



## Compensation to the Victims of Wrongful Prosecution and Confinement: An Analysis

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The legitimacy of the criminal justice system is based largely upon both its effectiveness and its fairness. Its effectiveness is judged by its ability to investigate and detect crime, identify offenders and mete out the appropriate sanctions to those who have been convicted of offences. In recent years organized crime has grown. In the investigation and prosecution of crime, particularly the more serious and complex forms of organized crime, it is essential that innocent persons are not to be prosecuted. However, nowadays in India, innocent persons are being victimized due to their wrongful prosecution and law has no solution in this respect resulting in the miscarriage of justice.<sup>3</sup>

The term **wrongful prosecution** is defined as a case in which a Government entity has determined that the originally convicted individual factually did not commit the crime. The term **exoneration** refers to the process by which a Government entity, by way of a pardon or judicial order, concedes that a convicted person is indeed innocent. A **wrongful confinement** is defined as the criminal conviction of an actually innocent person.<sup>4</sup> Actual innocence does not mean innocence based on a defect in the legal proceedings. It means factual innocence. Wrongful convictions undermine the two prongs of the criminal justice system's legitimacy. If someone is wrongfully convicted, that person is punished for an offence he or she did not commit and the actual perpetrator of the crime goes free.<sup>5</sup> As well, public confidence in the system declines when wrongful convictions are identified. Moreover, the criminal justice system is based on the fundamental legal value that an accused is legally presumed to be innocent, until adjudication after a trial. This is in contradiction with the public expectation that most of those charged with criminal offences are, and will be found to be guilty. Wrongful convictions undermine both this fundamental legal value and this public expectation since they show that the presumption of innocence may be honoured in its breach and that the criminal justice system does not only deal with the guilty.<sup>6</sup>

Thus, the wrongful prosecution and confinement not only results in unfair/Miscarriage of justice but it creates a number of problems for the victims as the pains of imprisonment are indeed serious. Those who have suffered behind the walls of justice can attest to the deprivation with which they have lived. Prisoners are deprived of the support network of family and friends, and lose the option of personal choice and all the daily freedoms that entail. The time in prison is considered the punishment for the crime that has been committed. The criminal record and the social ostracism that occurs after being found guilty of a criminal act are further types of punishment, although societal as opposed to legal. Such limitations and discomforts are considered "just desserts" for those who commit a crime. But, what about those imprisoned who have not committed a crime? What about those who are wrongfully convicted? The pains of imprisonment for those who are guilty may well be challenging; but for those who are innocent, they would be a living nightmare.<sup>7</sup>

Thus, evidently, wrongful convictions have a terrible and irreparable impact on the innocent defendant sent to prison; his family; the victim's family; and future victims preyed upon by the real perpetrator who remains at large. Wrongful convictions are thought to be aberrant, unpredictable, and tragic events. They are the consequence of systemic deficiencies in the criminal justice system. Systemic in-accuracy in the criminal justice system has widespread implications for all involved: the individual; the wrongfully convicted prisoner; and society at large. Not only is the wrongfully convicted individual unjustly deprived of his freedom, his family is dramatically impacted, as is the social order at large, because the real perpetrator remains free of police suspicion and often strikes again.<sup>8</sup>

Because of the same reason, “Criminal jurisprudence, with the passage of time has emphasized on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. “It is the duty of the court to see that the victims’ right is protected”, has aptly been emphasized by the Apex Court on the protection of victims’ rights in the case of *Rattiram & Others v. State of M.P.*<sup>9</sup> Thus, now victim is an important part of Criminal Justice System in India. Victim should not be forgotten in Criminal Justice System. As per section 2 (wa) of Code of Criminal Procedure, 1973 ‘Victim’ means 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’ also includes his or her guardian or legal heir.

