



Inadequate And Unjust Compensation Scheme In False Prosecution Case In India

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INTRODUCTION

India promptly responded by public inquiries into False Prosecution cases to remedy injustice and by a series of legal reforms to implement policy recommendations for better preventing future miscarriages of justice. After examining several high-profile False Prosecution and exploring the remedies for convicting the innocent, this paper concludes that further reforms are needed to protect the due process rights of the accused from being violated. At the very least, the relevant substantive justice reforms should include but not limit to the implementation of reform proposals on the resumption of the power to review death sentences, the exclusion of illegally obtained evidence and the presentation of expert evidence as well²¹. A finding that an individual was falsely prosecuted is not synonymous with innocence. There are a number of grounds on which an individual's prosecution can be reversed other than actual innocence-in fact, appeals themselves rarely are grounded on claims of actual innocence³².

Shifting the burden to the state to prove guilt, then, could lead to an increased chance that a guilty individual, released on a legal technicality, gets compensated. In that situation, a guilty individual who deserves to be in prison would not only escape the justified punishment, but would actually be rewarded for the portion of the sentence that he or she rightfully served. This is repugnant to public policy and contrary to the stated intent of the false prosecution compensation statutes, which "were intended to compensate the innocent for false prosecution" and not "to compensate those who had merely avoided criminal liability" which shall be violation of human rights⁴³.

There are different ways of achieving this objective but perhaps the easier way may be for the victim to pursue compensation within the criminal process or what we describe as the adhesion procedure. The framework of the law in India on this matter should find its place in the provisions of the constitution, the code of criminal procedure 1973. the person who faced the vengeance of the failure of the criminal justice system shall have rights to be enforced in order to provide it with the place to stand in a dignified condition after being exonerated but till now the criminal justice system has been lacking and failed to provide that support in the form of compensation and acknowledgement to be a free man.

CASES IN WHICH COMPENSATION MUST BE GIVEN

Evidence suggests that there are several causes of false prosecutions. To the greater extent, the rules and laws favour the defendant if he is younger. If the false prosecution individual has a criminal record that gives the court reason to be wary about reversing the verdict. Whenever the prosecution withholds material that might be helpful to the defence. When they are lying and using a non-eyewitness, which, depending on the circumstances, may not need much proof. Witness misidentification, even when unintentional, may result in a false prosecution. When the forensic evidence is distorted at trial. When the defence side is so poor that it cannot provide enough evidence to counter the opposing side. To what extent this applies, however, depends on the specifics of the case at hand, especially if the defendant plans to present a family member as a

¹ Kent Roach, "False Prosecutions: Adversarial and Inquisitorial Themes" (2010) 35 North Carolina Journal of International Law and Commercial Regulation 411

² Schlup v. Delo, 513 U.S. 298, 321 (1995) ("[H]abeas corpus petitions that advance a substantial claim of actual innocence are extremely rare.")

³ Chandler v. State, 641 N.E.2d 1382, 1385 (Ohio Ct. App. 1994); see also Rogers v. State, 694 N.Y.S.2d 874, 877 (Ct. Cl. 1999) ("[T]he Legislature did not intend to provide monetary compensation for every mistake made in the course of a prosecution of an individual for a crime he did not commit and for which he was imprisoned.").

witness. Depending on the individuals involved and the specifics of the situation, the weaker side may emerge victorious due to government malfeasance.

REASONS WHICH LEAD TO FALSE PROSECUTION

Despite there are steps taken by the Government machinery to overcome the problem of false prosecution, but certain barriers (challenges) still need to be knocked down. Some of the main challenges to the false prosecution are as follows:

Mistaken identification of Offender by Eyewitness: Error from the side of Eyewitness constitutes an important element that leads to Miscarriage of Justice. Mistaken eyewitness identification takes place when a victim or some other eyewitness mistakenly identifies a wrong person who is not a perpetrator or did not commit a crime. It is one of the major challenges faced by any Judicial Setup. This kind of incident generally happens in good faith but leads to an adverse effect on one's life. According to a report by West Michigan University, 72% of the prosecutions based on eyewitnesses were overturned after DNA testing. In short, identification by the eyewitness is an essential part of Judicial Proceedings but mistaken identification poses a severe threat to it leading to miscarriage of Justice⁵⁴.

