
WRONGFUL CONVICTION: THE TALE OF VICTIMIZATION

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ABSTRACT

Wrongful conviction has become a growing infection within the Indian criminal justice system. The incidents of wrongful prosecution of innocent presupposes a state where an innocent individual is convicted at the trial stage but found not guilty at the stage of appeal. But the state does not afford any system of certainty for which the individuals who are wrongfully convicted can be indicated or the exact figures can be known, the reason for this is that the state officials does not keep any track of their acquittal or discharge. But the problem does not ends here it continues to cause erroneous miscarriage of justice by which the innocent not only suffers the loss of his rights but also social alienation. This manifest the stern reality of our legal system that the innocent suffers due to the mistake or negligence on the part of the authority in power due to which human dignity, rights, liberty of such person is at stake, but the actual happening of such legal errors are difficult to measure as many sentences haven't been reversed. Therefore the Problem of wrongful conviction and prosecution has now become a serious issue and the guilt on the state's part needs to be treated immediately to ensure justice to the victim by conducting fair trials and or by providing compensation to them. The present study focuses on such instances of the victimization as a significant miscarriage of justice to know the factors liable for this problem. The proposed research paper is a doctrinal analysis of the existing provision and case laws to look into the different aspects of wrongful conviction spreading into our legal system. Further the objective of this present study to check what methods the state uses to resolve this problem of wrongful conviction and also aims to highlight what are the remedies already available under present laws and also to highlight the requirement of standard legal framework for seeking compensations to victims of wrongful conviction.

INTRODUCTION

“Once a man is convicted of an offence, and particularly once he goes to prison, he will begin to lose the approval and support of his law abiding friends and family. His ties to them will be weakened or cut. He cannot, however, exist without a degree of social approval from another and less scrupulous source¹”

The ‘innocence of the accused’ is the fundamental principle on which our adversarial legal system is based. Within which, presumption of accused is there as innocent until he is guilty proven beyond reasonable doubt and the burden of proof lies on the prosecution. Hence several defences are accessible to him during the entire proceedings till his guilt is proven. But during the trial there may be situations where such accused might be aggravated frivolous, maliciously or by the police officials who might have created false evidences against such innocent victim. This leads to the consequences of wrongful conviction of such person and shows the lack of accountability and transparency on the account of working of our legal system.

If such charges are not proved against such accused at the later stage of his imprisonment shows the lack of accountability and transparency on the account of working of our legal system but one can ensure the efficiency and fairness of our criminal justice system by marking its ability in conducting fair and impartial trial and investigation, prosecuting and trying offenders and to impose the specified punishment or sanction on them. The impartiality and fairness of our system depends on accuracy and efforts which it makes while conducting trial, and ensures effective legal assistance to such accused and protection to such accused at all the later stages of trial and its capacity to guilt free the innocent and sentence the real wrong-doer. When the law turns upon the victims itself which causes grave injustice and resulting in social injury is clear breach of the fundamental legal principle.²

The expression “wrongful conviction” means the failure or miscarriage of justice by the reason of which the innocent person is convicted for the crime which he/she didn’t committed and the real wrongdoer roams free and unpunished in the society. As a consequence of which people started losing faith or confidence in legal system when such incident of wrongful conviction is brought into notice, this puts question on the legitimacy of our criminal justice system. Law and order are essential or indispensable part of a socialized and civilized society which aims to

¹ J.P, Martin and D. Webster Cambridge Study in Criminology, the Social Consequences of Conviction, London: Heinemann, 1971, Pg. – 218. Ash gate Pub Co; First Edition (June 1, 1971)

² Van Dar Meer V the Queen (1988) 82 ALR 10, 31 (Deane J).

ensure protection to an individual from the misdeeds or unfortunate events. For an effective criminal justice system state is under an obligation to maintain such law and order in a society³. But an incident of wrongful convictions shows state's negligence in maintaining such law and order. So in this regards it's the task of the state to provide justice to the wrongfully prosecuted victims and also to provide compensation to them.

