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Victim Compensation For Wrongful Prosecution/Conviction-Indian Judiciary Yet To Evolve

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Humans of Bombay (a popular photoblog) recently [raised ₹23 lakhs](#) for Ali Mohammad Bhat, a carpet weaver from Kashmir who had been wrongfully imprisoned by the Indian state for 23 years on trumped-up charges of terrorism. This was related to the twin bomb blasts in [Lajpat Nagar](#), New Delhi and [Samlet](#), Rajasthan on two consecutive days in 1996. Ali is neither the first nor the last, person to be wrongfully convicted by the Indian judiciary. Our newspapers, magazines and social media accounts are peppered with such instances. Their frequent occurrence and wide coverage even risk de-sensitization towards these matters. Unfortunately for those countless, unnamed individuals, there is no good Samaritan starting a crowdfunding campaign in an attempt to get them back on their feet. Even if there were, is it the duty of a group of private individuals to rectify the wrongs of the state? The Indian state and society are indebted to these individuals, who have been punished for crimes they didn't commit. What can help is a victim compensation fund, but not in the form that is presently envisioned by the India legal system.

Victim compensation is an arrangement under which the victim

of a crime is awarded a sum of money for the hardships they have faced. This remedy is available at the conclusion of a criminal trial where the accused is found guilty. Under [section 357](#) of the Code of Criminal Procedure, 1973 the court can fine the guilty individual and use the amount to compensate the victim of the crime. [Section 357A](#) directs the various states to set up victim compensation schemes, covering those situations where the accused is acquitted or not tried or the amount awarded under section 357 is inadequate. However, the assumption made in these sections is that the 'accused' is a person or a group of persons. While crimes can be committed against the Indian state or its constituent organs, the state itself cannot commit any offences (punishable under the IPC) against its citizens. State crimes are the purview of international law and not criminal law.

How then can the state be held accountable for wrongfully confining its citizens? An imperfect answer lies in civil law. There have been a few instances when the state has been held accountable. In [Rudul Sah v. State of Bihar](#) (1983) the Supreme Court, recognising the violation of article 21 rights, ordered the Bihar government to pay ₹30,000 for detaining the petitioner for fourteen years after his acquittal. In [Bhim Singh v. State of Jammu and Kashmir](#) (1985) the Supreme Court directed the J&K state government to pay ₹50,000 to the MLA of the J&K state assembly who was illegally detained and not produced before a magistrate within twenty-four hours of his arrest. Besides serving as rare examples of answerability, these cases provide an insight into the problems posed by an ad-hoc compensation scheme, one that functions on the whims of the judiciary. Rudul Sah received a meagre sum of ₹30,000 after having spent fourteen years wrongfully confined in prison, while

Bhim Singh's detention of six days, a mere fraction of fourteen years, warranted a compensation of an additional ₹20,000. This discrepancy in application is arbitrary and unjustified, and will not be done away with unless a uniform policy is put in place.

The above cases are instances of wrongful action on the part of the executive. When it comes to judging its own actions, the Indian judiciary is not one to admit its mistakes. In July 2016, the Supreme Court refused to entertain the compensation pleas of the six persons wrongfully accused in the Gujarat [Akshardham temple blast case](#), on the ground that it would "result in a dangerous phenomena". They had been in custody for eleven years. This seems to be an indirect admission of guilt. The Court seems to be aware of the magnitude of the problem; of the numerous times that the Sessions judges have prosecuted and convicted the wrong persons, and the High Court and Supreme Court judges have affirmed it. It knows of the floodgates that could be opened following the acknowledgement of their errors. Therefore, instead of tackling the problem head-on, it prefers to bury its head in the sand.

We can look towards those from whom we have inherited this criminal justice system for an answer. [Section 133](#) of the Criminal Justice Act, 1988, a UK legislation, provides for compensation for miscarriage of justice. The scope of the term "miscarriage of justice" was expanded upon by the United Kingdom Supreme Court in [R \(Adams\) v. Secretary of State for Justice](#) (2011) where it rejected the argument that only those who could prove their innocence would be entitled to compensation for miscarriage of justice. Miscarriage of justice also covers those cases where fresh evidence negates the reasonable possibility of the accused committing the crime, or if a conviction results from a serious deficiency in the investigation

process or conduct of the trial. This provision for compensation is a reproduction of [Article 14\(6\)](#) of the *International Covenant on Civil and Political Rights*, of which India is also a signatory. However, India had made [reservations](#) regarding this aspect when it signed and ratified the ICCPR, allowing it to turn a blind eye to this requirement. It is now time for that sight be restored and to stop this tremendous injustice.

The UK compensation scheme, however, is limited to persons who have been convicted; it presumably doesn't cover those individuals who have been wrongfully prosecuted and finally determined to be not guilty. Justice Muralidhar's opinion in a [2017 Delhi High Court judgment](#) highlighted the "urgent need... for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration". The Law Commission of India, in its 277th report, has suggested [certain amendments](#) to the Code of Criminal Procedure, 1973 to address the issue of wrongful prosecution. These recommendations were made in 2018. Since then, all that there is to show for progress is a [PIL](#) filed before the Supreme Court last month, praying that laws be enacted to provide compensation to individuals who have been wrongfully prosecuted and convicted by the state.

It is a common practice in India to [lock up Muslim youth](#) for any and every national security or terror concern. They, and others, languish in jail for several years until acquitted, if lucky. Those accused of being illegal immigrants and detained by the [Foreigner Tribunals](#) in north-east India are in a worse predicament. In the current setting, the wrongdoing of the executive or a private individual can be monetarily corrected but the (literal) misjudgement on the part of the judiciary cannot be rectified. This lack of judicial accountability creates perverse

incentives, where the state can freely confine and prosecute whoever they want to, even indulge in the targeting of racial and religious minorities, without any fear of sanction. Undoubtedly it is the marginalised sections of society who suffer as they don't possess the resources to hire good legal help and "buy" their way out of incarceration. This lack of accountability also creates inefficiency. We can no longer claim to be a legal system that lives up to the Benjamin Franklin ideal, that prefers to release a hundred guilty than to punish a single innocent individual. We seem to be punishing a hundred innocent because there seem to be no repercussions for doing so. These individuals are nothing more than mere names to the vast, impersonal criminal justice system: names on the case files, names playing the role of 'accused', names being imprisoned, names being released without so much as an apology.

Custodial violence and overcrowding of prisons are issues with our criminal justice system that have deservedly received a lot of attention. In these cases, the judiciary is on the side of victims. In the case of wrongful prosecution and confinement, it is the judiciary which is victimising innocents. "*Freedom for the wolves has often meant death to the sheep.*" Isaiah Berlin's quote aptly analogises the situation at hand. If the judiciary is so unconstrained, without even a semblance of monetary accountability, they are free wolves hunting down sheep. Should victim compensation schemes not allow justice to be brought to victims of the judiciary? The power exercised by the judiciary over its victim is no less than the power wielded by an offender. Wrongful prosecution/conviction can destroy lives just as much as murders and rapes. When the *raison d'etre* of the justice system is to keep wrongful conduct in check, there must also be a provision to keep the extraordinary powers of the judiciary

within check. A democracy can only exist within the closed loop of checks and balances; if the highest echelon is not answerable to anyone, we risk becoming authoritarian. If these powers are allowed to run free, without any curbs, the distinction between the criminal, and the state which brings that criminal to justice, is slowly eroded.

Views are personal only.

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