False Confessions: False confession is another contributing factor leading to miscarriage of Justice (false prosecution). Confession refers to the admissibility of the fact by the perpetrator (Wrongdoer) which can be used by the Judicial authority to initiate proceedings against him/her. And when the confession is made by that person who is not guilty of the act committed then that confession is termed as False confession. Use of Force by the Police authority is the common and the biggest reason for that. Psychological Manipulation contributes another important reason.

Overburdened Judiciary: Lack of the number of required Judges possesses another threat to the proper carriage of Justice. As the Judges get overburdened with their work which sometimes might lead to false prosecution i.e., wrong sentencing. We should not forget that they too are human and are bound to commit mistakes especially when they are overburdened⁶⁵. On average, India only has 19 judges for every one million population. According to Data revealed by Law Ministry, India has a shortage of about Six Thousand Judges. More than thirty million cases are pending in trial Court leading to delay of Justice⁷⁶.

Official Misconduct: There are instances when misconduct from the side of Lawyers, Police Officials, and Forensic experts leads to false prosecution. As these officials are responsible are required to provide a helping hand to the Judges for administering Justice, misconduct from these sides leads to a serious miscarriage of Justice. According to the National Registry of Exonerations, Official Misconduct is a reason for more than fifty percent of false prosecution⁸⁷.

COMPENSATION MUST BE FAIR

Apart from the above mentioned Several other causes lead to Miscarriage of Justice. The concept of Forensic Science is a bit new to Judicial Proceedings. There are instances when this science provides misleading information due to some errors. The incident of James Driskell is a famous example of it. There are also instances when persons are put into prison based on the testimony of jailhouse informants. In most cases, the testimony is based on doubt and sometimes influenced by a third party. This is another challenge facing. The other important challenge is when the investigating officials go on focusing on one suspect by leaving behind others. This is also a contributing factor to the Miscarriage of Justice⁸.

The Court observed that this remedy is independent of the rights available under the private law in an action based on tort, or that under criminal law i.e. via criminal proceedings against the wrongdoer¹⁰⁹. On the heels of Rudal Shah came the Boma Chara Oraon case¹⁰, where the Supreme Court declared that anyone deprived illegally of his life or personal liberty can approach the Supreme Court and seek compensation for violation of his fundamental right under Article 21. Subsequently, there has been a string of cases, where the Supreme Court awarded compensation to persons whose fundamental rights under Articles 21 and 22 had been

⁴ Causes of wrongful conviction (2016) Western Michigan University. Available at: <https://wmich.edu/sociology/causes-wrongful-conviction> (Accessed: 5 July 2023).

⁵ The Hindu Business Line, <https://www.thehindubusinessline.com/news/india-has-19-judges-per-10-lakh-people-data/article25030009.ece>, (accessed Jun 4, 2023).

⁶ The Print, <https://theprint.in/opinion/indian-judges-overburdened-looking-after-legal-aid-shouldnt-be-on-plate/573300/>, (accessed Jun 4, 2023).

⁷ The National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (accessed Jun 4, 2023).

⁸ Innocence Canada, <https://innocencecanada.com/exonerations/james-driskell/>, (last visited Dec 4, 2021).

⁹ Rudal Sah v. State of Bihar AIR 1983 SC 1086

¹⁰ B. C. Oraon v State of Bihar, cited in M. P. Jain, Indian Constitutional Law Volume 1 (LexisNexis, Gurgaon, India Updated 6th Edition, 2013) 1618; see also: Devki Nandan v. State of Bihar, AIR 1983 SC 1134;

violated on account of illegal detention, false incarceration etc.¹²¹¹

Emphasising the need to compensate the victims of false arrests, incarceration etc. by awarding “suitable monetary compensation”, the Supreme Court in the case has opined that the mischief, malice or invasion of an illegal arrest and prosecution cannot just be “washed away or wished away” by setting free the person so arrested or imprisoned. The Court awarded a sum of Rs. 50,000/- as compensation for illegal detention but, it is noteworthy that it did not delve into the reasoning or mechanism of how this “suitable monetary compensation” was determined or should be determined in similar cases¹².

