CHAPTER 1
THEORETICAL FRAMEWORK OF WRONGFUL CONVICTION

‗Once a man is convicted of an offence, and particularly once he goes to prison, he will begin to lose the approval and support of his law-abiding family and friends. His ties to them will be cut or weakened. He cannot, however, exist without a degree of social approval from another and less scrupulous source’. 1

1.1 Introduction

India is a democratic union administered by rule of law and it is subjected in the Constitution of India, which the citizens of this nation have assumed to themselves. Rule of law indicates that law is absolute and the rule of law is safeguarded where there is legal sanctions, which is always reachable and answers to the needs and difficulties of peoples in a reasonable and unprejudiced means. The expansion in growth of any nation is calculated by the ‘financial assets’ and ‘justice system’, which should follow the practice of speedy and fair justice. Our Constitution has assured its citizens a set of fundamental rights which are necessary human rights. The expedition for precision is the establishment of justice delivery machinery which seeks to promote and safeguard the rule of law. 2

The supervision of process of criminal justice endlessly advances in reply to the varying economic and social conditions. It is the primary obligation of the judicial entity to maintain the equilibrium, criminal law that worries with societal fortification and recommends guidelines of conduct to be spotted by altogether and on other side the freedom of the individual, safety and stability in the society or community. 3

2 BHARATI YADAV VS. STATE OF U.P. (NITISH KATARAA CASE) 2006(135) DLT620
“Criminal procedure” is conventionally conceptualized as the adjectival counterpart to substantive criminal law. It delineates the functions and defines legal regulation of criminal law’s application and enforcement. Criminal procedure law is regarded as the operational and institutional aspect of criminal law, which proposes how the criminal justice system should be made effective and viable. This functional aspect of criminal law operates in every country, since it is indispensable for preserving the rule of law by administering the constitutional promises.

Criminal procedural law is instrumentally valuable, since it is responsible for bringing the criminal justice ideals and objectives into reality. The normative considerations outlined in the procedural law serve as guidelines at every step of criminal adjudication. They describe the functions, define the powers and prescribe the procedural standards that are to be followed at every stage of pre-trial and trial.

Invariably, the objective of Criminal Procedural Code is to ensure that justice is delivered on time to the victims of crime. Justice can only be rendered effectively when the actual offender is arrested and charged with offense he committed. This can be ensured by obligating the police, investigating agencies, the prosecutors and the judges to fulfil their responsibilities and duties efficiently as per the laws devoid of any intended error. For establishing faith in the people of any country towards the legal institutions, the veracity and ethos of the criminal justice system need to be safeguarded. This endeavour can only be realized when the guilty are condemned and the innocents are exonerated from punishment.

It is an established principle that “searing injustice and consequential social injury is caused ... when the law turns upon itself and convicts an innocent person”⁵. Various fundamental principles like “presumption of innocence” and other principles have been incorporated in the criminal procedural code, to ensure that such injustice is not caused. One of such grave injustice is when an innocent is accused for a crime, he never committed. “Although there is evidence of its occurrence in most criminal justice systems, wrongful conviction remains underdeveloped from a criminological

⁴ R.A. DUFF AND STUART P. GREEN, PHILOSOPHICAL FOUNDATIONS OF CRIMINAL LAW, ED., PG. 381
perspective. The result of a confluence of factors and actors, wrongful conviction stands as evidence that criminal justice systems are not immune to error.6 “Erroneous convictions can have immeasurable consequences for exonerees, original crime victims, and families.”7

1.2 Wrongful Conviction - Conceptual Framework

A 'Wrongful conviction' at first hand is the condemnation and sentence of a man for a wrongdoing he didn't do. The term can likewise apply to blunders the other way—mistakes of exemption, and to common cases. In a few occurrences, a wrongful conviction isn't overturned for quite a long while, or until after the honest individual has been executed, exonerated, or has been killed.8

Many times, Wrongful convictions are referred to by capital punishment critics as cause to dispense with capital punishments to abstain from executing blameless people. As of late, DNA evidences has been utilized to clear many individuals wrongfully sentenced.9

The notion of unlawful condemnation devours relevant consequences for the present prevalence of review, such that the Supreme Court generally exercise its authority for something that is just presented to it by the proceedings of subordinate judiciary and in a few times only it directly interferes where there is presumption of Innocence at the district court level.10

---

10 “We’ve Had To Borrow From Our Life Insurance Just To Live. We Will Have To Heat Our Home This Winter By Burning Wood From A Nearby Lot. We’ve Sold Everything We Own, Including Some Family Heirlooms. My Husband And I Are Hard-Working People. We Aren’t Looking For A Free Ride. But We’re Being Completely Devastated By This Criminal Who Reached In And Destroyed Our Lives.” - Crime Victim (Herrington Et Al., 1982, P. 38)
1.3 Definition of Wrongful Conviction

The term wrongful conviction has been in the western countries, particularly in U.K., U.S.A., where the problem of wrongful conviction is seen as a problem of violation of human rights of convicted person.

The term wrongful conviction here is analysed in term of combination of two concepts i.e. –

1. Wrongful
2. Conviction

Wrongful here means where the investigation, recording of confession, identification by witness and the right to a counsel laws are not followed or where the conviction appears to be biased, prejudiced or not in the compliance with the constitutional guarantees.

Conviction here is as in the post adjudication stage function where either the Trial Court or first Appellate Court has adjudicated the case wrongly. Thus, wrongful conviction is to be identified on the basis of the final appellate court rulings that may decide about ‘wrongfulness of conviction’ on account of multiple factors.

Victimization of Wrongfully Convicted

Ensuring protection of an individual in the criminal justice system, law and order are integral parts of a civilized society. It is the responsibility of the state that an effective criminal justice system is maintained in order that we maintain law and order. If a person is wrongfully convicted, then it is only an indicator of the state’s failure in that responsibility. There is intrinsic in this duty the responsibility to bring the wrongfully prosecuted to justice as much as offering redress to the victim. One can understand that the victim of wrongful conviction suffers two ways in the criminal justice system.

Firstly, it is personal, because it is the victim of wrongful conviction who suffered jail time. Secondly, the victim of wrongful conviction is condemned for rest of his life with societal demise and hate, due to the failure of criminal justice system.\(^\text{13}\)

Traditionally, when a person is arrested in different charges, he is presumed guilty where due to lack of responsibility played by the investigating officers, political corruption, media trial, false confessions if there leads to wrongful conviction of a person who is otherwise innocent. Truth is that inadequate attention is paid to the welfare and concerns of the victim of wrongful conviction.\(^\text{14}\) These people are punished in such a way that even if they are wrongfully convicted and are later exonerated, but, still after going into the society, they are publicly hated, demised due to public disgust and hatred for a particular crime or the story attached to it.\(^\text{15}\)

“We are familiar with the procedure that in every civilized state a suspect who commits a crime is apprehended, brought to trial, and if found guilty convicted and sentenced. I ask the question, does this achieve 'complete justice' as constitutionally envisaged. I ask the further question whether the criminal justice system ends there. What if the person who is arrested is a victim of malicious prosecution, what if the person is convicted in a rape case in absence of any DNA sample where it would have made him innocent? Is the victim consigned to the limbo of forgotten things?”\(^\text{16}\)

On May 16, 2014 the Supreme Court of India acquitted the six defendants, stating in their judgment: "We intend to express our anguish about the incompetence with

---


which the investigating agencies conducted the investigation of the case of such a
grievous nature, involving the integrity and security of the nation.”

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. Even after almost 70 years
being an independent nation, the criminal justice system has failed to stop certain
evils that come in subordination of being wrongfully convicted, that are-

1. Illegal detention by the police
2. Torture
3. Malicious methods of investigation
4. Harassment of family members
5. Continuing surveillance even after exoneration.

