



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Miscarriage of Justice: Causes, Consequences, and Remedies

Trilok Choudhary<sup>a</sup>

<sup>a</sup>Gujarat National Law University, Gandhinagar, India

*Received* 02 October 2021; *Accepted* 20 October 2021; *Published* 25 October 2021

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*A blatant miscarriage of justice occurs when there is an obvious or evident mistake on a point of law. Miscarriage occurs when an unreasonable decision is made based on an incorrect understanding of the law or facts. The subject under consideration here is miscarriage by improper or malicious prosecution, which may or may not result in a conviction. There is an urgent need for a structure that would give relief and rehabilitation to victims of unjust prosecution and incarceration. One of the most critical aspects of resolving a miscarriage of justice is determining what constitutes 'miscarriage of justice. In India, we must evaluate the structural flaws of our criminal justice system.*

**Keywords:** *justice, miscarriage, wrongful, conviction, prosecution, innocent.*

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### INTRODUCTION

The word or expression "Miscarriage of Justice" has a broad range of meanings. Some have characterised it as flaws in 'interpretation, process, or execution of the law,' which result in the conviction of innocent persons or others as a 'complete failure of Justice.' Miscarriage was described by the Privy Council in *Bibhabati Devi v Ramendra Narayan Roy* as a deviation from the principles that pervade judicial procedure, such that the proceeding is not

appropriate at all<sup>1</sup>. In *Ayodhya Dube & Ors v Ram Sumar Singh*, the Supreme Court ruled that failure to apply one's mind, lack of judicial attitude, and failure to examine or incorrect examination of facts constitutes a severe miscarriage of justice<sup>2</sup>. A blatant miscarriage of justice occurs when there is an obvious or evident mistake on a point of law<sup>3</sup>. Miscarriage of justice occurs when an unreasonable decision is made based on an incorrect understanding of the law or facts. A method of dealing with perverse facts and reaching conclusions that contradict the evidence is a miscarriage of justice<sup>4</sup>. These court declarations provide a broader perspective on the miscarriage of justice, but the subject under consideration here is a miscarriage of justice by improper or malicious prosecution, which may or may not result in a conviction.<sup>5</sup> While hearing the case of *Babloo Chauhan @ Dabloo v State Government of NCT of Delhi*, the Delhi High Court expressed its concerns about the wrongful implication of innocent people and their acquittal after long years of incarceration, all while our country lacks any effective legal framework to provide relief to these people, as well as any related statutory scheme to compensate those who are wrongfully convicted<sup>6</sup>. We have seen individuals acquitted after spending years in jails left to their own devices, with little prospect of reintegration into society, since they were locked behind bars, unseen behind the towering prison walls, during the best years of their lives.<sup>7</sup> There have been some cases where the Supreme Court has awarded compensation for wrongful incarceration, such as in *Veena Sethi v the State of Bihar*,<sup>8</sup> *Rudul Sah v the State of Bihar*,<sup>9</sup> and *Sant Bir v the State of Bihar*,<sup>10</sup> but these cases are episodic and are not easily accessible to the public. As a result, there is an urgent need for a structure that would give relief and rehabilitation to victims of unjust prosecution and incarceration.

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<sup>1</sup> *Bibhabati Devi v Ramendra Narayan Roy* [1947] AIR (PC), p 19

<sup>2</sup> *Ayodhya Dube & Ors v Ram Sumar Singh* [1981] AIR (SC), p 1415

<sup>3</sup> *K Chinnaswamy Reddy v Andhra Pradesh* [1962] AIR (SC), p 1788

<sup>4</sup> *Punjab v Madan Mohan Lal Verma* [2013] AIR (SC), p 3368

<sup>5</sup> *Ibid*

<sup>6</sup> *Babloo Chauhan @ Dabloo v State Government of NCT of Delhi* [2018] DLT p 247

<sup>7</sup> *Ibid*

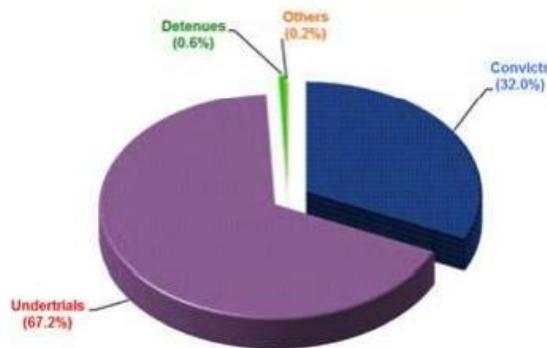
<sup>8</sup> *Veena Sethi v State of Bihar* AIR 1983 SC 339