Delving into question of who is responsible to pay the compensation in cases of State officials’ misconduct - individual police officers or the State”, the Supreme Court in the case¹⁴¹³ upheld the principle of the vicarious liability of the State i.e. the State to responsible for the tortious acts of its employees; and, ordered the Delhi Administration to pay the compensation for police atrocities which lead to the death of a 9 year-old child; further noting that the Delhi Administration has the option to recover the amount paid from the officers found responsible¹⁴

The Supreme Court upholding the principle of vicarious liability of the State in the case further observed that the individual officers cannot be held personally liable because even if it is assumed that such officers exceeded the limits of their power, they were still acting as officials. These cases recognised State’s liability and responsibility to pay compensation for the false acts of its employees but did not go into the compensation jurisprudence factors taken into consideration for arriving at the amount of compensation etc¹⁵.

A crucial judgment often credited with crystallising the principle of vicarious liability of the State underlining the above discussed cases and that of principle of sovereign immunity vis-à-vis violation of fundamental rights by the State officials was delivered in the case¹⁶. The Supreme Court in this case observed that award of compensation in writ proceedings is a remedy under public law, based on strict liability for contravention of fundamental rights, and that the principle of sovereign immunity is inapplicable in the cases involving violation of fundamental rights, though available as a defence under private law in an action based on tort¹⁷. The Court further observed that the State in such cases in turn has the right to be indemnified by, and/or take action against the concerned officers in accordance with law through appropriate proceedings. The principle of strict liability of the state was also upheld in the landmark decision on the issue of police atrocities and awarding of compensation in the case¹⁸.

The right to life under Article 21 is available not only to citizens, but also to persons which would includenon-citizens¹⁹. A foreigner too can claim protection under Article 21 along with the Indian citizens. A natural corollary to this is entitlement to compensation in the event of a violation of the said right. In line with the foregoing, the Supreme Court in the case has ruled that a citizen of Bangladesh i.e., a foreign national when in India was entitled to the protection of her person under Article 21, which when violated also entitled her to relief of compensation by the State under Article 226 as the State was under constitutional liability to pay compensation to her²⁰.

As the principle of granting compensation for violation of Article 21 was gaining ground, the scope of cases covered under this remedy once again came under review in the case has been laid down that that compensation is not to be awarded in all cases. This case limited the award of compensation to cases where: (i) the violation of Article 21 is patent and inconvertible; (ii) the violation is gross and of a magnitude to shock the conscience of the court; or (iii) the custodial torture alleged has resulted in death, or the custodial torture is supported by medical report or visible marks or scars or disability. In this case, the petitioner alleged illegal detention, custodial torture and harassment to the family members of the petitioner. Applying the foregoing criteria, the Court did not award any compensation in this case on the ground of lack of clear and incontrovertible evidence²¹.

¹¹ Sebastian M. Hongray v. Union of India, AIR 1984 SC 1026.

¹² Bhim Singh, MLA v. State of J & K & Ors

¹³ SAHELLI, A Women's Resources center & Ors. v Commissioner of Police Delhi & Ors AIR 1990 SC 513

¹⁴ Peoples' Union for Democratic Rights through its Secretary & Anr. v Delhi Police Headquarters & Anr., (1989) 4 SCC 730; Joginder Kaur v State of Punjab, (1969) 71 PLR 85.

¹⁵ State of Maharashtra v. Ravi Kant Patil AIR 1991 SC 871

¹⁶ AIR 1993 SC 1960; see also: State of Andhra Pradesh v. Challa Ramkrishna Reddy, (2000) 5 SCC 712.

¹⁷ The Court in this case distinguished the state’s liability in cases involving violation of fundamental rights from a claim the claim of damages for the tort of conversion under the ordinary process, stating that the decision of “the Court in Kasturilal (Kasturi Lal Ralia Ram Jain v. State of U.P, AIR 1966 SC 1039) upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort.

¹⁸ D. K. Basu v. State of West Bengal AIR 1997 SC 610.

¹⁹ Common Cause, A Regd. Society v. Union of India, AIR 1999 SC 2979; National Human Rights Commissio v. State of Arunachal Pradesh, AIR 1996 SC 1234.

²⁰ Chairman, Railway Board & Ors. v. Chandrima Das AIR 2000 SC 988.

²¹ Sube Singh v. State of Haryana (2006) 3 SCC 178

Compensation for violation of fundamental rights in cases is a public law remedy but there is no express provision in the Constitution of India for grant of compensation by the State in such cases²² It is a remedy determined and decided on case-to-case basis dependent on the facts of each case, the disposition of the court hearing the case etc. which makes this remedy arbitrary, episodic, and indeterminate²³.