Above are some of the many factors that are weakening the stature of the criminal
justice system where a common thought of process which evolve is that once an
individual is arrested for a serious crime, he is not coming out as a dignified member
of society even after an exoneration by law.

These principles are fundamental to the governance of the country and it is the duty of
the state to apply these principles for it has pledged to establish a just and fair state
committed to social, economic and political justice which includes the promotion of

17 ADAMBHAI, SULEMANBHAL, AIMERI & ORS. VS. STATE OF GUJARAT, NOS. 2295-2296 OF
2010 (SUPREME COURT OF INDIA, CRIM. APPELATE JURISDICTION, 5-16-2014)”
18 MURTY, K. Encountered With Urban Decay Because Of Deindustrialization, Engineering
Diary For U. Encountered With Urban Decay Because Of Deindustrialization, Engineering
Imagined, Government Lodgin. -China Government Funded Administration, 7(7), 82-83.
the welfare of the people by securing and protecting, as securely, as it may, a social order in which justice shall guide all institutions of national life.

On the other hand, we have the chapter on provisions for the protection of the accused from the time of his arrest until the end of his trial. Victims here as we all know are persons who have individually or collectively suffered torture, including physical or mental injury, emotional suffering due to insult of individual and family due to wrongful conviction, economic loss or substantial impairment of their rights guaranteed by the constitution, but ironically, we do not make similar provision to address their suffering in the meticulous manner in which they deserve to be.

1.4 General issues of wrongful conviction

The major causes for the failure of Criminal Justice System can be enlisted below:

- Lack of sincerity and efficiency been followed and practiced which leads to doubts leading to loop holes in investigation and framing of charge sheet.

- Damaging and misappropriation of evidences by the person involved in the case or in few cases the investigation officer is found guilty of tampering with the evidence.

- Misleading the story and fake identities makes the investigation more prone to failure.

- Caste biasness against the people which are also the defendants wrongfully arrested.

- Inability of the witness with respect to identifying the person who is responsible for the crime.

- Mistake of not giving enough consideration by the police department for the person having expert opinion in a case.

- False Evidence or contaminated evidence

- Mala fide and Doctored Forensic evidences.
• Wrong or fake confession taken under duress and pressure by the police investigation officer.

• Corruption and political interference is also another prominent malpractice that lead wrongful conviction.  

The failures of granting support in providing access to justice is one of the main arguments against the death penalty. It has been seen in so many cases where the person is wrongfully prosecuted / convicted, later got exonerated posthumously. This defeats the idea of Rule of Law. In a number of instances, the under-trials spend as much as 10 years or more in the wait of getting acquitted in light of the true evidentiary proposition which only comes in few cases or they just never come up due to least interest by the investigation officers. Even if the wrongfully convicted person who has been awarded death penalty is still alive and waiting to be executed, eventually sustains irreversible aftereffects, pain and sufferings attached to it which his family has to live with for the rest of the life.  

Misguided witness identification parade is the foremost reason of wrongful convictions. This figure is the same as the extent of DNA tests in assault cases led by the NCRB in which the DNA did not coordinate the erroneously recognized suspect. The human memory does not record all data like a video recorder; it drops most data out of here and now of memory and stores the focal, yet not fringe, components of those occasions in long haul memory. This makes facial identification review to some degree questionable. Occasions amid a wrongdoing, for example, extraordinary pressure or concentrating on a weapon, diminishes facial review by victims and witnesses. Also, oblivious transference can lead observers to superimpose the identity of somebody seen earlier yet not outstanding onto the memory of the culprit. Memory is dynamic and can change from the originally seen identity. Memory is likewise

19 BARRY SCHECK, PETER NEUFELD & JIM DWYER, ACTUAL INNOCENCE: FIVE DAYS TO EXECUTION AND OTHER DISPATCHES FROM THE WRONGLY CONVICTED 246 (2000).


All European countries allow defendants to file a petition of revision in situations where evidence turns out to be false or when new evidence becomes available that was not available at trial. The petition for revision allows the defendant to file a request to the court for a new trial. See
pliant and can change as due to been affected by recommendation. These and different
elements demonstrate that witness to identify should ought to be gotten with sincere
diligence and caution after doing all interrogation and investigation but then police,
prosecutors, and particularly judiciary have a tendency to seldom distrust witness
identification. 21

Difficulties by witness ID parade becomes full of doubts and weakness as due to
malicious police process. Sometime what happens is that the investigation is relied
upon just photos and the witness is never put to identify a lineup of accused and just a
photo option is there. 22

The issues and disputes about the working of forensic scientists and examiners is
another reason of wrongful convictions. There are variety of types of errors in
forensic evidence which also contain problem within the method.

It should be noted that sometimes expert evidence is more relied on scientific testing
which is done by comparing that is relied upon the understanding and calculations
done by subjective evaluation by the experts. Where the evidence available is in the
form of live bullet shells, finger print, foot prints, or any other prints like tire
impressions, in this case the possibility of error is very less.

It will be not wrong to say that if evidences of this category are set unnoticed or
uncalled, then it will only lead to malicious or failed prosecution resulting into
wrongful convictions in total. There are a number of other ways that comprise expert
evidences like analysis of handwriting which in turn require more subjective closer
scrutiny for performance of satisfactory procedure. Another progress which now can
be updated is the ‘hair profiling and identification’, which has been replaced by the
process of DNA profiling and identification consisting of samples from rape, murder,

21 D. Michael Risinger, Innocents Convicted: A Observationally Advocated True
Wrongful Conviction Rate, 97 J. CRIM. L. & CRIMINOLOGY 761, 773 N. 19 (2007)
(Finding, IN LIGHT OF INVESTIGATION FROM CLAIMING SIXTY-TWO DNA EXONERATIONS
SIMILARLY AS 0F 2000, THAT MIXED UP ONLOOKER ID NUMBER WILL BE THE MOSSycup
OAK BASIC FACTOR); Samuel R. Terrible ET AL., Exonerations IN THE United States
OF CONTEMPLATE INFORMATION THAT THOSE “Most Normal Reason For Wrongful
Convictions May Be Onlooker Misidentification”).

22 Edwin M. Borchard, Convicting Those Innocent: Errors About Criminal JusticeXIII
(1932).
assault etc. which has been considered as admissible in court but with strong accuracy and this procedure has always faced criticism.

“The theory behind polygraph tests is that when a subject is lying in response to a question, he/she will produce physiological responses that are different from those that arise in the normal course. During the polygraph examination, several instruments are attached to the subject for measuring and recording the physiological responses. The examiner then reads these results, analyses them and proceeds to gauge the credibility of the subject's answers. Instruments such as cardiographs, pneumographs, cardio-cuffs and sensitive electrodes are used in the course of polygraph examinations. They measure changes in aspects such as respiration, blood pressure, blood flow, pulse and galvanic skin resistance. The truthfulness or falsity on part of the subject is assessed by relying on the records of the physiological responses.”

Here the most important factor is that because of lack of professional supervision, the forensic labs being substandard. This results into failure of criminal justice system and imbalance in the process of rule of law.

It is very difficult to understand that when it is been clearly submitted by the police rules and the directions of the Supreme Court, that no third degree treatment will be given to any person in custody, then how come a person is blamed for false confession or for confessing under duress. As according to the report by the National Crime Report Bureau – 20-22 % of the confessions or admissions is false or under duress leading to wrongful identification and wrongful arrest and commencement of trial and conviction against an innocent or guilty person. It should be known that the system of police process is guilty for imposing unnecessary force on the accused or under trial to extract confession or admission where, the process of imposing physical or mental pressure come into force which has been narrated 100 of times by people exonerated or coming out on bail. They just don’t put it on record for the fear that if they might again get framed and they have to go through all that suffering again.