<sup>9</sup> *Rudul Sah v State of Bihar* AIR 1983 SC 1086

<sup>10</sup> *Sant Bir v State of Bihar* AIR 1982 SC 1470

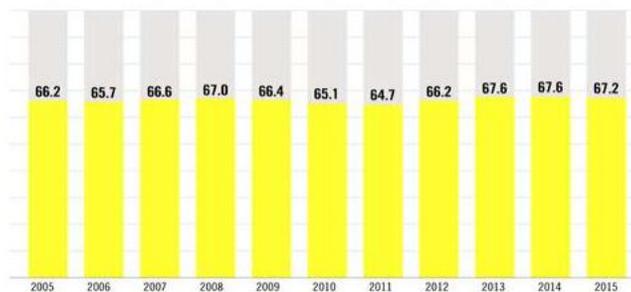
## DATA RELATED TO UNDER TRIALS AND ANALYSIS

We will now examine statistics on prisons, convicts, and prison facilities compiled by the National Crime Records Bureau in its yearly statistical report titled 'Prison Statistics India.' According to the PSI 2015, there were 4, 19, 623 inmates in the nation, with 67.2 percent of those under trial, which was much greater than the percentage of convicted (32 percent)<sup>11</sup>.



Source: National Crime Relations Bureau

A comprehensive study of the statistics indicates that the percentage of under-trial inmates remains greater than the percentage of convicts.<sup>12</sup> The percentage of inmates awaiting trial in each state is as follows: Meghalaya received 91.4 percent, Bihar received 82.4 percent, Manipur received 81.9 percent, Jammu and Kashmir received 81.5 percent, Nagaland received 79.6 percent, Odisha received 78.8 percent, Jharkhand received 77.1 percent, and Delhi received 76.7 percent. Between 2005 and 2015, the rate of undertrials in Indian jails remained high.

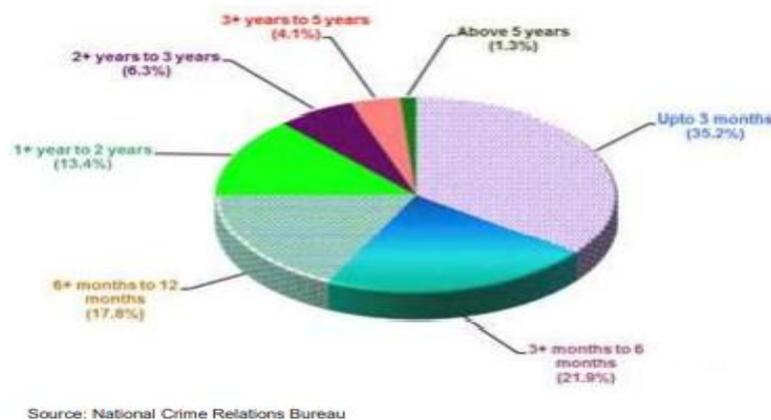


Source: National Crime Records Bureau

<sup>11</sup> 'Prison Statistics India' (Ncrb.gov.in, 2015) <[https://ncrb.gov.in/sites/default/files/PSI-2015-%2018-11-2016\\_0.pdf](https://ncrb.gov.in/sites/default/files/PSI-2015-%2018-11-2016_0.pdf)> accessed 01 October 2021

<sup>12</sup> *Ibid*

In terms of numbers, Uttar Pradesh reported the highest number of under trails at the end of 2015 - 62,669, followed by Bihar - 23,424, Maharashtra - 21,667, Madhya Pradesh - 21,300, West Bengal - 15,342, Rajasthan - 14,225, Jharkhand - 13,588, Punjab - 13,046, Odisha - 12,584, the capital Delhi - 10,879, and Haryana -10,489. Now, in terms of a miscarriage of justice, it is critical that we are aware of the average duration of detention of under-trials. According to the data, 25% of those on trial had previously spent more than a year in jail, 17.8% had spent up to a year in prison, and 21.9 percent had been in prison for 3 to 6 months<sup>13</sup>.