In theory, yes, you can claim compensation; in practice, it is difficult. There are several judicial pronouncements but there is no explicit provision in the Constitution of India (that is, no statutory right) for grant of compensation by the state for the infringement of right to life and personal liberty, in a case, a division bench of the SC held that the defence of sovereign immunity being inapplicable, award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution is justified²⁴.

The celebrated judgment in the case of the entire law relating to payment of compensation by the state to a victim of state excesses was expostulated²⁵.

Unfortunately, it is neither happening nor life is so simple. In the case, the Bombay and Madras high courts have held that the court could not award compensation merely because the prosecution failed to establish the guilt of the accused. It is for the victim to prove that the prosecution was initiated with an oblique motive only for the purpose of harassing him²⁶.

Eventually, after a painfully long wait of 22 years, the victim got justice when the SC in awarded him a compensation of Rs 50 lakh. The SC also directed for the constitution of a committee headed by a former judge of the SC to find out ways and means to take appropriate steps against the erring officials. Nambi Narayanan was then 77 years old his life, career, savings, and honour had been devastated²⁷.

Another landmark judgment of compensation of Rs 5.62 lakh is that of the Delhi high court in the case of Prempal was falsely implicated by the Delhi police in as many as 18 cases between 1991 and 2007²⁸. The court directed the Delhi police commissioner to compensate the victim as well as tender a written apology to the victim and his family for their suffering. The trial court had concluded that the foisting of false cases and harassment of 15 years had reduced Prempal to a living corpse.

The law of false prosecution has evolved generously through ages. The basic evolution of the law has taken place in England. England being the birth place of this tort, it was only genuine that with experience and usage this law would evolve more there. However, what is pertinent to note is the fact that the societal changes played a major role in this evolution. It was not abrupt legislative changes that brought about the development or evolution of this law, but in fact the perceptions of the society, both towards the menace of false cases as well as towards the usage of justice system. Thus, the law has matured and evolved to a considerable extent through the ages. It has also contributed to a great extent towards the evolution of the tort. Not only has it made this an effective deterrent and protector of people's right, but it has gone ahead and given it the status of a federal remedy. This is a giant step towards the evolution of this law in country like India, where fundamental rights are protected with all its vigour, it is about time that the law of false prosecution is also granted constitutional status.

JUDICIAL REMARKS IN THE NEED OF PROPER COMPENSATION

In the case where accused persons spent more than a decade in prison; the Supreme Court acquitted the accused persons with a specific noting as to the perversity in the conduct of the case from investigation to prosecution to sentencing but did not award any compensation to those falsely prosecution²⁹; despite also noting that the police instead of booking the real culprits caught innocent people and subjected them to grievous charges. However, when a separate petition praying for compensation came up before another bench of the Supreme Court, the plea for compensation was rejected on the grounds that acquittal by a court did not automatically entitle those acquitted to compensation and if compensation is to be awarded for acquittal, it will set a dangerous precedent, post which the petition was withdrawn³⁰. The foregoing contrasts with the other cases where under similar circumstances the court held the State accountable

²² Vibin P.V. v. State of Kerela, AIR 2013 Ker 67

²³ See: Inder Singh v. State of Punjab, (1995) 3 SCC 702; Malkiat Singh v. State of U.P., (1998) 9 SCC 351; Ajab Singh v. State of Uttar Pradesh, (2000) 3 SCC 521; and Munshi Singh Gautam v. State of MP (2005) 9 SCC 631.

²⁴ Smt. Nilabati Behera Alias Lalit v. State of Orissa and Ors (1993)

²⁵ D.K. Basu, Ashok K. Johri v. State of West Bengal, State of U.P. (1996), Rudul Sah v. State of Bihar and Another (1983), Dr. Rini Johar & Anr. v. State of M.P. & Ors. (2016), Durga @ Raja v. State of Madhya Pradesh (2018) and Nandu @ Nandkishore Dheemer v. State of M.P. (2018)

²⁶ Gopal S/O Ramdas Shetye v. The State of Maharashtra (2017) and D. Arun v. P.Subramani (2016)

²⁷ S. Nambi Narayanan v. Siby Mathews & Others Etc. (2018)

²⁸ Prempal & Ors. v. The Commissioner of Police & Ors. (2010).