23 LABORATORY PROCEDURE MANUAL - POLYGRAPH EXAMINATION (DIRECTORATE OF FORENSIC SCIENCE, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, NEW DELHI - 2005)
Police department has always been targeted as an organization who works in such a frame that they presume a person accused as the person responsible for the offence, where the investigation is still pending.

The right to have a legal representation and right to legal aid is something that guarantees that it’s the right of every citizen in India that they will get full representation and every assistance will be provided to them to fight for their rights whether they are guilty or not. This right to counsel is sometimes projected in such a way that what really matter is only that the person should be defended by a legal counsel but its implied that the legal counsel will be competent enough to represent diligently and efficiently. But if we go to the facts and figures that have been seen through the literature review, the efficiency of a counsel is in a serious doubt as most of them are just incompetent enough to defend their client efficiently which is an issue.

Prosecution or the office who represent the state, city or government – have their own identity guided as under with set of rules and they have also been surrounded by duties also. It’s the duty of the prosecution to clearly present the case. the idea is that it’s the prosecution that commands the direction in which the trial will go and if in that process if the prosecution fails to perform its duty efficiently than it’s like the dawn of the criminal justice system. it is very visibly seen in many cases that the case got deflected because of some malpractice done by the prosecution. It is not wrong to say that in many cases the prosecution gets influenced by political agendas, specially at the level of district where they are only been appointed as by the pleasure of the state and law department of the state on rolling basis of districts. The idea is that the malpractices of corruption, misrepresentation, misleading the court is very evitable if the prosecution is not performing its duty efficiently and which will lead into failure of the case and the person standing accused will be denied justice.

Getting it done, police examination is the patient, orderly, and impartial look for, revelation of, and assessment of every single applicable certainty of a presumed offence happened. The objective is to understand that whether an offence ever happened and how to recognize and catch the perpetrator(s). It can all be corrected and rejuvenated by creating strong periphery around the principles of criminal law.
On the other hand, if we see towards European nations, where interrogations and investigations is managed by investigative judges who are very much prepared legal officers in national services (offices) of equity, Investigative procedures are been followed (beside government cases) is completely under the control of nearby police divisions. European police reports are exceptionally point by point where some portion of the official dossier are equipped to finding out reality; American reports are interior archives that serve capacities other than advising the indictment, for example, assessing staff. Police are not particularly prepared to incorporate exculpatory data in reports, in spite of requests to incorporate "all" data. a pressure to perform as fast as possible makes it troublesome for police to compose far reaching reports, and police are prepared to not report data that could prompt suits that are civil in nature and are against themselves or their concerned offices and its team.24

1.5 Historical Aspects of Wrongful Conviction

Wrongful conviction, as a major concern, was recognized initially in the United States beginning in the early 1930s. The subject of wrongful conviction caught the public and scholarly attention primarily based on individual cases in the U.S.; including cases like the “Dreyfus affair in the nineteenth century, the infamous case of the ‘Scottsboro boys’ in the 1920s, the case of Randall Dale Adams, Sam Sheppard case, the ‘Birmingham Six’ case and the wrongful conviction of Michael and Lindy Chamberlain for the death of their daughter in Australia”25

These cases had attracted much public attention due to the injustice suffered by the innocents and their families. Several books, article and research papers focussed on these cases, providing reasons and suggestions for the same. This led to exonerations of most of the cases that came under media limelight, where the jury was compelled to reconsider the facts and decide the case thoughtfully based on correct evidence. Most of the people who got exonerated, were sentenced to death. The exoneration of


25 ‘WRONGFUL CONVICTION: INTERNATIONAL PERSPECTIVES ON MISCARRIAGES OF JUSTICE’, ED. BY C.RONALD HUFF AND MARTIN KILLIAS, PG. 3
the wrongfully convicted individuals was, indeed, the major factor for identification of wrongful conviction as an impediment to criminal justice system.

Numerous reasons can be attributed to the exonerations of individuals. The progress and development made in the field of forensic science such as the DNA testing of the evidence has contributed immensely to the convictions being overturned. “In one State, Illinois, the governor became so concerned about these errors and the possibility of executing innocent persons, that he declared a moratorium on the death penalty. A number of their states have discovered similar problems and have undertaken studies, imposed moratoria, or proposed possible moratoria while attempting to address the underlying problems that generate wrongful convictions and imprisonment.”

In the late 1990s, the subject caught much attention in the United States and Great Britain. In a study conducted during 1970, it was observed that more than 1,600 cases were overturned in the State of Germany, during a span of 30 years. The problem was due to several reasons like, inadequate interrogation by police, miss-identification by witnesses, falsely fabricated evidence by police or prosecution, wrong judgment by the jury etc. Though there has been ample of literature written on the subject, however most of them are focussed on a particular country or state. There is absence of “cross-national perspective”. Most of the books were focussed on either U.S system or U.K. system.

Wrongful conviction can be explained as a phenomenon “focussing exclusively on those who have been arrested on criminal charges, who have either pleaded guilty to criminal charges or have been found guilty, and who, notwithstanding their guilty plea or verdict, are actually innocent.” This definition is quite broad and general in nature. However, this definition is quite selective in the sense, that it excludes some of the variants of ‘miscarriage of justice’ like the under-trials or detainees who have been arrested by the police and had to send several years before their case was heard and they were subsequently acquitted. It also excludes those cases where the initial

26 IBID 66
27 HUFF, RATTNER AND SAGARIN (1996)
Wrongful conviction, though initially recognized in the U.S. and the U.K systems, has also been a failure of criminal justice system in other countries as well. It cannot be debated anymore that the criminal justice system of any country is perfect or devoid of any fallibility. It’s an impediment of the system that cannot be prevented even if all the procedures of fair trial are upheld. Countries where capital punishment is still prevalent, has reported the maximum number of wrongful convictions. Reasons and factors leading to wrongful conviction can vary from country to country, depending on the weakness of their system. For example, in Japan, the major factor leading to wrongful conviction is “prosecution’s failure to disclose exculpatory evidence”\(^\text{28}\). Whereas in our country, India, the reason can be chiefly attributed to prosecutorial misconduct, especially in high profile cases.\(^\text{29}\) In countries like China and United States, the abuse by police and their misconduct has accelerated the convictions of innocent individuals.\(^\text{30}\)

“Inadequate legal representation, shoddy police investigations, eyewitness misidentification, racial prejudice, and falsified evidence are additional factors that contribute to wrongful convictions around the world.”\(^\text{31}\) The incidence of wrongful conviction is maximum, where countries still have death penalty as punishment. In such cases, the individuals who have been wrongfully incarcerated suffer the most, since they are not only put behind bars but are executed in the name of ‘just punishment’. These victims don’t get a chance to fight for their innocence. Statistics have shown, in U.S. “143 people have been released from death row since 1973 on grounds of innocence”\(^\text{32}\). In the Country of Japan, four individuals who were sentenced to death were legally exonerated between the years of 1983 and 1989.

---

31 HTTP://WWW.DEATHPenaltyWORLDWIDE.ORG/Wrongful-Convictions.CFM#A1-1
32 HTTPS://DEATHPenaltyINFO.ORG/INNOCENCE-LIST-THOSE-FREED-DEATH-ROW
Later, in 2014, the case of an individual who is supposed to be the “longest serving death row inmate in the world” was exonerated by the court, after it was found that the evidence against him was falsely fabricated.

In China, after the much-publicized cases of wrongful conviction, the government was forced to change its procedural laws and policies regarding criminal trials. One of the cases where an individual was wrongfully convicted for murder for his own wife for 17 years instigated public outrage and initiated a public debate for the abolition death sentence. Similarly in Zimbabwe, a case where man was wrongfully convicted for the charge of rape, served five years before being legally exonerated was heavily criticized by the media and public. The High Court in Zimbabwe stated that the trial was “riddled with several and serious contradictions”.