Furthermore, according to the NCRB, the number of people awaiting trial grew by 10,000 in 2016, while the number of those convicted increased by just 1000<sup>14</sup>. With a population of undertrials of 67.2 percent, India has one of the world's biggest populations of undertrials.<sup>15</sup>. India has the world's 16th largest population of under trials, and Asia's 5th largest behind Pakistan, Cambodia, the Philippines, and Bangladesh<sup>16</sup>. Such a high number of people awaiting trial, especially with such extended incarceration terms, demonstrates the widespread delay in trial and judicial resolution of their cases. This delay will therefore result in a miscarriage of justice, in which a person wrongly accused will spend years awaiting a trial for which he is not guilty in the first place. While this data does not reflect the amount of

<sup>13</sup> *Ibid*

<sup>14</sup> 'Rajya Sabha: Unstarred Question No 550' (*Mha.gov.in*, 2018)

<<https://www.mha.gov.in/MHA1/Par2017/pdfs/par2018-pdfs/rs-07022018-ENG/550.pdf>> accessed 01 October 2021

<sup>15</sup> 'Highest to Lowest: World Prison Brief' (*Prisonstudies.org*, 2021) <[https://www.prisonstudies.org/highest-to-lowest/pre-trial%02detainees?field\\_region\\_taxonomy\\_tid=All](https://www.prisonstudies.org/highest-to-lowest/pre-trial%02detainees?field_region_taxonomy_tid=All)> accessed 01 October 2021

<sup>16</sup> *Ibid*

wrongly accused people facing trials, it does demonstrate the urgency with which we must deal with these delayed trials and give solutions. In **Thana Singh v Central Bureau of Narcotics**,<sup>17</sup> the Supreme Court expressed its displeasure with the situation, observing:

*“The laxity with which we throw citizens into prison reflects our lack of appreciation for the tribulations of incarceration; the callousness with which we leave them there reflects our lack of deference for humanity. It also reflects our imprudence when our prisons are bursting at their seams.<sup>18</sup> For the prisoner himself, imprisonment for the purposes of the trial is as ignoble as imprisonment on conviction for an offense since the damning finger and opprobrious eyes of society draw no difference between the two...”<sup>19</sup>*

## INTERNATIONAL PERSPECTIVE

The International Covenant on Civil and Political Rights (ICCPR) discusses the duties of states in the event of a miscarriage of justice, stating that the state must compensate the individual who was convicted but later had his conviction reversed due to new evidence. While discussing article 14 of the ICCPR,<sup>20</sup> the United Nations Human Rights Committee mandated that governments implement laws to secure such person's compensation within a reasonable time frame.<sup>21</sup> Although 168 nations, including India, have ratified the ICCPR, not all have followed through on their obligations. Some of these nations have created a legal framework for resolving miscarriages of justice through the insertion of an article or law to create a statutory right to compensation, whilst others have left it to the discretion of administrative or judicial bodies. We'll take a quick look at some of these nations' methods to have a better sense of how to solve the problem at hand.

- **United Kingdom**

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<sup>17</sup> *Thana Singh v Central Bureau of Narcotics* Criminal Appeal No 1640/2010

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

<sup>20</sup> International Covenant on Civil and Political Rights 1966, art 14

<sup>21</sup> UNHRC's interpretation of ICCPR are considered authoritative

To demonstrate compliance with the ICCPR duty, the United Kingdom adopted the aforementioned measures in Part XI of the Criminal Justice Act, 1988,<sup>22</sup> titled "Miscarriage of Justice." This provision authorises the Secretary of State to compensate a person who has been wrongfully convicted and whose case has been proven beyond a reasonable doubt. Factors such as the gravity of the offence, the potential for reputational harm, and the severity of the penalty. The conduct of the investigator or the prosecution would have an impact on the amount of compensation. The UK Supreme Court broadened the definition of a miscarriage of justice in the case of **R v Secretary of State for Justice** in 2011, ruling that even people who could not establish their innocence beyond a reasonable doubt are entitled to compensation<sup>23</sup>. The Criminal Cases Review Commission of the United Kingdom is also unusual in that it is entrusted with determining whether an accused has suffered a miscarriage of justice. The UK Police Act of 1996,<sup>24</sup> which holds the chief officer of police responsible for the improper conduct of constables, provides another barrier to protect the interests of those on trial.<sup>25</sup>

- **Germany**

Miscarriage of justice is dealt with in Germany by attributing blame to the state. According to Article 34 of the German constitution,<sup>26</sup> the state is accountable when a person in the performance of public office breaches his official obligation to a third party. Ordinary courts have the authority to award compensation or indemnity in such circumstances. Furthermore, Article 1 of the Compensation for Criminal Prosecution Proceeding 1971,<sup>27</sup> states that anybody who has experienced harm as a result of a false conviction would be reimbursed by the state. In terms of other statutes, Sections 97 (a)<sup>28</sup> and 97 (b)<sup>29</sup> of the German Criminal Code of 1872 allow for compensation for pain caused by an unreasonable length of the process before the Federal court.

