improving skills to get a good job
- Legal aid to enjoy their rights as a citizen, regain custody of children and deleting criminal records.⁸

UN 1985 declaration is the Magna Carta for the rights of the wrongfully convicted victims and abuse of power. Victims should be treated with compassion and dignity.

They have right to be informed of their rights in pursuance of their remedies. Their views must be cared and the court should be informed about it. There should be least inconvenience caused to the victim and their families while protecting their rights. The expression victims should also include their family, dependents not only the victim. Similar rational is stated in UN resolution.

It is no doubt true that the framers of the Indian Penal Code had it in mind that there will be a menace of un thoughtful, vengeful, and false litigation in the years to come. For these reasons, they have attempted to address this issue by way of Chapter Ten and Eleven of the Indian Penal Code. However, by limiting its usage by the procedural limitations laid down

⁷ *Adambhai Suelemanbhai Ajmeri v. State of Gujrat* (2014) 7 SCC 716.

⁸ H.L.A. Hart called The Realists' notion that judges are not bound by rules a "Great Exaggeration." H.L.A. Hart, *The Concept of Law* 144 (1994). In rejecting the idea that deduction constrains judges, realism attracted much criticism. See Brian Leiter, *Legal Realism and Legal Positivism Reconsidered*, 11 *ethics* 278, 278-79, 300 (2001) (noting that hart's critique of the realists in chapter 7 of the concept of law turned realism into a "jurisprudential joke, a tissue of philosophical confusions"). Even many of the realists conceded that judges were constrained by legal rules. See Joseph William Singer, *Legal Realism Now*, 76 *Cal. L. Rev.* 465, 471 (1988) (book review) ("the most convincing legal realists argued that the reasoning demanded by judicial opinions substantially constrained judges").

in Sections 195 and 340 of the Code of Criminal Procedure, the real idea behind it being a legal tool for everyone against false prosecution, has been lost. Moreover, there is another level on which the Indian Penal Code lacks in being an affective law against false prosecution. This is because right since its inception, the framers have kept these provisions under the purview of 'Public justice'. Therefore, criminal courts being the responsibility of the state, the entire control and discretion for invoking these sections lies with the judiciary. The private rights of the citizens have not been taken care of whatsoever. There is not a single provision which would address the hardships a victim of false prosecution faces. The basic and biggest shortcoming of the Indian legal provisions surrounding this topic is the fact that it absolutely fails to understand and acknowledge that this right of not being subjected to false prosecution is one of the most basic and direct private rights of any person. The hardships faced tamper upon many fundamental rights of the victim which are otherwise guaranteed by the Constitution of India. The attempts of the government to come up with bills to tackle false litigation go onto show that this is a real threat, which is not yet tackled properly by the legislation.