In African Countries, like Malawi, the inefficiency and professional misconduct of the defence lawyers plays an important factor in wrongful conviction. The defence lawyers are often not trained properly, they hardly have the resources to investigate the case. The defence lawyers don’t meet their clients before the day of trial. It has also been found that the police officers are poorly trained, with respect to investigation. “Moreover, most prisoners in Malawi are unable to appeal their convictions since defence counsel are not automatically assigned to handle appeals. The lack of exonerations in many African countries should not be taken as evidence that all who are convicted are guilty; rather, there are simply no resources available for post-conviction investigations that are essential to uncover exculpatory evidence.”

A famous criminal scholar has stated that “For a long time, transnational comparative studies were a peripheral and none-too-important suburb of the empirical study of crime and social control...(but) how do we know whether, and to what extent, the

---

33 HTTPS://WWW.NYTIMES.COM/2014/03/28/WORLD/ASIA/FREED-AFTER-DECADES-ON-DEATH-ROW-MAN-INDICTS-JUSTICE-IN-JAPAN.HTML
34 HTTPS://WRONGFULCONVICTIONSBLOG.ORG/2013/08/15/MISCARRIAGES-OF-JUSTICE-IN-CHINA-PROMPT-NEW-GUIDELINES/
35 HTTP://WWW.HERALD.CO.ZW/HIGH-COURT-UPHOLDS-HIV-MANS-RAPE-APPEAL/
36 HTTP://WWW.DEATHPENALTYWORLDWIDE.ORG/WRONGFUL-CONVICTIONS.CFM#A1-1
United States is unique without implicit or explicit comparisons between the United States and elsewhere?\textsuperscript{37}

When we start the argument of the difference in perspectives of various countries in order to pursue the idea of justice then it’s not wrong to say that every justice system of a nation is either govern by inquisitorial or adversarial system. In context of the inquisitorial system, the judge asks the question and has the full liberty to consider the welfare of the state all along the trial or proceedings whereas in the case of adversarial system, the judiciary is more towards a passive role where the idea is to provide full credibility to final evidence presented by the prosecution and defense.

The idea of lapse of criminal justice system has significant impact for proper status of reconsideration, in that the High court / supreme court can generally only use its authority to make right the mistake done where there was miscarriage of justice (or "manifest injustice").

It is not wrong to say that the process of wrongful conviction in the beginning appears to be rightful process where the statement informing the facts and statements of the incident happened justifies the arrest of the accused responsible for that crime. In case, the conviction later resulted into exoneration because of the appeal filed by the wrongfully convicted and the apex court hence exonerate the individual, therefore makes the whole process of prosecution malicious. In the mean time when the criminal justice system is busy in prosecuting the wrongfully arrested and accused person, the local citizen frames a false and misguided belief about the wrongfully accused person. It is not wrong to say that the audience to address the issue of wrongful conviction varies from nation to nation but in general it is the society which needs to be protected from this malicious frame of criminal justice system.

The definitional issues, the accountability issues, the compensatory issues are the three major issues in the concept of wrongful conviction. The malicious prosecution is the biggest reason for wrongful convictions.

\textsuperscript{37} (ZIMRING, 2006;615)
The moral panic theory is one of the key factors leading to wrongful conviction in many countries. They immensely raise the chances of error in interrogation and prosecution. “Sometimes wrongful conviction occurs in a context of ‘moral panic’ due to certain highly inflammatory crimes or allegations of crimes that are especially detested by the public”\(^{38}\). The theory of moral panic implies to those cases that are highly sensitive and involve crimes of grave nature, e.g. sexual assault of children by their caregivers. Author Randall Grometstein, in his work has highlighted the concept of moral panic relating to ‘organized abuse of children’. This theory propounds that certain cases, especially relating to the vulnerable section of the society, leads to immense pressure on the police and investigative agencies to detain the culprit and award the convicted just punishment. In these cases, the police, the prosecution and even the judges are under huge moral stress to provide justice to the victim and to the society at large.

As in Indian perspective, In *D.K. Basu*\(^{39}\), the Hon’ble Supreme Court of India came up with some principles that created an alertness in the criminal justice system about the adeptness of **natural justice principles**. They were encompassed in eleven guidelines, which must be followed by a police official when an arrest of an accused person is made. Hon’ble Supreme Court observed that these guidelines will protect the interest of the accused since it will reduce unnecessary arrest and detention. The court additionally expressed that since the number of judges is not sufficient in our nation, the error of investigation group and the police office to play out their obligation with due steadiness will twofold the issues in the nation. It is because of this timely interference of the Hon’ble Supreme Court in many instances, there have been several constructive changes happened in the behavior of the police officials and government officials in conducting inquiry and in the administration of justice.

The Supreme Court observed that the problem of "Custodial violence" and misuse of police control isn’t just prevalent in India, however it is a major problem that has collapsed most of the criminal justice system in the world.

---

\(^{38}\) C. RONALD HUFF AND MARTIN KILLIAS, ‘WRONGFUL CONVICTION: INTERNATIONAL PERSPECTIVES ON MISCARRIAGES OF JUSTICE’, ED. BY, PG. 6

\(^{39}\) D.K. BASU V. STATE OF WEST BENGAL, 1997 SC 610, 18\(^{TH}\) DECEMBER 1996
Since the predicament is global and widespread in every country, hence it can be regarded a compelling concern on international platform. The Universal Declaration of Human Rights 1984, which assures security and protection of certain fundamental human rights, stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Notwithstanding the devout statement, the wrongdoing proceeds unabated, however every humanized country demonstrates its worry and makes strides for its removal.

The court pointed towards the disturbing concern quoting “torture is actually more prevalent now than ever before”. It expressed, ‘custodial torture’ as an extremely naked infringement related with human safety and security and humiliation, which harm, to a huge degree, the individual's identity. It is extremely an immediate attack upon human pride where the confidence and pride of the victim is shattered.

In response to the problem of illegal arrest and custodial violence, the court thought that is of utmost importance to issue some substantiating guidelines to be followed in all instances of arrest or detainment till proper laws are made for the same as preventive measures:

(1) The police officers performing the arrest and taking care of the investigation of the detainee should have precise, clearly noticeable identification proof and name tags with designation written on them. A register must be maintained with names, designation and signature of the police officials carrying out the investigation.

(2) At the time of arrest, a “memo of arrest” should be prepared by the concerned police personnel. The memo should specifically mention the time of arrest, date of arrest and should bear the signature of the person arrested. At least one witness should sign and attest the memo. This witness can be a relative of the detainee or any reputable member of the neighbourhood where such arrest takes place.

(3) After a person is detained or confined by the police official and is taken into their official custody like police station, investigation department of any other centre, he/she shall have the basic right to inform any of his/her friend, family member or
relative, as soon as possible, about his/her arrest and the place where such person has been kept.

(4) The police official shall inform the relatives, family member or friend of the detainee, within a time span of 8 to 12 hours subsequent to the arrest if such relative or friend don’t reside in the same district or locality. The time of arrest, the place of arrest and the place where the detainee has been kept in custody of police shall be conveyed to them by the police or the Legal Aid Organisation in the District.

(5) The right to inform his friend, relative or family member shall be clearly notified to the person arrested as soon as he is taken into custody by the officials.

(6) A journal shall be maintained at the place of custody, where ever arrest made should be noted down, including particulars like the name of the person who has been informed about the arrest of the detainee and the name along with designation of the police personnel who has the responsibility of the custody of the arrestee.

(7) On request by the arrestee, an examination of the body of the person arrested should be made in order to ascertain if there is any wound or bruise on him. If any such injury is found then it should be noted in a register. Such ‘Inspection Memo’ shall be signed by the police official making the arrest and the person who has been arrested.