Globally also nowadays, it is felt that there is a need to provide victims their participatory rights to secure justice, restitution and rehabilitation. Thus, there is a legal expectation that victim must be given rehabilitative support including financial compensation. Such remedy in India has been directed to be paid in public law remedy with reference to Article 21.<sup>10</sup> Many countries have assured to specifically accord participatory rights to the victims of wrongful prosecution. Justice must be reformatory for the purpose of perpetrator and rehabilitative for the survivor. The report of Prof. Bajpai refers to the practice in the United States of America (USA) and the United Kingdom (UK). He points out that there are 32 States in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. There are specific schemes in the UK and New Zealand in this regard.

As far as India is concerned, there is no exclusive legislation on the topic. The decisions in *Khatri v. State of Bihar*,<sup>11</sup> *Veena Sethi v. State of Bihar*,<sup>12</sup> *Rudul Sah v. State of Bihar*,<sup>13</sup> *Bhim Singh v. State of Jammu and Kashmir*<sup>14</sup> and *Sant Bir v. State of Bihar*<sup>15</sup> are instances where the Supreme Court has held that compensation can be awarded by constitutional courts for violation of fundamental right under Article 21 of the Constitution of India. These have included instances of compensation being awarded to those wrongly incarcerated as well. Regarding compensating the victims of crime, Sections 357 and 357 A to 357 C of the Cr.P.C. provide for compensation. The effective implementation of these provisions hinges upon the concerted efforts of legal services authorities and Governments. As far as compensating persons ‘groundlessly arrested’, Section 358 Cr PC offers some token of relief. This provision however fails to acknowledge the multiple ways in which not only the prisoner, who may ultimately be declared to be innocent, but the family of the prisoner faces deprivation and hardship. Particularly poignant is the plight of the spouse, children and aged parents of the prisoner who are unable to find legal redress in monetary terms for their losses. The Delhi High Court has on more than one occasion stepped in to order provision of shelter, educational and health needs of the children whose parents, either or both, are in jail serving sentence.

The emergence of compensatory jurisprudence in the light of human rights philosophy is a positive signal indicating that the judiciary has undertaken the task of protecting the right to life and personal liberty of all the people irrespective of the absence of any express Constitutional and statutory provision and of judicial precedents.

The idea of victim and compensation to such victim is not new but has been in existence since the ancient time, which got lost in the later period when the State emerged focusing primarily on retribution on behalf of a victim by itself. The later criminal justice system due to its over emphasis on the offender and his rights, lost right of the victims.

Historically, wrongful convictions were essentially considered a non-issue. This is not because wrongful convictions did not occur, but rather because it was assumed that those who were found guilty were, indeed, guilty of the crimes charged. According to Hoffman, it was not until fear of political repression through unjust criminal prosecution that the problem of factual innocence arose. In England, the idea that the State might wrongfully accuse an individual of committing a crime ascended at roughly the same time as the divine perfection of kings descended, and nobles became not the enforcers of the King’s law but its principal political targets.<sup>16</sup>

However, **ancient Indian History** is a witness to the fact that the victims of crimes had sufficient provisions of restitution by way of compensation to injuries. Author of the book, “General Principle of Hindu Jurisprudence” Dr. Priyanath Sen<sup>17</sup> has observed-

“It is, however, remarkable that in as much as it was concerned to the duty of the King to protect the property of his people, if the King could not restore the stolen articles or recover their price for the owner by apprehending the thief, it was deemed to be his duty to pay the price to the owner out of his own treasury, and in his turn he could recover the same from the village officers who by reason of their negligence, were accountable for the thief’s escape.”

Hence, reparation or compensation as a form of punishment has been found to be recognized from ancient time in India. In ancient Hindu law, during Sutra period, awarding of compensation was treated as a royal right. The law of Manu required the offender to pay compensation and pay the expenses of cure in case of injuries to the sufferer and in satisfaction to the owner where goods were damaged. In all cases of cutting of a limb, wounding or fetching blood, the assailant would pay the expenses of a perfect cure or in his failure, both full damages and a fine. It shows that the victim compensation was never an alien concept in the justice delivery systems of the India.