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<sup>22</sup> Criminal Justice Act 1988

<sup>23</sup> *R v Secretary of State for Justice* [2011] UKSC 18

<sup>24</sup> UK Police Act 1996

<sup>25</sup> *Ibid*

<sup>26</sup> Constitution of Germany, art 34

<sup>27</sup> Compensation for Criminal Prosecution Proceeding 1971, art 1

<sup>28</sup> German Criminal Code 1872, s 97(a)

<sup>29</sup> German Criminal Code 1872, s 97(b)

- **United States**

In the United States, miscarriage of justice is generally addressed by paying victims of erroneous convictions in line with Federal or state legislation. The United States Code 28<sup>30</sup> § 1495<sup>31</sup> & § 2513<sup>32</sup> deals with federal claims from those who have been wrongfully convicted if they are declared not guilty, their conviction is reversed, or a pardon is given, although the states have their state laws that provide compensation. Furthermore, the US gives non-monetary compensation in the form of rehabilitation and reintegration into society through housing aid, job training and employment, mental health services, and so on.

- **Canada**

The ICCPR was ratified by Canada in 1976, but no law was implemented, and the 'Federal / Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons' would apply. It further states that compensation will be paid to the real individual who was wrongly convicted if the conviction is overturned now. In addition, the costs paid by the individual in seeking the pardon or acquittal verdict should be included in compensation. Furthermore, civil action can be taken against malicious prosecution, incompetent investigation, and false incarceration, among other things.

- **Australia**

Except in the Australian Capital Territory, people wrongly convicted or imprisoned in Australia do not have a common law or statutory claim to compensation. However, a state or territory may opt to make an ex gratia payment on its own or at the request of a party. The Human Rights Act of 2004,<sup>33</sup> provides for compensation for erroneous convictions if a person can demonstrate, under article 23 of the same act,<sup>34</sup> that his conviction was reversed and that

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<sup>30</sup> United States Code, s 28

<sup>31</sup> United States Code, s 1495

<sup>32</sup> United States Code, s 2513

<sup>33</sup> Australian Human Rights Act 2004

<sup>34</sup> Australian Human Rights Act 2004, s 23

he suffered from a miscarriage of justice. Subsection 1 (b) of Article 23<sup>35</sup> also compensates people who have incurred "punishment" as a result of their conviction<sup>36</sup>. However, these ex gratia payments are frequently arbitrary and, in general, extremely little, and are hampered by a lack of transparency<sup>37</sup>. Thus, a study of international perspectives has revealed that Western countries understand miscarriage of justice as when a person convicted by a final court is pardoned due to the discovery of new facts proving that he did not commit any offence, and primary relief is provided in the form of monetary and non-monetary assistance.<sup>38</sup>

### NEED TO SET STANDARD FOR MISCARRIAGE OF JUSTICE

One of the most critical aspects of resolving a miscarriage of justice is determining what constitutes a miscarriage of justice, whether it be improper prosecution, detention, conviction, or all three. The international standard laid down in the ICCPR and in many western countries' compensation law is miscarriage of justice as resulting in wrongful conviction by final court order, but only after conviction do new facts emerge conclusively proving that the convicted person is innocent does the claimant qualify for compensation. As a result, this criterion is only applied when a claimant is proven innocent after a final conviction due to new facts, therefore recognising 'wrongful conviction' as a miscarriage of justice. However, to implement this approach in India, we must evaluate the structural flaws of our criminal justice system. For starters, this criterion would not apply to other types of a miscarriage of justice, such as unlawful and unjust imprisonment, torture in jail, and repeated denials of bail. Also, the requirement that all bail avenues be exhausted before a new fact emerges proving the innocence of the convict would not work in an Indian environment because due to delays in trial/appeal, the accused person may stay in prison for a long or longer period than the sentence for the offence for which he will eventually be acquitted. **Second**, only considering wrongful incarceration as a criterion for miscarriage of justice will exclude cases where the

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<sup>35</sup> Australian Human Rights Act 2004, s 23(1)(b)

<sup>36</sup> 'Compensation for Wrongful Compensation. Trends & Issues in Crime and Criminal Justice Australian Government' (*Australian Institute of Criminology*, 2021) <<https://www.aic.gov.au/publications/tandi/tandi356>> accessed 01 October 2021

<sup>37</sup> Tom Percy QC, 'Despised Outsiders: Compensation for Wrongful Convictions' (*austlii.edu.au*, August 2007) <<http://www.austlii.edu.au/au/journals/PrecedentAULA/2007/66.pdf>> accessed 01 October 2021