(8) During the time of his imprisonment in the police custody, the person arrested has the right to get himself/herself medically examined by a proper doctor after every 48 hours. Such doctor shall be on the panel prepared by the Director, Health Services of the concerned Stare or Union Territory for every district.

(9) All the documents and memos referred to above shall be signed by all the police officials concerned regarding a particular arrest and a copy of the same shall be given to the magistrate so that he can keep it in his record.

(10) During investigation, the person arrested has the right to be provided with a lawyer and to meet the lawyer at the time of investigation, but not throughout such investigation.
(11) Every district and state headquarters should have a police control room. After every arrest, the concerned police official shall inform the police control room about the place of arrest and place of detention. Such information should be communicated with 12 hours of the arrest and shall be made visible on a conspicuous notice board of the police control room.

Identifying factors connected with wrongful conviction like, misidentification, false confessions, tampered forensic evidence, prosecution misconduct, witness testimonies and inadequate legal aid to the defendants is important. (Gross, Jacoby, Matheson, Montgomery, & Patil, 2005; Innocence Project, 2010).

Research additionally demonstrated that, with those special cases for DNA, the quality about forensic science systems remains dubious.

1.6 Review of Literature

The effect of wrongful conviction on victims has not been experimentally inquired about. Keeping in mind the end goal to ground this investigation in the related experimental writing, ICF directed a writing survey to pick up a superior comprehension of the effect of wrongdoing on victims; the part of victims in the criminal justice process; the historical backdrop of wrongful conviction and exemptions in the Unified States; and the legitimate procedure embraced to absolve the individuals who have been wrongfully indicted. ICF likewise looked into the writing reporting the recounted encounters of victims in instances of wrongful conviction furnished by partners working with victims and, in a couple of cases, by victims themselves ⁴⁰.

---

The idea of justice that prevails in the ideology of criminal justice system is such that the person who is innocent should be kept away from any accusation or jail time and should be protected with the guidelines given the guidelines of the criminal justice system.

In India, the judiciary is regarded as the protector and guardian to the principle of “rule of law” which in turn epitomizes the significance of peace, security and harmony among the citizens of the nation. Indian Judiciary is that constitutional branch of our democratic government, that ensures to every individual in our country the right to fair trial and the means to achieve justice.

To accomplish this goal of securing justice, it is important that the judicial officers and their judicial service is available adequately to all the aggrieved victims who come before the court.

However, it has been observed through the course of extensive research, that majority of the petitioners have to wait for endless months and, sometimes years, just to begin with proper trial in the courts. Hence our judiciary is not able to perform its functions of granting justice to all efficaciously. One of the leading intensive research done on the working of judiciary was headed by Mr. Nick Robinson, a senior research fellow in India, who wrote an elaborate research paper discussing the reasons and causes for the delay in the work of judiciary. He stated, “If statistical data be discussed than it can be infer that presently on an average one judge presides over the cases filed by one million people, which are a very small number”.

The constitution of India guarantees to all its citizens the protection of their rights including the remedies for enforcement of their rights. However, the huge pendency of cases in the courts are defeating the very ideals of the constitution and our criminal justice system. The accused person is often arrested in criminal cases and put behind bars for years, before the trial of his case begins in the court. Those accused who are illiterate or don’t have the means to pay for their bail have to spend

42 Article 32, Constitution of India
at least two to five years as “undertrials” in the prison. Till the time, when their cases come to the court for hearing, these accused have already served the punishment for the crime they have been arrested for. Further, most of the time, the under-trial prisoners are acquitted after their trial, wasting their precious years of life in prison. Here the judiciary fails to protect the rights of the citizens and the innocent people have to pay the price for this failure.

The plight of undertrials was highlighted in the case of **Hussainara Khatoon and Others v. State of Bihar**, in 1979. The Supreme court took note of various articles published in Indian Express regarding the terrible conditions in the prisons of Bihar. The articles in the newspaper disclosed that several prisoners, including women and children, have been detained in the prisons as under-trials for at least 2-5 years. Out of them, most of the under-trials have been arrested for minor charges, the punishment of which would not be more than few months, however these detainees have been in the prison since 3 to 10 years. A writ petition of habeas corpus was filed in the Supreme Court which revealed a disturbing picture of under trials in the state of Bihar and challenged the administration of justice in the state.

The Supreme Court admitted the petitions and ordered the Government of Bihar to submit an extensive report on the prisoners and the under-trials. The Apex Court pronounced a landmark judgment in his case and held that the right to speedy trial is an essential part of the administration of justice in any state. Further, this right is a constitutional right and it is the obligation of the state to ensure the protection of it. The Supreme Court said that “Article 21 from the Constitution lays down that nobody shall be deprived of life or individual liberty except based on the procedure established legally. The procedure ought to be reasonable, fair and otherwise such deprivation will be illegal.”

Supreme Court quoted “there are several under-trial prisoners who are charged with offences which are bailable but who are still in jail presumably because no application for bail has been made on their behalf or being too poor they are unable to furnish bail. It is not uncommon to find that under-trial prisoners who are produced before the

---

43 HUSSAINARA KHATOOON V. STATE OF BIHAR, 1979 SCR (3) 532, 9TH MARCH 1979
44 PARA 5, HUSSAINARA KHATOOON V. STATE OF BIHAR, 1979 SCR (3) 532
Magistrates are unaware of their right to obtain release on bail and on account of their poverty, they are unable to engage a lawyer who would apprise them of their right to apply for bail and help them to secure release on bail by making a proper application to the Magistrate in that behalf. Sometimes the Magistrates also refuse to release the undertrial prisoners produced before them on their personal bond but insist on monetary bail with sureties, which by reason of their poverty the under-trial prisoners are unable to furnish and which, therefore, effectively shuts out for them any possibility of release from pre-trial detention. This unfortunate situation cries aloud for introduction of an adequate and comprehensive legal service programme, but so far, these cries do not seem to have evoked any response. We do not think it is possible to reach the benefits of the legal process to the poor, to protect them against injustice and to secure to them their constitutional and statutory rights unless there is a nationwide legal service programme to provide free legal services to them.”

The Court further observed that it is extremely discouraging to see that even after the amendments to the Criminal Procedure Code, 1973, our criminal justice system is dependent on the value of money for the impetus of creating a deterrence effect for the offenders of law. The court suggested that the outdated and primitive practice of bail in cases of pre-trial based only on sureties should be reconsidered. The parliament should make some amendments and suggest alternatives to the guarantee of bail, especially for poor people. The court further stated that these guidelines for bail should not only apply to court but also to police department.

With regard to the issue of delay in the disposal of cases in India, Nani Palkivala once said-

"May I turn to the situation in India which has the second largest number of lawyers in the world? While it is true that the justice is blind in our country, it is also lame. It barely manages to hobble along. The law may or may not be an ass, but in India it is snail; it moves at a pace which would be regarded as unduly slow in community of snails. A lawsuit, once started in India, is the nearest thing to the eternal life ever seen on this earth. Some have said that litigation in India is a form of fairly harmless entertainment. But, if so, it seems to be a very expensive way of keeping the citizens
amused. If litigation were to be concluded in the next Olympics India would be quite certain of winning at least one gold medal.” ⁴⁵

Another crucial impediment in the administration of justice is the issue of access to courts by the parties to the case. It often creates obstacles for the common man to secure justice from Courts. Where the petition for enforcement of fundamental rights is involved and the case come before Supreme Court, it is inconvenient for those who reside far from New Delhi (for example in South or East India). People who are poor and don’t have sufficient financial resources to turn up for every hearing in the court; or people who are old or disabled and can’t be expected to travel for hours, are the ones who give up the idea to claim their rights in the court. This theory of access to justice plays a crucial role in securing justice to the victims of crime.