### At The Time of Jehangir

Before the Anglo-Saxon system of criminal justice was introduced in India, the victim was not completely neglected. A story is told how Emperor Jehangir was faced with a problem in one of his daily "darbars" and how he solved it. One day the Empress in a fit of anger hit her Launderer whose work was not satisfactory. The washer man fell down dead. Somebody persuaded the widow to attend the Jehangir "darbar" the next morning. The laundress waited trembling till all the others had mentioned their grievances and received redress from Emperor. Finally, Jehangir looked at her and said, "Who are you? What do you want?" In great trepidation she replied that she was the court laundress and recapitulated the previous day's calamity. "Your husband was killed? By whom?" queried Jehangir. "By the Empress", replied the woman. It is said that Jehangir was stunned and leaned back on his throne, but only for a moment. He then came down the steps of his throne and faced the laundress. Drawing his sword from gilded holster, he held it out to her and said, "Hold it". The woman did not know what she was being led up to. But she obeyed the command of Emperor. Then he spoke to her along the following lines. "The Empress killed your husband. Now, with that sword, you kill the Empress's husband. I command you to do it." The laundress was nonplussed. She fell at the Emperor's feet, recovered her equanimity soon enough, and said, "Sire, I have suffered, but I do not want either the Empress or the country to suffer by my obeying Your Majesty's command. I am prepared to take any punishment for this disobedience." The story goes that Jehangir was so touched by the words of the washer woman that he made her a baroness and showered her with riches beyond measure. It is perhaps one of the earliest known cases of victim compensation in modern Indian history.  
1819

### Middle Ages

Towards the end of the middle ages, however the institution of compensation began to lose its force, due to the simultaneous growth of Royal and Ecclesiastical power which had a sharp distinction between torts and crimes. The concept of compensation was closely related to that of punishment and it was merged to some extent in the Penal Law, but at the same time, a number of offences like murder, robbery and rape were no longer regarded as torts which could be settled by compensation, but were regarded as crimes against society and were punishable as such. Gradually, as the State monopolized the institutions of punishment, the rights of the injured were separated from the Penal Law and the obligations to pay damages or compensation became a part of the Civil Procedure. The demand for compensation for the victims of crimes was revised during the Penal reforms movement of the 19th Century.

Some penal philosophers strongly advocated for compensation and restitution to the victim. Among those were Bonneville, Lombroso, and Garofalo.<sup>20</sup> Bonneville was a strong voice in the field of penal reforms who stressed on "public responsibility" to the victim. Lombroso<sup>21</sup> supported the idea of victim compensation and recommended that the victim of a crime should be properly compensated for injury. This would not only be an ideal punishment but would benefit the victim as well, he thought. He recognised the difficulties in administering such a proposal, but his idea was that "the victim should be legally entitled to receive a part of the proceeds from work done by culprit during detention". Garofalo<sup>22</sup> supported the idea of "enforced reparation". He thought, the damages are to be assessed in sufficient amount not only adequate for complete indemnification of the injured party but to cover the expenses incurred by the State as a result of the offender's dereliction. If the offender's means are inadequate his labour must be devoted to the required reparation.

At the First Congress of Criminal Anthropology in Rome (1885), a resolution was passed which essentially followed the suggestion of Garofalo. The issue was discussed at fifth International Prison Congress in the latter half of the century and the Third International Juridical Congress at Florence (1891) also recommended the institution of a "Compensation Fund." Despite the strong advocacy of Jeremy Bentham and a number of leading penologists, the acceptance of the principle of the State liability to pay compensation to the victims of crime remained a distant dream.<sup>23</sup> Among many other suggestions, one was that public Tribunals, while passing sentences in respect of offences prepondering Civil element viz. in Petty Larceny, breach of trust and swindling etc. should be empowered to compel solvent offenders to make financial restitutions to the victims. Another suggestion was that if the offenders were insolvent they should be made to work for the State till they earned enough to compensate their victims.<sup>24</sup>

**Thus, it is quite clear that historically, wrongful convictions were usually considered a non-issue.** Firstly, this is not because wrongful convictions did not occur, but rather because it was assumed that those who were found guilty were, indeed, guilty of the crimes charged. According to Morris Hoffman, the issue of guilt in England was fairly

much presumed and the main purpose of the criminal law was not determining guilt, but determining the type and severity of punishment it should impose.<sup>25</sup>

Secondly, the 12<sup>th</sup> century distinction of English law of wrongs into civil wrongs and criminal wrongs leads to misconception that the area of compensation is something exclusively belonging to the domain of civil law and others less obvious like the ignorance of those who can give effect to these benefactions.