The Criminal Procedure Code, 1973 incorporated various fundamental legal principles like presumption of innocence of accused, various scheme to provide compensation to them and other legal principles which seeks to ensures that such incidents of injustice is no so caused to such innocents. But apart from this there is no such effective statutory provision for safeguarding the interests of such wrongfully prosecuted persons because of police officials and prosecutorial mischief causes inestimable number of false cases. This not only damages the social fabric of our country but also affected the judiciary with increasing number of cases and pendency of the same. Due to this organisational mishap a individual suffers into 2 ways, where small mistakes combine and build disasters are:

- The victim who has undergone imprisonment for the crime which he/she didn't commit causes mental and psychological issues.
- The victim of such wrongful conviction is subjected to lifelong social loathing and social criticism because of the inadequacy or insufficiency of the criminal justice system.

The wrongful conviction of the victim is a result of incompetency and irregularities caused during investigation, trial and/or at the stage of appeal. To be more precise, there are other responsible factors such as false allegation / accusation, a person playing a notable part of the criminal justice system assuming the guilt of an accused, State prosecutors misleading their roles while dealing with the case in a very personal approach, Faulty or misleading investigation by police authorities, defence counsel lawyers Incompetency, Lying under the oath i.e. Perjury, Community pressure enforcing conviction, Fabricating and giving false forensic reports as a evidence, Judicial biasness and also the difficulty in inducing fresh evidences already admitted in an appeal, false admission of guilt and fabrication of false evidence, missing significant evidences.⁴ All this calls the need for statutory recognition of the

³ Gould, J.B., & Leo, R.A. (2010) Centennial Symposium: Then Afterward A century of Criminal Equity, North Western University, School of Law Diary For Criminal Law& Criminology, 70 100(3), 825-868.

⁴ Archibal Kaiser, When Justice is a Mirage: A Primer on Wrongful Conviction (1991).

right to compensation in the cases of wrongful or mistaken arrest and detention as it's a need for an hour because such unlawful detention and imprisonment not only results into losing years of life but also created social criticisms even after the release.

METHODOLOGY

1.1 STATEMENT OF RESEARCH PROBLEM

The proposed research paper is a doctrinal analysis of the existing provisions and case laws to study the different aspects of wrongful conviction in India. The wrongful conviction is a rising problem in the present scenario of our Indian criminal justice system. The incidents of wrongful prosecution involve a situation where a person is wrongfully prosecuted and convicted and not found guilty at the later stage of trial. Which causes trouble to such innocent who not only suffers the coercion, torture and forced confession during interrogation by police officials but are also adjudged to be guilty based the false grounds. Despite found not guilty in the end of their detention, there tale of victimization remains horrific. Their tale of victimization does not come to an end it continues even after their release in the form of social negligence by the society. The present research focuses on what are those factors which are responsible for such mishap and what remedies are already available in existing provisions in the form of compensation and is there is any step taken by the state to rehabilitate such victims.

1.2 OBJECTIVES

- To examine the repercussions of wrongful convictions or incarceration on such innocent under trial prisoners and what are the factors leading to such mishap on the part of the state.
- To study the different provisions under constitution of India allowing victims of such wrongful prosecution to move to the court for availing various remedies including compensation.
- To study various landmark judgments evolved or pronounced by Supreme Court regarding wrongful prosecution.

1.3 RESEARCH QUESTIONS

1. What are the consequences and implications that arise as a result of the wrongful conviction or incarceration?

2. What is the existing mechanism by which state authorities can be punished or penalized for its negligence which causes harm to the innocent?

3. Is there any action taken by state to overturn the harm suffered by the victim of wrongful conviction?

I. WRONGFUL CONVICTION: MEANING

The expression wrongful conviction is analyzed in terms to two concepts i.e. divided into two different combinations-

1. Wrongful

2. Conviction

Wrongful here refers to the consequences from which it appears that proper laws doesn't seems to be followed while "conducting investigation, recording confessions, identification of the accused by the witness and also the right to counsel", and when such conviction of accused appears to be prejudice, biased and unfair or not in lines with the constitutional provisions.

Conviction here means "*the post adjudication stage* in which either the 'trial court' or the 'first appellate court' has adjudicated wrongly the case".

A conviction could also be categorized as wrongful for following more reasons:

1. There have been some errors in procedure that violated the convicted person's rights.
2. The one who is convicted is factually innocent of the charges.

According to *duhaimé's law dictionary*, "**a wrongful conviction is a conviction of a person accused of a crime which, in the result of the subsequent investigation, proves erroneous**", the following is also included in the definition is the individual who have committed the act and planning of crimes however whose convictions were obtained in violation of constitutional or different procedural rights.