While referring to the cost of litigation in criminal cases in the country, Nick Robinson in his Research article stated that “the litigation in India is the game of the rich”. When any aggrieved person goes to the court to claim his right he should not only be supported by some strong proof to defend his case but should also be prepared to spend at least lakhs for the lawyer’s fees and other expenses. It is observed that in very few cases the state gives compensation to those who were wrongly prosecuted and convicted and had to spend their entire earning to prove themselves innocent.

The problem of bail and its sureties has been a great challenge for poor and destitute. One of the major reasons for the growing number of under-trials in India, is the fact that many poor people cannot afford to pay sureties to secure bail after arrest. The concept of sureties is such that a specific amount of money has to be deposited with the court in order to ensure that the person who has been granted bail will turn up for his hearing whenever required by the court. If he fails to do so, the amount of money submitted by him will be confiscated. Though this method of ensuring the appearance of person in the court, who has been granted bail, is reasonable per se, but not for all the sections of the society. In case of poor and restitutes who cannot afford to pay the sum for the purpose of bail have to depend on other to provide them with money.

In the case of Motiram v. State of Madhya Pradesh ⁴⁶, the Supreme Court had to face the challenge of deciding some of the most critical issues regarding bail given to those who can’t afford the sureties. In 1978, the Apex court had to decide on three important issues. First, whether the Criminal Procedure Code, 1973, entitles a person to get bail on the basis of personal bond. Second, what should be the criteria for repayment of the amount submitted for bail and how should that be calculated. Thirdly, in case an individual is living or residing in a different district or state, or he is the owner of properties which are located in different districts or states, whether his bail demand can be rejected on the same grounds.

It was observed by the Apex Court that the criminal procedural law is having various shortcomings and lacunas with regard to the representation of the poor section of the society. It has various ambiguous laws and complexities that need to be clarified through some amendments or guidelines. The ‘balance of the procedural law’ for various sections of society needs to be inculcated in the legislation with regard to some specific issues that have been raised in this case. As has been mentioned under Article 14 of the Constitution of India, “the right to equality before law” shall be put to practice in all procedures of criminal trial.

Recently another major impediment, in the criminal justice system, has been the appointment and transfer of judges. Tis a barrier for smooth functioning of criminal justice system as per many criminologist. The procedure for appointment of judges of Supreme Court and High Court is done through ‘collegium system’ of appointment. It has been debated that this blanket of collegium system on our judiciary is full of errors and unfair procedures. This system gives discretionary power to chief justice to appoint judges of after consultation with other senior judges. There is a 22-year old practice which is being carried out by the judiciary irrespective of the fact that the constitution does not give any power to the judiciary to do so. In 1993, this practice was challenged in the case of Supreme Court Advocates-on-Record Association v. Union of India ⁴⁷,

⁴⁷ Supreme Court Advocates-On-Record Association V. Union Of India, 1993 (SC) 1303, 6TH OCTOBER 1993
where issue was highlighted regarding the reasons and grounds on which the appointment of judges was done in High Court and Supreme Court. The authority and discretion of chief justice in this regard was also challenged. The Supreme Court upheld the collegium system and the discretion of the chief justice to decide the appointment of judges. The apex court held that while finalizing the appointment of judges the chief justice should consult at least two senior most judges of the Supreme Court and once the decision is made it will be binding. Further, Supreme Court has the power to increase the judicial strength if there is a requirement for it.

This judgement was full of errors and had not addressed some of the crucial points which were relevant to the appointment. The Constitution of India has provided a systematic distribution of power to each organ of state. However, through this judgment, an imbalance was created in the power arrangement. **The term concurrence can be called in place of consultation, as it would change the ideology on which the Constitution laid down the principles for the judiciary to follow.** It was observed in this judgment that the judiciary had exceeded the power that our Constitution, ‘the Grundnorm’, had bestowed on it. The president has the latent power given by the Constitution to it. However, the stand taken by the bench in this case, was against the due procedure and hence needs to be challenged on various grounds. The supreme court has been given certain powers and responsibilities under various Articles of the Constitution. But these powers and functions ought to be exercised within the constitutional boundaries and not in arbitrary manner. The direction to replace the word ‘consultant’ to ‘concurrence’ necessitates an amendment to constitution, yet the Supreme Court did not follow any procedure to make the changes. This is a very crucial point, that has not been addressed sufficiently.

**1.6.1 Impact of Crime on Victims of Wrongful Conviction**

At the point when a wrong conviction happens, victims can encounter physical, money related, enthusiastic, mental, social, and otherworldly results that can a years ago. For some victims, the physical outcomes coming from a wrongdoing are regularly the most quick and unmistakable effect experienced. In 1994, Klaus
evaluated that 31 percent of victims of rough wrongdoing supported some type of physical damage. Prompt physical wounds of a wrongdoing can incorporate, however are not constrained to, shot injuries, broken bones, wounding, consumes, and gashes. Victims additionally may encounter quick physiological reactions (e.g., fast heart rate, hyper-ventilation, and stomach trouble), which can prompt wellbeing conditions, for example, cardiovascular pain, heart assaults and strokes. Victims of rape might be presented to sexually transmitted infections and undesirable pregnancy.48

In the days, weeks, and months following the wrongdoing, victims can encounter weariness, rest issue, changes in hunger or eating designs, and different confinements to physical development or movement. For a few victims, for example, victims who were deformed or incapacitated because of the wrongdoing, the physical outcomes of a wrongdoing can changeless. Indeed, even in situations where every physical injury from a wrongdoing have mended, victims may keep on experiencing agony and inconvenience, showing itself through interminable migraines, muscle strain, touchy inside disorder, sickness, and sexual brokenness.49

Essentially to physical results, victims may encounter both quick and long haul money related outcomes. The most painful, quick effect can come because of lost or harmed property. Long haul, one of the best expenses frequently originates from required restorative treatment (e.g., regular checkups, drug, and physical/word related treatment). In 2003, a report by the Communities for Malady Control and Anticipation figured the yearly wellbeing related expenses related with assault, physical ambush, stalking, and manslaughter by a cozy accomplice to surpass $5.8 billion (National Place for Damage Counteractive action and Control, 2003). Likewise, it is evaluated that 10-20% of psychological well-being costs in the Unified States can be ascribed to wrongdoing, essentially emotional wellness treatment for victims.50

48 (CANADIAN RESOURCE CENTRE FOR VICTIMS OF CRIME [CRCVC], 2005; MILLER, COHEN, & ROSSMAN, 1993; WASSERMAN & ELLIS, 2011)
49 (CRCVC, 2005; MILLER, COHEN, & ROSSMAN, 1993; WASSERMAN & ELLIS, 2011)
50 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION, HTTP://WWW.INNOCENCECOMMISSION-NC.GOV/.
“Presumption of innocence” has been regarded as a fundamental principle of procedural fairness in the criminal law, and a manifested and basic “human right” not only in Western European, Anglo-American legal systems but also in other legal systems such as Brazilian, Columbian, Iranian, Russian, South African and Indian. It also finds a well-defined space in International Conventions such as ECHR, UDHR, Canadian Charter of Rights and freedoms, etc. But, despite the National and International recognition of this Cardinal legal principle, in recent times the incidences of false allegations of crime has become a matter of public concern in number of legal systems, especially in case of sexual assaults.”

The effect of wrongful conviction on victims has not been experimentally investigated. To ground this examination in the related observational writing, ICF led a writing review to pick up a superior comprehension of the effect of wrongdoing on victims; the part of victims in the criminal justice process; the historical backdrop of wrongful conviction and exemptions in the Unified States; and the legitimate procedure attempted to excuse the individuals who have been wrongfully sentenced.  

ICF additionally explored the writing reporting the recounted encounters of victims in instances of wrongful conviction furnished by partners working with victims and, in a couple of cases, by victims themselves.