²⁹ "There Must Be a Price to Pay for False Prosecutions" The Wire, 30 August 2016. Available at: <https://thewire.in/law/cops-judges-andterrorists>. (Last Accessed: 3 July 2023)

³⁰ (2014) 7 SCC 716; see also: State of Orissa v. Duleshwar Barik, 2017 (I) OLR 824; Gopal Ramdas Sheyte v. State of Maharashtra, Judgement dated 5 May 2017 in Criminal Writ Petition No. 3960 of 2015.

and awarded compensation. Perhaps it was owing to this kind of variance in the decisions on otherwise similar facts that the High Court of Delhi in its Reference to the Commission noted that these (awards of compensation for false incarceration under public law) are episodic and are not easily available to all similarly situated persons³¹.

The Court, while hearing a writ petition in the case of, ordered a compensation amount of Rs.10 lakhs to the petitioner who fought a prolonged legal battle for ten years and spent 11 days in jail. In another case, a nine-year-old child died due to police's atrocities whose kin was awarded a compensation amount of Rs. 75000³².

The Supreme Court awarded Rs. 50 lakhs as compensation to the ISRO scientist who was falsely accused of espionage after a long legal battle of 24 years. The fact that restitution was granted 24 years post the false prosecution significantly reminds us of the need to 'rectify wrongdoings promptly'³³.

The court held that the omission of a proper procedure, the lack of disciplinary intervention, and the insufficient evaluation of sufficient facts lead to perversity, which may lead to the severe obstruction of justice³⁴.

The court held that upon the judicial literature of false prosecutions. In this case, the Supreme Court reprimanded the authorities for conducting the investigation of terror attacks in an injudicious manner and levying severe allegations against innocent persons³⁵.

"The Apex Court gave them back freedom but who can give them back the ten years they spent behind bars for no-fault? The State must adequately compensate them as it violated the right to life brazenly." Astonishingly to our lamentation, the Court denied the appeal for compensation on the 'basis' that the acquittal of the victims by the Court would not automatically give them the right to compensation and would set a 'dangerous precedent' if the appeal was allowed³⁶.

In this case, the accused were charged for a conspiracy behind the suicide attack that took place in Police task force office on Oct. 12, 2005, thereby killing two officials. The Court accentuated that the police arrested the suspects without any concrete evidence and has subsequently failed to prove conspiracy on the part of accused. The innocents lost 'ten years' of their lives due to authorities' negligence. Neither was any compensation granted to the victims nor was any coercive action taken against the investigators. It is not the first time when police committed such a faux pas. These cases are often viewed as high profile cases. The Judiciary has been retrospectively aware of the factors leading to 'Miscarriage of Justice'. Furthermore, their lack of action to frame a uniform legislative framework for compensation indicates their ignorance towards the degraded status of these victims. The lack of action on the part of Judiciary continues to undermine the country's judicial system³⁷. For false prosecution if it is any cruel, degrading and inhumane treatment in custody is harassment Compensation awarded³⁸.

Chief Justices to institute Suo-motu public interest proceedings to pay compensation to next of kin in cases of unnatural death in prison. Quantum of compensation- no strait jacketed formula will depend on the facts of each case³⁹.

Acquittal in custodial violence case compensation still granted under Article 142⁴⁰. Unfair investigation and prosecution infract Article 21- compensation awarded under Article 142 as the accused remained in custody for 16 years under the sceptre of death⁴¹. No allegation of false and false implication of accused- part of High Court's direction for compensation, set aside⁴².

Grant of compensation to accused- Absence of evidence to show false prosecution or any mala fide or malice like fact situation- Hence, order granting compensation set aside⁴³.

³¹ I (2018) CCR 482 (Del.).

³² Ram Lakhan Singh v. State of UP 2015 16 SCC 715

³³ S. Nambi Narayanan v. State of Kerala ISRO spy case: after 24 years, Supreme Court orders Rs 50 Lakh compensation for Ex- Scientist Nambi Narayan in false espionage case, FIRST POST (June 14, 2023). WP(C). No. 30918 of 2012 (L)(India).