When such innocent respondent are found guilty in criminal proceedings or once they coerced to confess to confess to the crimes they didn't even committed so as to avoid the death sentence or imprisonment for life, when such innocent defendant spends years in prison or under trial, unfair penalties will result.

Various investigations explored that a large proportion of innocent under trial prisoners who endanger their lives in prisons suffers from serious mental health problems, including anxiety disorders and post traumatic stress, which don't seem to be very casual. After spending years of life in prisons, the life of such victims becomes much more miserable after their release which makes it difficult to rehabilitate them into their normal life. Although many states still don't have any scheme for providing financial compensation to such victims and to their family. Due to all this the requirement of providing financial compensation becomes much more important because there is no other way to recover money from the police or prosecutors. As it's not only the need of the individual but also of his family in whose absence they suffered both financially and emotionally. The cases of these types are very rare but once such comes into light it cuts the wire of trust between public and criminal justice system.

II. EFFECTS CAUSED DUE TO WRONGFUL CONVICTION AND PROSECUTION

We as a law abiding citizens often depend on the punishing or sentencing of "criminals" on our legal system, as we place our trust or faith in the working of the justice system. For entire society once a person is convicted for an offence is considered as guilty for entire life and one who he declared as innocent is innocent for all, but what is such decision is wrong or taken arbitrarily and what if death sentenced is passed against such innocent will it be reversible.⁵

The repercussions of wrongful conviction become a chronic wound after the post release life of an innocent person. It's a challenging task for one who has already lost his irrecoverable and valuable years of life to get back into his normal life as the scars of such false accusation is long lasting and not easy for anyone to escape such chapter of his life from his memory. Such wrongful conviction not only affects individual life but also leaves a great impact on the society as well.

The period or phase of wrongful conviction causes many issues in the life of an innocent and in lives of his/her family members which sometimes becomes irreparable such as one may encounter money related problems or for his family it becomes very difficult to live their livelihood, physical, social, mental or psychological problems which can last up to entire life or for years.

⁵ Erin Barrett, "Wrongful Conviction : How do they impact Society" Engaged Sociology (3rd May,2017) <https://engagedsociology.com/2017/05/03/wrongful-convictions-how-do-they-impact-society/> (last accessed on 18th February ,2022)

Some of the major effects on individual's life create negative impact on their self identity, physical or mental /psychological health, one's relationship with society and others, view towards the criminal justice system , reputation, financial issues , the lack of education and job employment issues , and dealing with other issues after release. All these problems combine together and created major psychological issues.

However there may be some chances that such persons are able to overcome the influences of social stigmatization but the psychological effects are more difficult to overcome. Such as Post – traumatic stress, anxiety and depression are some of the common psychological effects.

Except the psychological impacts, there have been some other diverse impacts on the innocent like unable to earn income, lost or wrongful encroachment on property, expenses of court fees, fees to advocates or attorney and some other consequential costs incurred are not only limited to individual's life but also extends to affect the lives of family and relatives of such innocent accused.⁶

Number of cases has already happened in which an innocent is prosecuted and later on found not guilty in India but still no proper approach is adopted by Indian criminal justice system to solve or prevent happening of such event. Some of landmark cases are given below:

- In the case of “*Hussainara khatoon and others v. Home Assistant State of Bihar*”⁷, in the state of Bihar the disturbing conditions of under trial prisoners was highlighted after filling a habeas corpus writ petition before Supreme Court. In this case Supreme Court has confirm that Right to Speedy trial is an significant part of our criminal justice system in all of the states as mentioned by apex court.
- Subsequently in the case of “*State v. Saqib Rehman and others*”⁸, Supreme Court held that the victim who was wrongfully prosecuted because of the police officer who framed false evidence against such innocent. But no compensation was awarded to such innocent and even the police was not punished for fabricating false evidences.
- In “*Assam's Madhubala Mondal's*” case again is an example of negligence or fault at the part of police who has mistaken the identity of the accused due which innocent

⁶ Law Commission of India, Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (2018), <https://LawcomissionofInidia.Nic.In/Reports/Report277.pdf>. (Last Visited Feb 16, 2022).