However, in the modern times as it is a recognized principle of both the civil and criminal jurisprudence to punish any individual who infringes the right of the other individual and also to award monetary compensation under some circumstances to the victim, who was adversely effected by such infringement. Similarly, the State Government which performs its assigned powers and functions through its machinery consisting of huge number of employees is also liable to pay monetary compensation like any other individual whenever its employees cause infringement of the rights of the individual. Though the State enjoys certain privileges in comparison with the ordinary citizen but in some matters it cannot escape the basic and fundamental liabilities. This is more so in any country governed by the rule of law and democracy.

Hence, at the present time, the State is liable for the actions of its employees in many areas of administrative functions. With the tremendous increase in the functions of the State, the extent of State liability for the acts of its employees is becoming complex day by day. All over the globe now-a-days the aim of any Government is to establish a welfare State. This has resulted in the expansion of powers and functions of the State in all spheres of the administration. Not only the concept of welfare State but also other functions of the State require its officials to implement various statutory provisions, regulations etc. Sometimes these administrative actions may affect the statutory and fundamental rights of the individuals and then only the question of State liability will arise. In India the common law governed the State liability in tort during the British Rule. And after independence, the provisions in the Constitution of India, 1950 govern the State liability.

In some of the other western countries like Finland, France, Israel, Japan, Norway and United States and other countries, the compensation to victims of crime is being given by the State. In USA compensation is being given by the State as well as by the offender. In Austria and Belgium the offender has to compensate the victim of crime. In some countries like Columbia, Germany, Switzerland, Ireland, Czech Republic the law does not specify whether the compensation is being given by the State or by the accused.<sup>26</sup>

There is also adequate law in this respect at global level. In the twentieth century on wards at **global level**, a number of laws began to be built in order to facilitate the victims of wrongful prosecution not only to get justice but to be compensated for the wrong committed upon them. In this direction, the International Covenant on Civil and Political Rights 1966 (ICCPR) is one of the key international documents on miscarriage of justice. ICCPR discusses the obligation of State in cases of miscarriage of justice resulting in wrongful conviction. It requires the State to compensate the person who has suffered punishment on account of a wrongful conviction provided that the conviction was final, and was later reversed or pardoned on the ground of miscarriage of justice i.e. a new fact proving that the accused was factually innocent. Article 14(6) of ICCPR 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) states: Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The United Nations Human Rights Committee<sup>27</sup> discussed Article 14 of the ICCPR in detail in its General Comment No. 32 (2007). In explaining the obligations of the State in “Cases of Miscarriage of Justice”, it required:

“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.”<sup>28</sup>

This guarantee does not apply if it is proved that the non-disclosure of such a material fact in good time is wholly or partly attributable to the accused; in such cases, the burden of proof rests on the State. Furthermore, no compensation is due if the conviction is set aside upon appeal, i.e. before the judgment becomes final,<sup>29</sup> or by a pardon that is humanitarian or discretionary in nature, or motivated by considerations of equity,<sup>30</sup> not implying that there has been a miscarriage of justice.<sup>31</sup>

Consequently, only recently, long after the Second World War as a result of the activities of certain progressive thinkers and activists in various advanced countries, like the U.K., Canada, U.S.A., Australia and New-Zealand, the focus has marginally shifted towards the unfortunate victim, who generally is the most affected party in the crime and also the party who naturally deserves redress. Hence, during the past thirty years efforts have been made to initiate victim orientation schemes by the Western countries for their rehabilitation, protection and financial assistance in order to prevent abuse of power. In the Constitutions of certain countries, rights of victims have been recognized thereby forcing changes in criminal justice goals and procedures. In the United States, the Supreme Court ruled that consideration of Victim Impact Statements during sentence hearing was constitutionally permissible.<sup>32</sup>