1.6.2 Effect of Wrongdoing on Victims

When a wrongdoing happens, victims can encounter physical, money related, enthusiastic, mental, social, and otherworldly outcomes that can a years ago. For some
victims, the physical results originating from a wrongdoing are regularly the most quick and noticeable effect experienced.\textsuperscript{53}

‘In 1994, Klaus assessed that 31 percent of victims of savage wrongdoing managed some type of physical damage. Prompt physical wounds of a wrongdoing can incorporate, yet are not restricted to, discharge wounds, broken bones, wounding, copies, and slashes. Victims likewise may encounter prompt physiological reactions (e.g., quick heart rate, hyper-ventilation, and stomach trouble), which can prompt wellbeing conditions, for example, cardiovascular misery, heart assaults, and strokes.’\textsuperscript{54}

Victims of rape might be presented to sexually transmitted sicknesses and undesirable pregnancy. In the days, weeks, and months following the wrongdoing, victims can encounter weariness, rest issue, changes in craving or eating designs, and different confinements to physical development or movement. For a few victims, for example, victims who were distorted or incapacitated because of the wrongdoing, the physical outcomes of a wrongdoing can changeless. Indeed, even in situations where every physical injury from a wrongdoing have recuperated, victims may keep on experiencing torment and distress, showing itself through perpetual migraines, muscle strain, fractious inside disorder, queasiness, and sexual brokenness.\textsuperscript{55}

Victims may likewise encounter a money related effect in the event that they can't act because of damage, require work retraining, or experience monetary misfortune because of their support in the criminal justice framework. In a few occurrences

\textsuperscript{53} icf played out numerous ventures of the writing utilizing google\textsuperscript{TM}, heinonline\textsuperscript{®}, lexis nexis\textsuperscript{®}, jstor\textsuperscript{®}, proquest\textsuperscript{®}, psychinfo\textsuperscript{®}, sage publications\textsuperscript{®}, and wiley online library\textsuperscript{®} web search tools. Pursuits highlighted a wide exhibit of terms, including: casualty of wrongdoing, casualty encounter, casualty affect, part of victims, casualty rights, casualty administrations, casualty enactment, premature delivery of equity, wrongful conviction, exemption, absolution process, wrongful conviction causes, and wrongful conviction factors. Hunts were confined to the investigation of non-government instances of fierce wrongdoing (i.e., irritated ambush, coercive assault, kill, non-careless murder, and burglary).

\textsuperscript{54} “we’ve had to borrow from our life insurance just to live. We will have to heat our home this winter by burning wood from a nearby lot. We’ve sold everything we own, including some family heirlooms. My husband and i are hard-working people. We aren’t looking for a free ride. But we’re being completely devastated by this criminal who reached in and destroyed our lives.” - crime victim (herrington et al., 1982, p. 38)

\textsuperscript{55} (CANADIAN RESOURCE CENTRE FOR VICTIMS OF CRIME [CRCVC], 2005; MILLER, COHEN, & ROSSMAN, 1993; WASSERMAN & ELLIS, 2011).
victims may endure brief or long haul wage misfortune; in different cases, victims may encounter perpetual occupation misfortune. Different costs that can come about because of a wrongdoing incorporate wrongdoing scene clean-up, burial service costs, movement costs, youngster and senior care, and higher protection premiums. The enthusiastic effect of a wrongdoing can go from responses, for example, dread, frenzy, and doubt of others to diagnosable mental issue, for example, mind-set, uneasiness, dissociative, and substance-utilize disarranges. Victims may likewise encounter enthusiastic trouble because of physical damage (CRCVC, 2005). In many cases, victims won't quickly connect for proficient emotional well-being help since they trust that talking won't help them, that family and companions are adequate help, or in light of the fact that they don't have a clue about that administrations exist. Shockingly, inquire about shows that administrations that are deferred or are too short in length have constrained effect on victims' mental prosperity. The social effect of wrongdoing is regularly connected to the physical, monetary, enthusiastic, mental, and otherworldly effects. Physical and money related outcomes can limit victims' development and along these lines their capacity to participate in social exercises. Thus, passionate and mental effects, for example, dread, uneasiness, and disgrace can make people pull back into detachment, particularly on the off chance that they feel powerless or have worries for individual security.

Contingent upon the wrongdoing and the relationship of the guilty party to the casualty, the casualty's family and companions may accuse the casualty making them separate from their interpersonal organizations. For instance, relatives may accuse a spouse for calling law authorization to report mishandle because of her better half. At last, violations can likewise lead victims to scrutinize their confidence or feel sold out by God or other otherworldly divinities. If a casualty's informal organization is firmly identified with a religious group, the profound outcomes of a wrongdoing may bring about victims stopping to associate with different individuals from their religious assemblages. It ought to likewise be noticed that in a few occasions horrible encounters prompt an extending of religious and profound convictions and inclusion.

(GREEN & ROBERTS, 2008; KILPATRICK, BEST, VERONEN, AMICK, VILLEPONTEAUX, & RUFF, 1985; WASSERMAN & ELLIS, 2011)
and positive profound and religious adapting has been observed to be connected with positive mental change.\textsuperscript{57}

\textbf{1.6.3. The Rise of the Innocence Movement}

Preceding 1990, wrongful conviction created just slight intrigue. The well-known essayist of the "Perry Artisan" legitimate spine chillers, Erle Stanley Gardner, made a casual "court of final resort" in the 1950s to research and right unnatural birth cycles of equity. Generally, in any case, the general population, and most judges and criminal legal counsellors, was persuaded that not very many pure individuals were ever sentenced. At the point when the Preeminent Court extended respondents' trial rights in the 1960s, for instance, the reason given was not to make the criminal justice framework more exact in deciding blame and honesty however to forestall government mistreatment.\textsuperscript{58}

Initially, a gathering of subjective therapists started to direct observer distinguishing proof investigations in the 1970s. By 1990, they had amassed an abundance of data demonstrating that observers were frequently mixed up and that line-up and recognizable proof strategies could essentially increment or decline onlooker precision. Next, an overview of criminal justice authorities by criminologists C. Ronald Spat, Arye Rattner, and Edward Sagarin in the 1980s assessed that a huge number of wrongful conviction happened each year (Fit, Rattner, and Sagarin, 1996). At long last, scholar Hugo Adam Bedau and humanist Michael Radelet distributed a study in a renowned law diary in 1988 stating that 350 pure people were indicted capital and conceivably capital violations in the twentieth century and that 23 were executed. In spite of the fact that a modest bunch of these 350 may have been genuinely liable, the examination's general accuracy brought issues to light in the lawful group that an honest individual could be executed. This grant did not, in spite of intermittent news stories about wrongful conviction, make far reaching worry about unsuccessful labours of equity.

\textsuperscript{57} EDWARD M. BORCHARD, CONVICTING THE INNOCENT: SIXTY-FIVE ACTUAL ERRORS OF C. MIWAL JUSNCE (1932).

\textsuperscript{58} HTTP://RESEARCH-PAPER.ESSAYEMPIRE.COM/CRIMINAL-JUSTICE-RESEARCH-PAPER/WRONGFUL-CONVICTIONS/ VISITED ON 10NOV 2016
The main DNA exemption in the United States happened in 1989 and demonstrated how DNA changed a confounding story of honesty or blame for one of outright lucidity. Gary Dotson was sentenced assault in Illinois on an adolescent young lady's observer recognizable proof. She made up the assault story to cover her dread and disgrace after consensual sex with a sweetheart. After six years she was hitched, got religion, and abnegated her story. The police and a judge declined to trust that the recantation was valid, regardless of her minister supporting her honest perspective and the previous sweetheart admitting to the consensual sex. Dotson was discharged on parole by the legislative leader of Illinois in 1985, who conflictingly said that he didn't trust the recantation. Dotson was re-imprisoned for a parole infringement in 1987. At last, with the help of writers and a decided resistance attorney, a DNA test was performed on the semen in the assault unit. Dotson was totally cleared and formally excused. His case turned into a layout for tens and afterward a huge number of police assault examinations, which excused suspects in the beginning times of wrongdoing examinations. By the mid 1990s, the FBI research facility revealed that one fourth of all assault pack tests from police around the nation were avoidances. This implied in a large number of cases, allegations in light of observer recognizable pieces of proof weren't right.