⁷ 1979 AIR 1369

⁸ (2012) 4 DLT (Cri) 584 (DB)

victim who was a woman of 59 years of age who was wrongfully arrested for a period of 3 years for the offence which she has not committed.⁹

All this shows that the effects how a mistake on the part of state officials ruin the entire life of an innocent, which not only restrains the liberty and privacy of such person, but also makes his family subject of humiliation and criticism in the society. Due to the above mentioned cases the requirement to bring transparency and accountability in legal institution of India is much more demanded and then to put obligation on the state to rectify or overturn the wrong it caused to such person by helping him to rehabilitate and mingle within the society after release, and to provide adequate monetary compensation to him and his family.

III. WRONGFUL CONVICTION: A HUMAN RIGHT VIOLATION

The Universal Declaration of Human rights, 1945 enumerated the concept of wrongful conviction.¹⁰ The incident of wrongful prosecution or conviction is a direct infringement of human rights of an individual. The violation of human rights is the restriction on the freedom of movement or of one's thoughts or to one's privacy to which humans are legally entitled. One of the significant human right violations is arbitrary arrest and detention of someone by the state or government authorities. In such kinds of human right violation the wrong is solely done on the part of state as state does nothing to prevent or protect the happening of such mishap. The provisions of declaration of human rights are laid down in the International covenant on Civil and Political Rights (ICCPR) and under Indian Constitution regarding rights of such wrongfully convicted persons:

- The ICCPR¹¹, 1976 enables people to enjoy wide range of human rights relating to :
 1. *“Right to fair trial*
 2. *Right to get freedom from torture and cruelty and other inhuman or degrading treatment or punishments.*
 3. *Freedom of thoughts, religion and expression.*
 4. *Right to privacy*
 5. *Right to Equality and Non discrimination”*

⁹ Riya Luhadia, “*wrongful Conviction – A Tale of Injustice*”, *Know law blog (June 3, 2021)* <https://knowlaw.in/index.php/2021/06/03/wrongful-conviction-atale-of-injustice/> (last visited Feb 12,2022)

¹⁰ Universal Declaration of Human Rights of 1945

¹¹ Equality and Human Rights Commission, <https://www.equalityhumanrights.com/en> (last accessed on Feb 18,2022)

The above mentioned rights are followed by different countries except India have amended their laws.

- The Constitution of India provides certain rights in this respect : Wrongful Conviction is also violative of :

1. Article 21: ***“No person shall be deprived of his life or personal liberty except according to procedure established by law.”***¹²

In the case of ***“Maneka Gandhi v. Union of India”***¹³ the Supreme Court held that the right enumerated under article 21 is not just a physical right but it also includes within its scope the right to live with human dignity and right to live life free from any kind of exploitation. This widens the scope of article 21.

But these rights are mere declaratory in nature as there is no enforcement mechanism in case of wrongful conviction. As wrongful prosecution is directly deprives the innocent’s life and his liberty to movement freely in the society because of the state’s negligence while providing justice.

2. Article 22: ***“Provides protection to individual from illegal arrest and detention in certain cases.”***

But this right also sounds mere illusionary specially in case of wrongful prosecution as wrongful prosecution is the form of illegal arrest and detention but this right does not provides any protection to victims of wrongful conviction the reason for this may be that the wrong was done on the part of the state authorities itself.

Thus the rights guaranteed by the Indian Constitution or by International covenant on Civil and Political Rights (ICCPR) are merely declaratory in nature they does not provide any effective mechanism for enforcement of these rights in case of wrongfully prosecuted person this give rise for enactment of an special provision or legal mechanism or procedural safeguards particularly dealing with the protection of innocent victims wrongfully arrested due to lack of evidence or due to turning witnesses hostile or any other reasons due to which they suffers for the crime committed by another.

¹² India Const. Art. 21.

¹³ AIR 1978 SC 597

IV. JUDICIAL PRONOUNCEMENTS IN FAVOUR OR AGAINST OF WRONGFUL CONVICTION

Judiciary has taken an active step to look into the matters of those victims and pronounced various landmark judgements which in some cases awarded compensation to victims and in some cases refused the same but in all the cases judiciary has failed to punish the state authorities for their mistakes. And apart from these judicial precedents there is no as such comprehensive legal mechanism to provide relief to such victims. In absence of such comprehensive legal mechanism one always have to look to the judicial decisions regarding the same. So author divided the landmark cases given by judiciary in three heads –

1. REMEDY ACCESSIBLE UNDER THE CONSTITUTION OF INDIA

In respect of wrongful prosecution of victim following remedies existed in constitution of India which aims to provide redress in case of miscarriage of justice. That is the *Right to life and personal liberty* provided under **Article 21**¹⁴, and provisions of Indian constitution provides *protection against arbitrary arrest and illegal detention* under **Article 22**¹⁵ So the way provided to enforce such rights is the person aggrieved by the act of wrongful prosecution can approach High court or Supreme Court by filling writ petition under **Article 226**¹⁶ and **Article 32**¹⁷ respectively.