In this direction, many countries enacted laws aiming at providing increased participation of the victims of wrongful prosecution in the criminal justice process. In the same direction, towards the last quarter of the twentieth century, the common law world also realized the adverse consequences arising from this inequitable situation and enacted laws giving rights of participation and compensation to the victims. For example, in conformity with its international obligation under ICCPR, the United Kingdom has incorporated the aforesaid provision of Article 14(6) into its domestic legislation, the Criminal Justice Act 1988, under Part XI subtitled "Miscarriages of Justice", Sections 133, 133A, 133B of the U.K., also noteworthy is the Section 88 of the UK Police Act 1996, that deals with the "Liability for wrongful acts of constables", specifically dealing with wrongful conviction. There is also An Act of Parliament of Germany - the Law on Compensation for Criminal Prosecution Proceedings 1971, which specifies that whoever has suffered damage as a result of a criminal conviction, is the victim. Similarly the Victim and the Witness Protection Act, 1982 of the United States of America (USA), the Victims' Rights and Restitution Act, 1990 of the USA, etc. deal with the Victims' rights. Canada ratified the ICCPR in 1976; though no legislation has been enacted to give effect to the Covenant, the principles expressed in it appear to have informed a joint set of guidelines relating to compensation for the wrongfully convicted, formulated by the Federal and Provincial Ministers of Justice in 1988.

In Australia, With respect to the ACT, Human Rights Act 2004 (ACT) lays down the law regarding compensation for wrongful conviction for ACT. Under Section 23 of the Act, an individual who is wrongfully convicted of a criminal offence may apply for compensation.

The edifice of the law in India in present day legal system relating to the victim compensation is legal provisions contained in the Criminal Procedure Code, 1973 and various judgments of the Hon'ble Supreme Court.

### Legal Provisions in India

After Independence, the people of India devised an excellent piece of state craft in the form of Constitution of India, wherein due to the commitment to the human dignity, the classification of certain rights as fundamental rights was done and granting of power to the various wings governing "we the people" under the expectation that they shall never toy with these basic rights, took place. Apart from it, India became signatory to various international covenants and conventions with regard to the human rights which also warrant the State to take care of the human rights and other rights mentioned therein which are primarily indispensable so far as the human being is concerned.<sup>33</sup> Additionally, the person suffered under wrongful prosecution can request the Government to take criminal law remedies against the concerned public official in pursuance of the provisions in **Indian Penal Code (IPC) and Code of Criminal Procedure, 1973 (CrPC)**.

A careful reading of provisions of Code of Criminal Procedure, 1973 as amended on date and that of Probation of Offenders Act, 1958 reveals that a few sections contained therein can be invoked to provide justice and compensation to the victims of crime.

The Indian Penal Code, enacted in 1860 as such did not contain any provision for awarding compensation to the victim. However, under offences against property, Chapter XVII, the stolen property if recovered is liable to be returned to the victim/owner. Additionally, the **IPC**, in its chapters IX and XI, lays down the offences relating to wrongful investigation and prosecution. The Section 166 of the IPC criminalizes a public servant when he makes any wilful departure from the direction of law in order to cause injury to any person. The Section 167 criminalizes a public servant knowingly framing a document for causing injury. The section 166A lays down the offence of a public servant who knowingly disobeys any direction of law. The Section 218 under chapter XI criminalizes intentional preparation of an incorrect record. The Section 219 deals with corrupt or malicious exercise of power by public servants. The Section 220 criminalizes malicious commitment for trial or confinement of any person.

There are 44 sections in the IPC altogether on offences relating to giving and fabricating false evidence (Sections 191 to 200) and other offences against public justice (Sections 201 to 229).

