

## **MISCARRIAGE OF JUSTICE: SOLUCIONIS ULTRICIES FOR VICTIMS**

**(By Varun Vikas Srivastav and Nishtha Kheria)**

### **Introduction:**

A miscarriage of justice is also referred to be failure of justice. Such miscarriage occurs when any person gets convicted or is provided with any kind of punishment for the crimes which was not committed by them. This term is usually used as a defense in the criminal proceedings. Each miscarriage of justice is also a manifest injustice. The wrongful conviction in some cases do not even get convicted for years or until the innocent person gets executed or is dead.

The miscarriage of justice can be evident from many cases happening daily in our Indian justice system. Some of them are explained through this article.

Dr Kafeel khan who was detained in December 2019 because of the speech he gave at the Aligarh Muslim University was provided with the release on 1st September 2020 by the order of the Allahabad high court. The court said that the speech Dr kafeel gave did not promote any kind of hate or violence.

On December 13 2019 a FIR was registered against him under Section 153 A of IPC which stated the promotion of enmity between different groups on the grounds of religion. After Dr kafeel khan was detained the government of Uttar Pradesh had invoked the national security act (NSA) which was against Dr khan. The court had stated that it was illegal to impose such severe acts on the grounds which were stated by the authorities. Dr. Khan is in prison since January 29 2020 on the charges of delivering a confrontational speech at the University of Aligarh which was given during the protests of the citizen amendment act (CAA).

A habeas corpus writ petition was filed by Nuzhat Perween the mother of Dr. Kafeel for the release of his son and said that the speech did not contain any matter of hatred or violence. The high court bench which comprised of Justice Govind Mathur and justice Saumitra Dayal Singh had permitted to file the writ.

But after when he released the National Security Act (NSA) got imposed upon him. Therefore, it was stated that his detention was illegal because of which it was passed to the competent court to nullify the effects of bail which was granted to him.

In another case, a petition was filed by Yash Giri who was a resident in Noida before the Supreme Court in which he wanted to seek direction to the government so that they can enact laws for

providing compensation and rehabilitation to the people who are wrongly acquitted and kept in jail for wrongful prosecution for many years. Such people lose their respect in society and feel a lot of agonies.

The petition even asked for interpretations of Section 2(w) and Section 357A of Cr.P.C which refers to the victim compensation scheme. It is high time when the government needs to prepare schemes so that they can provide funds as compensation to the victims after which they have suffered a loss or any injury.

According to the Indian constitution when a person is wrongfully prosecuted and is put in jail for years then it violated the fundamental right of life and liberty under Article 21 and the right to equality under Article 14. Therefore, due to the compensation, the victims will be able to gain back their reputation a little. This petition even highlighted the provisions of Article 14 of the ICCPR.

According to the statistics released by the national crime relations bureau, it is evident that there is a rise in the population of convicts as the conviction rate is 48% and more than 50% is the rate of acquittal. Thus, the people who are wrongly acquitted should be provided with adequate compensation.

The wrongful conviction is an evil which does not stop to any gender or profession. Such as in the case of Assam's Madhubala Mondal is not occasionally as it combines with several cases that carry unlawful arrests and detentions that have caused individuals to spend numerous years in imprisonment without being liable for the crime in India.

Mondal was 59-year-old and was wrongfully confined for three years in the Assam as a consequence of a Mistake that has been done by the police in a case of identification. It is important to highlight such activities as the innocent become the victims of such crime due to the fault in the criminal justice system.

Contemporary Judgments and order by the honorable Courts state that the individual has often been falsely framed and indicted for crimes against the state, especially those connected to the terror and national security.

Under the *International Covenant on Civil and Political Rights* (ICCPR), endorsers are prescribed to take steps to assure the right to compensation for illegitimate confinement and arrest. While India had declared reservations while endorsing the ICCPR that the Indian legal system

doesn't recognize the right to compensation for survivors of such unlawful confinements and imprisonment, that the jurisprudence conceives by the Honorable Supreme Court of India that has made this reservation policy superfluous.

In several judgments as given by the Supreme court of India, it has been stated as granting of compensation as an essential public law relief for the violations of fundamental rights, includes the wrongful or unlawful confinement and detentions. For instance, the Supreme Court, in the previous Year grant the compensation of 50 lakhs to the ISRO former Scientist that is Nambi Narayanan, 24 Year after he was unlawfully confined on the charges of disclosing official secrets and data to the spy Racket. The payment for the compensation was granted by the court 24 years after the wrongful detention is a critical admonition of the commitment to correct wrongs caused by the unlawful detentions and confinements promptly and to preserve privileged. Victims of such accusations can grant it without waiting for another numerous years of litigation before the courts as it is statutory recognition of the right to compensation in the matter of wrongful confinement and detention.