- The case of “*Bhim Singh, MLA v. State of Jammu & Kashmir and Ors.*”¹⁸ in the case court was unable to determine adequate compensation mechanism for the innocent. This case sheer violation of ‘Article 21 and 22 clause (2)’ of the Indian Constitution. As in this an MLA was illegally arrested and detained and further he was prevented to join the session of legislative assembly and all this is done by police authorities and the court awarded Rs. 50,000/- as compensation to such MLA. And further court also held that :

“When a person comes to us with the complaint that he has been arrested and imprisoned with malicious or mischievous intent and that his constitutional and legal right were invaded, the mischief or malice and the invasion may not be

¹⁴ India Const. Art 21.

¹⁵ India Const. Art 22

¹⁶ India Const. Art 226

¹⁷ India Const. Art 32

¹⁸ AIR 1986 SC 494

washed away by his being set free. In inappropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation”.

- In the landmark case of **“Rudul shah v. State of Bihar¹⁹”** this case was also in favour of victim while it awarded a monetary compensation of ₹ 30,000/- to the victim who was maliciously arrested for a long period of 14 years as this also violates the rights enshrined under Article 21 and Article 22 of Indian constitution further it was held by Supreme Court :

“One of the telling ways in which the violation of that right can be reasonable be prevented or and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation.”

- In the Case of **“Ram Lakhan Singh v. State Govt. of UP.²⁰”** the courts have the inherent power to order the state officials to pay adequate amount of compensation to the innocent party in order to help them in rehabilitation as the incident of wrongful conviction is sheer violation of the individual fundamental and legal rights.
- There is plethora of cases in which courts have taken the view in favour of victim and awarded adequate compensation to them such in cases of **“Khatri v. State of Bihar²¹”** , **“Boma Chara Oraon v. State of Bihar²²”** , **“A Woman’s Resources centre & Ors. V. Commissioner of Police, Delhi²³”** in all the above cases the court held the police or the state authorities liable for their negligence.

But apart from the above cases the court has restricted its view point and tried to curb the power to award compensation for violation of Right to life and personal liberty.

- In the **“Sube Singh v. State of Haryana²⁴”**’s case in this case it was provided that the monetary compensation shall not be provided in all the cases of violation of “Right to life an personal liberty²⁵”. Superme Court refused to award any monetary compensation to the victims because the court was not satisfied with the evidences

¹⁹ (1983) 4 SCC 141

²⁰ (2015) 16 SCC 715

²¹ 1981 SCR (2) 408

²² 1997 (1) Bljr 60

²³ 1990 AIR 513

²⁴ 2006 3 SCC 178

²⁵ INDIA CONSTI. 21

produced as they were not adequate to prove that the petitioners were illegally detained, or they were victims of custodial torture and harassment to the member of petitioner's family.

So as it's clear from the above discussion that awarding compensation it's solely based on the courts discretion. But due to this exclusive power of court there is still no set or standard framework for providing monetary compensation to victims of wrongful conviction. Even though the law commission has recommended the various guidelines for the same but all of its suggestions were not implemented. The problem arises because this remedy is to be provided and depends on the facts and circumstances of the case. As this remedy is mere declaratory in nature.

2. REMEDIES IN FORM OF DAMAGES

These types of remedies are in the form of monetary damages which are generally in nature of civil suits against the obdurate acts of the state and state officials. This is enumerated under Art 300²⁶ of our Constitution which provides that “*government of India can be sued in its own name*”. This remedy is different from the remedy laid down under Indian Constitution that is the concept of damage is dependent on the remedies available under law of torts etc, while its not same as the concept of compensation which is exemplary in nature.