³⁴ Ayodhya Dube & Ors. v. Ram Sumar Singh AIR 1981 SC 1415

³⁵ Akshardham terror attack: Supreme Court refuses compensation plea of acquitted persons, THE INDIAN EXPRESS (July 05, 2023).

³⁶ PTI, Akshardham Terror Attack Case: SC Refuses Compensation Plea of Acquitted Persons, THE INDIAN EXPRESS (Jul. 05, 2023, 5:29 PM), <https://indianexpress.com/article/india/india-news-india/akshardham-terrorattack-case-sc-refuses-compensation-plea-of-acquitted-persons-2895251>

³⁷ Srinivasa Rao Apparasu, 10 Suspects in Hyderabad Suicide Bombing Case Acquitted, HINDUSTAN TIMES (Aug. 10, 2017, 6:21 PM), <https://www.hindustantimes.com/india-news/10-suspects-in-2005-hyderabad-suicidebombing-acquitted/story-fIIo2EQzHjVARjq3WhFDdO.html> (accessed Jun 4, 2023).

³⁸ Mehmood Nayyar Azam v. State of Chattisgarh (2012) 8 SCC 1

³⁹ In re: Inhuman conditions in 1382 prisons (2017) 10 SCC 658

⁴⁰ Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble (2003) 7 SCC 749

⁴¹ Ankush Maruti Shinde (2019) 15 SCC 470

⁴² State of West Bengal v. Babu Chakraborty (2004) 12 SCC 201

⁴³ State of Rajasthan v. Jainudeen Shekh (2016) 1 SCC 514

Remedy available only in clear and incontrovertible cases and not where there is no evidence of torture except statement of victim and it is not supported by medical evidence or visible marks of injury⁴⁴.

While reiterating power of the constitutional court to award compensation and/or issue directions/guidelines in cases of custodial violence/ torture, Supreme Court declined to issue mandamus for enactment of a standalone law in lines of UN Convention as it would amount to usurpation of essential legislative function⁴⁵.

In this very famous case of the release of person because of false prosecutions. A writ petition was filed before the Hon'ble Supreme Court for the release of several undertrial prisoners of Bihar. It was observed that many prisoners have been detained for a longer period than prescribed. The apex court ordered the release of several such prisoners. This case shows how the concept of a miscarriage of Justice is still prevalent in the Judicial system and the worst sufferer of them are poor people⁴⁶.

In such case, a 19-year-old boy was booked under the Terrorist and Disruptive Act (TADA). Ajmer Court sentenced him to Life Prosecution. The issue came before the Supreme Court. Apex Court in May 2016 acquitted him from all charges and set aside his sentence of Life prosecution. The young boy spent his 23 years of life in jail framed under false charges. Interestingly, he was not awarded any compensation by the Court⁴⁷.

In the case of Assam's Madhubala Mondal, Mondal was a 59-year-old woman who was sent to jail and was falsely detained for three years in Assam without being guilty in the case. It was said the police were mistaken in identifying her. This mainly highlights the need to bring accountability to the criminal justice system of India⁴⁸.

In the case of State v Saqib Rehman and Others, the court held that the accused was prosecution due to false pieces of evidence framed by police officers. But neither the claimant was awarded compensation nor were the police officers punished for the same⁴⁹. In the case of Babloo Chauhan v. N.C.T Delhi, it was held that the practice of false prosecution leads to miscarriage of justice and that it should be curtailed by legislation through various remedies to impart justice fairly and reasonably⁵⁰.

In this case it was provided that the monetary compensation shall not be provided in all the cases of violation of "Right to life a personal liberty." Supreme Court refused to award any monetary compensation to the victims because the court was not satisfied with the evidences 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 court's discretion. But due to this exclusive power of court there is still no set or standard framework for providing monetary compensation to victims of false prosecution. Even though the law commission has recommended the various guidelines for the same but all 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 nature⁵¹.

In this case 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 innocent⁵².

In some case the court has confirmed the compensation to the victim of false prosecution from the state for harassing the victim by instituting proceedings against such person⁵³.

The Supreme Court of India in this case has said that Right to Reputation is part and Parcel of Right to Life and Personal Liberty guaranteed by the Constitution of India⁵⁴. The same was reiterated by the Hon'ble Supreme Court in 2014 in the case⁵⁵.