However, there is no direct comprehensive legislation providing for compensation by the State or by the offender to the victims of crime particularly victims of wrongful prosecution. The **Criminal Procedure Code is the first and may be the oldest legislation in India** to deal with the subject of compensation to the victims of crime. The Code of Criminal Procedure, 1898 contained Sections 545 and 546 which empowered the trial court to award relief to the victim in the form of compensation to the victims to be paid out of fine imposed on the accused when he was convicted and sentenced. But the payment was allowed only when the judgment became final, subject to recovery of the fine.

The provisions of Criminal Procedure Code concerning victim compensation occupy a prominent place in the progressive development of the law relating to victim compensation through judicial approach. The provisions for compensation envisaged in the Code of Criminal Procedure, 1973 are contained in Sections 357, 358, 359 and 357-A of the Code. Some other provisions on the subject matter are under Sections 237 and 250 of the Criminal Procedure Code, 1973.

Hence evidently, post independence, the criminal trials were governed by criminal Procedure Codes 1898 and then by 1973 Code ("Cr.PC"). The Code of Criminal Procedure, 1898 was thoroughly revised and re-enacted as the Code of Criminal Procedure, 1973. Till the year 2008, there was a provision more or less similar in both the codes for compensation to the victims of the offence under Section 545 in the old Code and Section 357 in the new Code.

Obviously provisions of Sections 545 and 546 of the old Code were included as such in the new Code as Sub-Sections (1), (2) and (5) of Section 357 and Sub-Sections (3) and (4) were newly inserted to make Section 357 more victim friendly. Section 357 Cr.PC is regarding Order to pay compensation. It appears that in order to overcome the situation, a new section 357 A Code of Criminal Procedure was added in the Code of Criminal Procedure by an amendment in the year 2009. The new provisions are meant to be dealt with those offences where, fine is not part of the substantive punishment and are added also with the object to enhance the discretionary powers of the trial/appellate courts to award compensation. Section 357-A has been newly inserted by the Code of Criminal Procedure (Amendment) Act, 2008. It reads as- Section 357A of Cr.P.C- Victim compensation scheme. This Section provides for a scheme for providing funds by the State Government in co-ordination with the Central Government to provide compensation to the victim or his dependants who have suffered any substantial loss or any injury as a result of an offence. Presently with the introduction of Section 357 and 357A in the *Code of Criminal Procedure, 1973* new compensatory jurisprudence has emerged. The apex court has emphasised that trial court must take into account the need to compensate victim as a mandatory consideration.<sup>34</sup> This was the much-needed relief to the victims of offences and therefore one of the most progressive legislation in recent times. Lately the Criminal Law (Amendment) Act, 2013 has included penal and procedural provisions keeping in view the need to protect the victims.

After considering all the provisions of the Code, it is clear that Section 357(3) confers wider powers on the Court to award compensation irrespective of the amount of fine imposed. Further, it is clear from the above provision which at least visualizes a minimum scheme of compensation for the victims. However, if the provision of Section 357(3) is excluded then the purpose of the provision, becomes futile in case the offender is unable to pay the fine imposed. Therefore, in most of the cases, where compensation is awarded, it remains unreal.

### **Power of Court to Pay Compensation on Conviction**

Specifically, **Section 357** of the Criminal Procedure Code, 1973 enables the passing of an order of compensation by the trial Court, the Appellate Court and the High Court or Court of Session in revision at the time of passing of judgment, out of fine imposed by the Court under the following circumstances:

**Firstly**, (a) to the complainant, for meeting expenses properly incurred in the prosecution; (b) to a person, who has suffered loss or injury by the offender, when he can recover compensation in Civil Court; (c) to a person entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof; (d) to a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or disposing of stolen property and which is ordered to be restored to its rightful owner.

**Secondly**, where there is an appeal against any sentence or fine, no compensation shall be paid till the appeal period lapses. **Thirdly**, in all cases where no fine is imposed, the Court may order the payment of compensation to the victims of crime who have suffered any loss or injury.