- In the case of “*Kasturilal Ralia Ram Jain v. State of Uttar Pradesh*”²⁷ the court relied on the principle of sovereign immunity and held that a state shall not have any liability to pay any sum of monetary compensation to the victims because the states were performing their duties. This question rose due to the negligence and mistake of state or police officials and suit is filed against them for recovery of damages and loss incurred by innocent.
- In case of “*State of Bihar v. Rameshwar Prasad & Another*”²⁸ court confirmed the compensation to the victim of wrongful conviction from the state for harassing the victim by instituting criminal proceedings against such person.²⁹

3. REMEDIES AGAINST CRIMINAL ACTS OF STATE OFFICIALS

²⁶ INDIA CONST. 300

²⁷ AIR 1965 SCR (1) 375

²⁸ AIR 1980 PAT 267

²⁹ Ruchika Jha, “*Wrongful Conviction: How Can State Undo Harm?*” LTJ, March,14 2020, (last visited on Feb 16,2022) <https://Lawtimesjournal.in/Wrongful-Conviction-how-can-state-undo-harm/>

These forms of remedies are provided under Criminal laws of our country i.e. Under Indian Penal Code, 1860 and under Criminal Procedure Code, 1973. These kinds of remedies are mainly focuses on the failure or miscarriage of Justice.

1. Provisions under IPC³⁰ -

Under chapter 9 and chapter 10 of the Act deals with the offence which are related to the Public Servants and the offences committed by the Public servant, or of any offence which is against public justice and fabricating false evidences, making of the incorrect documents, public servants not obeying the laws, in judicial proceedings making of false or corrupt reports by public official etc. all these proving remedies in case of injury to victim.

2. Provisions under Crpc³¹

Under Section 358 of the code i.e. “*Compensation to victims arrested groundlessly*”:
- This section is against another police officer to arrest the person without disclosing the grounds of arrest or without any sufficient cause. Then in such case court order that compensation shall be payable by the person causes such arrest to the victim.

- In the case of “*Mohd. Jalees Ansari & ors. v. Central Bureau of Investigation*”³² in this case accused had spend 23 years of his life in jail till the matter reached to the Supreme Court in year 2016 and where it was held that the confession made by the accused under police custody was considered as inappropriate and have no legal sanction and on this basis accused was released after spending 23 years of his life in jail and was set free from all the charges imposed on him.

Generally in most of the cases the decision comes against the victim only that is why this result into wrongful conviction, the mere declaration of rights under various laws are not sufficient to ensure justice. Talking about justice and actually providing justice to victims are entirely different issues. There we need enactment of strict provisions to safeguard the interest of such wrongful convicted person. However there are some other existing procedural safeguards in the State police Act and rules, 1861 under section 29 of the act provides for penalties for neglect

³⁰ Indian Penal Code, 1860

³¹ Code Of Criminal Procedure, 1973

³² AIR 2016 SC 2461

of duty, etc.³³ Thus state must pass a specific compensation related provisions under law and ensure that they must be enforced specifically.

V. KEY FACTORS LEADING TO WRONGFUL CONVICTION

Judges in India follow the principle which says “*A hundred guilty may be left but an innocent shouldn't be punished*”. The main aim of criminal justice system is to look into the causes which lead to injustice or inhuman treatment to the victims of wrongful conviction and that sufficient remedy is provided to them. The issue of wrongful conviction occurs when there is any kind of negligence or misconduct during interrogation by police, investigation, and production and examination of documents and appearance of accused and witness before court etc. any Kind of mistake during the stage of trial is the main reason for miscarriage of justice in case of wrongful conviction some other reasons for such problems are enlisted below:

1. One of the major factors that lead to wrongful conviction of accused is the “*misconduct or fraudulent act*” done on the part of state or by state officials. This may be because there might be some connection between the accused and any of the officials of the state who ensures that the accused must be sent behind the bars notwithstanding that the evidences are against or in favour of the accused.
2. Another factor is the “*malicious institution of false criminal proceeding*” against the innocent person without any sufficient or reasonable cause. All this abuses the process of law and engages the court into malicious proceedings which waste the time court. Due to this there may be chances that an innocent become the trap of such malicious prosecution.
3. “*Fabricating false evidences*” against those innocent victims, shows the general intention of the wrongdoer to cause the wrongful conviction. This kind of offence is against the public justices that not only cause the arrest of individual but it also shaken the lives of the family members of the accused.
4. “*Hostile witness*” is one of the most serious problems in which the witness turn hostile by giving false testimony in favour of the party calling him to give his testimony, this may caused by giving money or other favours to such witness by another party. This in most of the cases weakens the case of the accused person and at last may become cause of his conviction.