<sup>38</sup> *Ibid*

person is granted bail and does not spend any time in jail, but he also suffers from wrongful prosecution, delayed trial, loss of employment, and possibly mental and physical harassment, making such wrongful incarceration under-inclusive. **The third** requirement should be wrongful prosecution as a result of police or prosecutorial misconduct that leads to the conviction of an innocent person. In the Indian context, the criterion of wrongful prosecution is particularly successful in identifying cases of miscarriage of justice since procedural and prosecutorial misconduct appears to be one of the major reasons why innocent individuals are held guilty for crimes they did not commit. In **CBI v Om Prakash Aggarwal**, an investigating officer opted to submit a charge sheet despite knowing that there was no procedural violation or wrongdoing on the side of the accused bank officer, resulting in a 14-year lengthy trial and acquittal due to a lack of damning evidence<sup>39</sup>. In the above context, procedural issues would include creating or framing false accusations, making false declarations, fabricating or destroying evidence, and filing fraudulent procedures, among other things.<sup>40</sup>

## CONCLUSION AND RECOMMENDATIONS

Is a person who was wrongly convicted but acquitted free to return to his life? Will his life be the same? The person who was accused of a crime endured judicial proceedings, and whose reputation was harmed for a crime he did not commit has an uphill struggle even after acquittal.

*“For the prisoner himself, imprisonment for the purposes of a trial is as ignoble as imprisonment on conviction for an offence since the damning finger and opprobrious eyes of society draw no difference between the two...”<sup>41</sup>*

This necessitates compensating the acquitted individual for the year missed, social stigma, physical and emotional harassment, and trial expenses, which should be borne by the state in the form of compensation aid. The UNHRC reached the same conclusion after reading Article 14 of the ICCPR, which states that victims of a miscarriage of justice shall be paid in

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<sup>39</sup> *CBI v Om Prakash Aggarwal* Criminal Appeal No 134/2016

<sup>40</sup> *Ibid*

<sup>41</sup> *Thana Singh v Central Bureau of Narcotics* [2013] SCC 2

accordance with the law.<sup>42</sup> As a result of this positive responsibility, several nations, including the United Kingdom, the United States, Germany, and Australia, have adopted legislation to ensure that victims be paid, and it is their legislative duty to do so. While India signed the ICCPR in 1968, it has made no significant steps toward implementing the law. One concern expressed by India is that the Indian legal system does not recognise victims' rights to compensation for wrongful arrest and conviction<sup>43</sup>. However, a subsequent judicial ruling acknowledged compensation as a remedy for miscarriage of justice resulting in a breach of the basic right to life and personal liberty.<sup>44</sup> The Supreme Court has recognised compensation as a remedy against violations of fundamental rights in landmark cases such as **Rudul Shah, Nilabati Behera, and DK Basu**. High courts in respective states, such as Madhya Pradesh, have agreed that appellants who are innocent<sup>45</sup> and have suffered as a result of poor investigation deserve compensation from the state.<sup>46</sup> However, even though police and prosecutorial misconduct is considered a violation of fundamental rights and can result in state liability, the amount of compensation is still decided arbitrarily and lacks transparency; this compensation is also only awarded as a result of judicial pronouncements, and there is still no explicit provision in the constitution or any other act for suing the state. As a result, the existing remedies are merely ex gratia, and despite a decade of jurisprudence on compensation under public law, no legislative concept exists.

## REMEDIES

- There should be special legal provisions in place to address situations of miscarriage of justice caused by unjust prosecution, and compensation should be implemented if proved to be true.

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<sup>42</sup> *Ibid*

<sup>43</sup> '1st Peoples Tribunal on Innocent Acquitted, Report of the Jury, Towards a Framework for Compensation & Rehabilitation for Victims of Wrongful Prosecution/Conviction' (*Innocence Network India*, 2021) <<http://jtsa.in/document/Innocence%20Network%27s%201st%20People%27s%20Tri%20bunal%20-%20Jury%20Report.pdf>> accessed 01 October 2021

<sup>44</sup> *Ibid*

<sup>45</sup> *Durga @ Raja v State of Madhya Pradesh* [2008] Criminal Appeal No 812

<sup>46</sup> *Nandu @ Nandkishore v State of Madhya Pradesh* [2008] Criminal Appeal No 866

- A statutory responsibility to pay victims of unjust prosecution should be imposed on the state, and such compensation should not be ex gratia.
- Special courts should be established in each area to expedite and speed up the trials of under trials.
- Under the new legal framework, the cause of action for bringing a claim shall be “Wrongful prosecution,” which includes (i) malicious prosecutions and (ii) prosecutions launched in bad faith.
- It should also be mentioned in the provision that the said cause of action might be filed by the claimant or his duly authorised agent.