Whenever compensation is paid under Section 357 it shall be taken into account by any Civil Court which subsequently takes up the civil suit claiming compensation. Section 357 visualizes a wide range of situations under which compensation may be ordered to be paid to the victims of crime. Under this Section, the categories of victims which become entitled to claim compensation are the complainant victim or any person who has suffered loss or injury

because of the offence. He can recover compensation in Civil Courts under the Fatal Accidents Act, 1855 and when there is a conviction causing death or abetment thereof or a bona fide purchaser of property, etc. can claim compensation. But this Section 357 of Code of Criminal Procedure does not provide interim or immediate compensation to the victim on motor accidents claim cases. Section 357, sub-section (1) of the Code empowers a Criminal Court to award the whole or any portion of the fine recovered for the purposes mentioned in clauses (a) to (d). Further clauses (a) and (d) in essence, deal with defraying pecuniary losses incurred by a person in prosecution<sup>35</sup> and by a bona fide purchaser of stolen goods, respectively. Clause (b) and clause (c), on the other hand, respectively deals with re-compensating 'any loss' (pecuniary or otherwise) or injury caused by any offence<sup>38</sup> and by death. In order to claim compensation under clause (b) it is necessary to show that person suffered a loss. 'Loss' means that can be compensated in money including some substantial detriment from a worldly point of view and loss of support and even loss of mere gratuitous liberty while the word 'injury' has been given a very wide meaning and connection in Indian Penal Code, 1860. The compensation under this section not only corresponds to damages awarded in civil proceedings but is also to be taken into consideration by a Civil Court in determining the quantum of damages in a subsequent civil suit relating to the same matter. Further, sub-section (3) was inserted in Section 357 of the Code of Criminal Procedure, in 1973, unlike sub-section (1), empowers a Criminal Court, in its discretion, to order the accused to pay by way of compensation a specified amount to victims of the offence even if fine does not form part of the sentence imposed on him. Keeping this in view, Section 357(3) of Criminal Procedure Code has added a new dimension to the idea of re-compensating them. Prior to inclusion of this clause no compensation could be awarded.

The Supreme Court, in Nambi Narayan case (decided on 14th September 2018), reaffirmed that the award of compensation - the quantum of which will depend upon the facts and circumstances of each case - against the State is an appropriate and effective remedy for an established infringement of a fundamental right under Article 21, by a public servant.

The award of such compensation by way of public law remedy will not come in the way of the aggrieved person claiming additional compensation either in a civil court by way of private law remedies in tort, or in the criminal court under section 357 of the Cr P C. The court also directed that the authorities who are responsible for wrongful prosecution should face the legal consequences for their inappropriate or illegal actions.

### **Amendment in Criminal Procedure Code**

After Section 357 of the principal Act, Section 357A was inserted providing for Victim Compensation Scheme<sup>37</sup>—

#### **Victim Compensation Scheme 357A.**

- (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- (2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
- (3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
- (4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- (5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- (6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

### **Compensation to the Persons Groundlessly Arrested**

Moreover, Section 358 visualizes when any person has been caused to be arrested by the police, at the instigation of a person and the Magistrate finds that such arrest was caused on insufficient grounds then he may order a sum of rupees not exceeding one thousand<sup>38</sup> to be paid to the victim of such arrest. In these instances the State is to proceed against the erring officials and release the amount awarded as compensation. Further, it is pertinent to note that Section 358 obviously aims at protecting the constitutionally guaranteed personal liberty of the person under Article 21 of the Constitution of India and also saves him from illegal and arbitrary arrest, even without reference to any accusations or charge levelled against such person. Thus, this is definitely, important piece of legislation against groundless arrest by the police which upholds the rule of law by having democratic values.<sup>39</sup>

### **Order to Pay Costs in Non-Cognizable Cases**

Similarly, under Section 359 of the Code when any person has been convicted in non-cognizable case the Court may order for the refund of expenses incurred by the complainant in launching the prosecution. So, under Section 359, the complainant victim is entitled to claim only the expenses incurred in the launching of the prosecution for loss or injury suffered by him.