³³ The Police Act,1861

5. Sometimes there may be circumstance due which the accused is under put under coercion, threat to his life or property or under any undue influence or due to any physiological issue is forced to admit the guilt which he or she has not committed that is the “*false confession*” by the innocent due to any of the reasons.

6. The another factor resulting into wrongful prosecution may be when the “*Eye witness misunderstood or there is misidentification*” of the real wrongdoer this may happen because minds of human cannot always remember each and every facts there may be situation where due to the gravity of offence committed is so major that it causes great psychological impact even on the mind of witnesses.

7. “*Lack of knowledge or skill on the part of lawyer*” handling the accused case due to over burden with the other cases or in cases where the client having no adequate money to pay the fees of lawyer , in such situation advocate take no or less interest in the client’s case which leads to his conviction.

Apart from the above mentioned reasons an accused may be victim of wrongful conviction due to caste biasness, age of the accused, media trial, personal rivalry between parties etc. but knowing these factors are not sufficient but active steps must be taken in order to prevent above mention factors and the state must ensure that proceedings are conducted fairly and without any biasness.

VI. CONCLUSION AND SUGGESTIONS

The concept of wrongful conviction or incarceration is increasing day by day resulting erroneous miscarriage of justice. A victim of such crime not only suffer the loss of crucial part of his life during which he was wrongfully detained in jail far away from his loved ones for that crime which he has never committed and suffering for the wrong committed by other. This not only affects the individual but also his family and loved ones, this trauma not only ends after his release but continues even after his release from prison, this leads to both mental and physical injury followed with social negligence and criticism by the society. Due to this mishap done by the state an innocent person turns into an hardened criminal because of the miserable conditions of the jail which leads to shaken the very foundation of trust and faith of the public in the legal system, but the state on its part with the help judiciary has pronounced various landmark judgements in favour of wrongful convicted persons. But the decisions to award compensation, what amount of

compensation, what will be the mode to provide compensations still remains at the discretion of the courts.

The Law Commission of India³⁴ in its 277th report titled “*Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*” has already pointed out that for solving the issue of wrongful conviction there is a need for passing a legislation which imposes statutory duty on the government to provide compensation to such innocent and there must also be provisions to provide for non-pecuniary awards to the family members of the innocent, and report also suggested that a dynamic role must be played by the NGO’S in helping the victims to move to the court and enforce their rights.

Apart from the above suggestions, author recommends more suggestions which may help to solve the issue of wrongful prosecution:

- As already discussed above the need to provide compensation to the victim is there but such compensation must be adequate and the manner to receive such compensation must be provided so that neither the accused nor his family member have to visit the court for it, compensation should be provided as early as possible i.e. it should be provided within specified time limit otherwise this would leads to another problem for victim and his family. And there must be uniform compensation scheme.
- The state should take necessary steps in conducting rehabilitation programmes after the release of specially such innocent victims which helps to fade pictures of victimization and made it easier for them to live their rest of the life. And special mental health services should also be provided to such victims.
- State must take active steps to educate such victims or to provide employment to such persons as it would help them to live their life with dignity and to feed their families because no one apart from state would give them employment by looking their past criminal records.
- As every criminal is subject of social criticism which always keeps them under the guilt. But in case of wrongfully convicted persons there after life is much more difficult than habitual offenders they suffers social negligence even their relatives also starts abandoning them, so state must make an public

³⁴ Law Commission of India, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (2018), <https://lawcommissionofindia.nic.in/reports/Report277.pdf> (last visited Feb 10, 2022)

announcement for such victim that he was wrongfully prosecuted and that he is free from all the charges and the state must also accept its mistake it has two fold benefit firstly the public confidence and trust is sustained in the legal system and it makes the remaining life of victim easier.

- There must be set up of an impartial committee apart from judges who ensures that to re-examine the evidences or other related documents, Re-calling the witnesses, or to re investigate the case if needed whenever there is doubt regarding conviction of any individual person,

As crime is unpreventable every minute somewhere or other crime is being committed by someone. Thus human being as a social animal can never rid of the courts as where justice is being served. But that does not means they have absolute power to convicted an innocent and leave the real wrongdoer free from any charges. Thus it is important for everyone to always keep one's mind open about the guilt or innocence of the person until the guilt of accused is proven beyond any reasonable doubt because miscarriage of justice may happen for several reasons. Thus wrong justice is no justice its only miscarriage of justice.

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