Due to such unlawful confinement, arrest, and detention, victims not only loss the years but also it creates the social stigma in the society and the boycott even after being released as the impression and spot was there in the mindset of people and that is not easy to be removed. This is crucial as well as conspicuous from emergent narrative accounts as by individuals who have been the victims of such unlawful prosecutions.

A nation such as The United State of America, United Kingdom, Canada, Australia, Germany, Europe, etc. have executed a statutory right to compensation, but it is defined to an unlawful principle by the virtue of the Final order given by the court and after all the pathway of appeal have been drained and a new matter surfaces, which then can prove that the convicted person was although factually Innocent and not guilty of such offense. In its 277th Report entitled "***Wrongful Prosecution (Miscarriage of Justice); Legal Remedies***" in August 2018, the Law Commission of India has accurately peaked that the process and exercising done by the Western Countries would be inadequate to direct the systemic shortcomings for the criminal justice system in India, where victims who have undergone through numerous years in the imprisonment even previous to the convictions.

In India, it is been stated by the law commission of India that the standard of Wrongful Prosecution should be applied in all spheres. This Standard will apply to those instances, matters, or cases where the authority or prosecution falsely, mistakenly, negligently, or maliciously investigated or prosecuted a person who was not found or proven guilty of such offense.

The Law Commission also recommended distinct specific amendments in the Code of Criminal Procedure, 1973 for stating that India must accomplish its international commitments as well as to incorporate the arrangements and provisions for compensation to such victims. Additionally, the commission even presented a draft amendment bill for the Cr.P.C. Therefore, the Indian Parliament has not compensated any heed to the considerations, proposal, and instructions to the law commission to date.

However, as a consequence, there is a lack of monetary resources and information's about the Supreme Court judgments, as several individuals may not even consider directly approaching the honorable Supreme Court of India to pursue justice and compensation. A legal and lawful remedy to the citizens can only be provided by the statutory right to compensation that will subsequently form the state officials in particular the police and authorities liable for the same.

### **So therefore is there an end to this practice in our justice system?**

This system can be curbed if the subsequent steps are followed. Through these steps a wrongful convict will be able to live their life again with dignity in the eyes of the society.

### **The Reasons for providing compensation:**

Even after a person is proven to be innocent still it is a huge challenge for the wrongfully convicted to re-enter society. If they are not even provided with the compensation then their injury even increases.

### **The state must assist the wrongfully convicted in the following ways:**

- Providing monetary support according to the set minimum amount that they served in the prison.
- Providing financial support for their basic needs such as food, clothing, and transportation.
- Assisting in securing affordable housing.
- Providing proper medical care or psychological care as required.

- Assisting with education and formation of skills for a job.
- Providing legal assistance for expunging the criminal record as well as gaining back the custody of their children.

### **The Drawbacks of the existing legislation:**

#### **There are various drawbacks of the legislation which is existing in present:**

- There is no sufficient monetary assistance for providing compensation available.
- The present legislation refuses for the enactment of the uniform or statutory access for the wrongful conviction compensation.
- They deny the remedy which the people deserve who can prove that they are wrongfully convicted which emerged by the intentional civil rights violations or simple errors.
- The compensation is prevented from the people who are unrelated or are felony convicts.

### **Steps to be taken to ensure fair compensation in each state:**

A state should take various steps so that the criminal justice system can maintain its integrity which is that the states which do not contain the statutes for the compensation then they should form laws so that the convicts can receive compensation equally. The statues formed should contain the provisions so that the convicts can receive funds are services so that they can return to the society with respect and they have the access to house, food, medical care, job skills, education, etc so that they get successful to rebuild their lives.

### **Conclusion:**

A person who is wrongfully put in prison gets his life complete loss in freedom because of which they are not able to enjoy some years of their lives. They are deprived of their family as well as friends and after they are released from prison after some years they are deprived of food, clothing, housing, etc. even if their criminal records are cleaned, they are proved innocent but still they do not receive the respect they deserve from the society. Therefore, the state has the responsibility to restore the lives of the wrongful convicts.