### **Compensation for accusation without reasonable cause**

Similarly, Section 250 of the Code also lays down special provision for the payment of compensation to the accused person in cases where he is discharged or acquitted as a result of finding no reasonable ground existing for launching such prosecution. Section 250 of the Code of Criminal Procedure, thus, covers only those specific cases where case has been instituted upon a complaint or upon the information given to police or to the Magistrate accusing some person of having committed certain act or offence triable by a Magistrate and the case should have been ended in an acquittal when the Magistrate trying the case should have found that complaint or the information given was false and either frivolous then the Magistrate may order the informant to pay compensation.

Additionally, Section 237 of the Code lays down that the Court of Session taking cognizance of an offence under sub-section (2) of Section 199 shall try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a Court of Magistrate. This Section lays down the provision of the payment of compensation to victims of crime by the Sessions Court in the cases involving the defamation of a person. The maximum amount of compensation that the Court may award under this Section is Rs. 1000/-. Under Section 237 to award the compensation the accused must have been discharged or acquitted on the ground that no reasonable cause for making the allegation against the accused exists. It is clear from the observations that the Court is empowered to award compensation to the victim or his dependants out of the fine imposed upon the offender.

### **Conclusion and recommendations:**

The brief review of the existing legislative framework and the judgements pronounced by judiciary relating to the victims of malicious prosecution reveals that nothing has been done either through statutes or through schemes to address the entire range of problems faced by the victims of wrongful prosecution and confinement. Though there have been observations made by the apex court on several occasions while dealing with the cases of malicious prosecution where justice has yet not been delivered, the lawmakers have failed over and over again to capitalise on that fact and has miserably failed to come up with a legislation or for the instance even amendments which would serve for the cause in the short run and at the same time is used to frame relevant laws by conducting further research as to what is best suited to the legal system of India. It is often blamed on the courts when such fiascos occur but, if one analyses carefully it is the authority charged with carrying out such investigation, neglect on whose part has amounted to perversity and on the contrary have paved the way for forces which are gaining an upper hand for more such fiascos.

Hence, there has been a flagrant violation of the idea of natural justice as all these attempt to set the law in motion wrongfully to satisfy their plebeian selves and are going unpunished as the redresses available to the victims are not only scarce but also out rightly inefficient. Still there is neither a comprehensive legislation nor a well designed statutory scheme or a public policy in India either allowing a victim of crime particularly victim of wrongful prosecution and incarceration to seek compensation from the offender and/or State or to participate, as a matter of right, in the criminal justice process.

Therefore, still it is a truth that in our present day adversarial legal system between the State and the accused, the victim of wrongful prosecution is not only neglected but is lost in silence. The role of the victim is limited to report the offence of wrongful prosecution as well as confinement and depose in the court on behalf of prosecuting party, which is the State. That's all. The Malimath Committee also reflected on the present criminal justice system that the victim's



(victim of wrongful prosecution) right to compensation was ignored except as token provision under the Criminal Procedure Code.

The perpetual instances of wrongful prosecution and wrongful confinement have been alarming enough and the need is now being felt more than ever before for competent legislation, which would deal with such acts. A new specialized legislation needs to be drawn in lines with that of United States and United Kingdom in order to render meaningful justice, social and legal and facilitate rehabilitation of the victims of wrongful prosecution providing:

1. Fair, considerate and sympathetic treatment by the police, hospitals, welfare organizations, prosecution and courts;
2. Prompt restitution/compensation to the Victim for the injury or loss suffered by the existing provisions; and setting up of 'Special Courts' in each district for delivery of expedient and speedy justice to victims. These courts shall solely entertain the Compensation Pleas filed by wrongfully accused victims and their family members.
3. Security to Victims and potential Victims of wrongful prosecution and confinement against victimization in future;
4. There ought to be inclusion of 'Guiding Principles' to be followed by Courts while deciding the quantum of compensation. The guiding principles shall be included in the amendments prescribed by Law Commission of India. These principles include the "seriousness of the offence, severity of punishment, length of detention, damage to health, harm to reputation, and loss of opportunities."

In this way, the above stated recommendations will pave the way for providing justice to victims of wrongful prosecution and confinement and establishing administration of criminal justice in the nation.

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