In this case the petitioners came up with important issues concerning the police powers and if monetary compensation should be awarded for established violation of Fundamental Rights, as under Article 21 and 22 of the Constitution. The court decided that Custodial violence, including torture and death in the lock ups,

⁴⁴ Sube Singh v. State of Haryana (2006) 3 SCC 178

⁴⁵ Ashwani Kumar v. Union of India (2020) 13 SCC 585

⁴⁶ Hussainara Khatoon & Ors v. Home Secretary, State of Bihar MANU/SC/0119/1979

⁴⁷ Mohammad Nisaruddin Case THE HINDU, <https://www.thehindu.com/news/cities/mumbai/prisoners-of-the-system/article17333262.ece>, (accessed Jun 4, 2023)

⁴⁸ Assam's Madhubala Mondal, Mondal case

⁴⁹ State (NCT) Of Delhi v. Saqib Rehman @ Masood & Ors on 1 August, 2012

⁵⁰ Babloo Chauhan @ Dabloo v. State Govt. Of Nct Of Delhi on 30 November, 2017

⁵¹ Sube Singh v. State of Haryana 2006 3 SCC 178

⁵² State of Bihar v. Rameshwar Prasad & Another

⁵³ Ruchika Jha, "False Prosecution: How Can State Undo Harm?" LTJ, March,14 2020, <https://Lawtimesjournal.in/False-Prosecution-how-can-state-undo-harm/> (accessed Jun 4, 2023)

⁵⁴ Deepak Bajaj v. State of Maharashtra and Ors, AIR 2009 SC 628

⁵⁵ Umesh Kumar v. State of Andhra Pradesh (2013) 10 SCC 591

strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be arose from law but also that the same should be limited by law. To check the abuse of police power, transparency of action and accountability were the two safeguards laid down by the court, 11 directives has been issued by the court where it spelled out the rights of an arrestee or a detainee and the manner in which the arresting or detaining authority is expected to behave, including the written record of arrest, informing of arrestee's family of his arrest, medical examination on request, among others⁵⁶.

In this case, two persons were unauthorisedly detained by an army officer and could not be produced in court even after filing a writ of habeas corpus. They were assumed to have met an 'unnatural' death in the custody of the army officer based on circumstantial and prima facie evidence. The Supreme Court of India stated that the Union of India "cannot disown" the responsibility for the act. The Supreme Court of India awarded exemplary damage "in the nature of compensation" to their widows to be paid by the state⁵⁷.

In this case, the plaintiff suffered a false order of detention of one year in a central prison. Subsequently, the order was quashed and he was offered compensation. It was also noted by the Madras High Court that he was an agriculturist and from a respectful family who protested the forceful conversions of poor Hindus to other religions with money and other benefits. He also sent complaints against the defendant IAS and the Inspector of Police for failing to stop forceful conversions. In return, they conspired against the plaintiff and caused his false loss. The Court held that he suffered from false prosecution due to "false exercise and misuse of power" and was entitled to get compensation⁵⁸.

In this case, the Allahabad High Court held that the arrest of a citizen without any lawful justification is the total restraint of his physical liberty and the plaintiff is entitled to damages for the wrong of false prosecution⁵⁹. False prosecution can be committed by words, acts, or by both⁶⁰.

On January 29, 2010, four youths Dalip, Deepak, Ravinder and Vikas were arrested by the Jahangirpuri police in Delhi and charged with offences of robbery and attempt to cause death or grievous hurt. During the trial, the victim testified that he had given false testimony against the four at the behest of a businessman. Acquitting them, the trial court ordered a compensation of Rs 50,000 to each of them. While accepting that a serious 'lapse' had been committed, the police opposed the compensation. They went to the high court and lost. Then they went to SC, which held, "The people who are framed up are also victims of crime and hence, the authorities are obligated to pay compensation to them for agony and harassment⁶¹."

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

⁵⁶ D.K.Basu v. State of West Bengal

⁵⁷ Sebastian M. Hongray v. Union of India and Others (1984)

⁵⁸ T. Subramani v. State of Tamil Nadu (2012)

⁵⁹ Jwala Prasad v. S.N. Varma (1970)

⁶⁰ Dietz v. Finlay Fine Jewelry Corp., 754 N.E.2d 958 (Ind. Ct. App. 2001)

⁶¹ State v. Parvez Ahmad Radoo (2014)