“Before long, detainees who knew they were pure and serving time or sitting waiting for capital punishment for violations that did not occur or were conferred by another person started to appeal to for DNA testing. Most were prevented trying on the grounds that from securing prosecutors' protection in view of lawful details. Be that as it may, an adequate number of absolutions happened by the mid-1990s to produce critical happenings. Daily papers conspicuously revealed DNA absolutions. In New York, two venturesome graduate school clinical teachers, Barry Scheck and Diminish Neufeld, began the primary graduate school honesty venture at Cardozo Graduate school to seek after instances of prisoners guaranteeing blamelessness. Janet Reno, at that point lawyer general of the United States, dispatched a report featuring the shortcoming of onlooker distinguishing proof. The report raised the profile of the wrongful conviction issue in criminal justiceand lawful circles. By the late 1990s, a
few capable documentaries, for example, Errol Morris’ Thin Blue Line, conveyed the issue to moviegoers and TV gatherings of people.”

“In 2001, Scheck and Neufeld, together with correspondent Jim Dwyer, distributed Genuine Guiltlessness, describing a few of their absolution cases in grasping point of interest. Each case recorded a particular manner by which the criminal justice framework had fizzled. This rundown, alongside past examinations, made indexes of what are thought about reasons for wrongful conviction. Despite the fact that the book was generally welcomed, the real occasion in 2000 that accomplished more to put wrongful conviction on the guide was Illinois Representative George Ryan's ban on executions. In the vicinity of 1990 and 2000, Illinois had executed 12 detainees while 13 waiting for capital punishment had been absolved and liberated. This so stunned Ryan that he ended all executions and set up a commission to audit the death penalty in Illinois. The commission prescribed many changes, and a few were sanctioned. Ryan's proceeding with worry with problematic capital punishments drove him to drive the sentences of every one of the 167 death row detainees and exculpate 4 on the grounds of real blamelessness before he exited office in 2003. This drove different states to force moratoria or to end capital punishment. Absolutions have debilitated help for the death penalty and raised overall population mindfulness about wrongful conviction.”

1.6.4. Position of Victim in the Criminal Justice System

The respect and confidence of an innocent individual can be damaged irreparably, if he is arrested and held in custody on any ground. The police officers, while conducting the operation of arrest shall always keep in mind the dire consequence of arrest on an individual and his family. Thus, arrest shall be taken to be the last resort with the police in order to prevent or stop the occurrence of a particular crime by a particular individual. Arrest made on mere allegations received by police, without any investigation on the matter, shall be avoided at any cost. In response to the issue of illegal arrest and detention, the judiciary has pronounced several guidelines to be kept in mind while making an arrest. The judiciary through these judgements has made it very clear that any police officer, investigative officer, or even Magistrate
involved in an illegal and wrongful arrest will not be spared from the departmental inquiry and actions, if the allegations made against them are proved to be true.

The State must ensure protection to the victims of torment, abuse and the human rights protector battling for the of the victims, giving the issue genuine thought since victims of abuse endure tremendous consequences mentally. The issues of intense worry and also a post-horrendous anxiety issue and numerous other mental outcomes must be comprehended in correct viewpoint. In this manner, the State must guarantee preclusion of torment, barbarous, cruel and debasing treatment to any individual, especially on account of any State office/police department.

Throughout those investigation, victims might come into contact for medical, legal, theory enforcement, advocacy and forensic science experts. These people are tasked for identifying, gathering and preserving confirmation related to the identification of wrongdoers. Lawful proceedings, which need aid adversarial by nature, might fuel victims’ post-traumatic anxiety manifestations toward taking out their sense of power, control, and help.

The international perspective sad to say is not encouraging. The theoretical application and academic discourse on the subject although impeccable, what we see on the ground is anything but what we would like to see. One begins to wonder whether victimology is at the cross roads of the competing world orders, trudging along just like its subjects, the victims, who have to settle for crumbs that fall off the table of justice. What then is the reason for this attitude? Is there an urgent need for a fundamental change of attitude towards vulnerable persons or groups? The author submits that there a need for the change of the whole ethos of treating victims as virtual chattels, a status the victims of wrongful conviction have acquired as a circumstance of their birth, as if though it was part of their karmic

59 RONALD C., AND MARTIN KILLIAS, Wrongful conviction: international perspectives on miscarriages of justice, 2008. All European countries allow defendants to file a petition of revision in situations where evidence turns out to be false or when new evidence becomes available that was not available at trial. The petition for revision allows the defendant to file a request to the court for a new trial. See huff,

inheritance. Should we then endeavour to minimize the incidence of victimization or perhaps work towards its elimination, structuring it on a rights footing, as an inherent right, a fundamental entitlement as members of the human family.

Right to compensation for wrongful conviction is provided under Article 10 of the American Convention on Human Rights as well as under Art 14(6) of the International Convenant on Civil and Political Rights and Art 3 of the European Convention on Human Rights. The court should examine the conditions like transportation, education, housing, skill development and health care required for the smooth transition of the victim in the society back in addition to providing monetary benefits. As recommended by the Innocent Project there should be an official acknowledgment of wrongdoing by the state, this will help in fighting long battle against social stigma.

Thorough and revolutionary steps towards the assurance of liberty, equality and justice are constructively enacted by the entertainer of International Treaty on Human Rights.

1.6.5. Victim perspective in view of rights and obligations

Wrongful conviction can be explained as a phenomenon “focussing exclusively on those who have been arrested on criminal charges, who have either pleaded guilty to criminal charges or have been found guilty, and who, notwithstanding their guilty plea or verdict, are actually innocent.”61 This definition is quite broad and general in nature. However, this definition is quite selective in the sense, that it excludes some of the variants of ‘miscarriage of justice’ like the under-trials or detainees who have been arrested by the police and had to send several years before their case was heard and they were subsequently acquitted. It also excludes those cases where the initial conviction was quashed on appeal because of procedural inadequacies rather than factual errors.

61 Huff, Rattner and Sagarin (1996)
The load that the criminal justice framework place on victims and the exploitation that regularly came about from their inclusion in the framework is disturbing. The CVRA significantly extended wrongdoing victims’ privileges by giving work to victims for a method for change ought their privileges a chance to be defiled. It also charged those lawyer generals for making regulations for implementation What's more to guarantee agreeability for those acts. Those current regulations would have portrayed in the lawyer general rules to victimized person Furthermore Witness aid (U. Encountered with urban decay because of deindustrialization, innovation developed, government lodging. Division for Justice, 2012). In as much as those CVRA certifications the greater part, however overlook wrongdoing victims, the VRRA portrays benefits accessible to victimized people for wrongdoing. Those legislature need those obligation with provide the portrayed administrations Likewise before long Likewise workable after those identification of a crime, so long Similarly as they don't meddle with the examination.. As stated by the lawyer general Guidelines, carefulness and sound judgment ought to make used to focus if an examination alternately arraignment need concluded, In which side of the point administrations might be given of the degree license by those law What's more should which accessible assets exist.

Benefits afforded on victimized people under the VVRA include:

1. Sensible security starting with the suspected wrongdoer Also persons acting in show for or during those command of the suspected offender; general Information, including:

2. Data around the robotized exploited person notice System;

3. Logistical majority of the data Also support with respects should transportation, parking, childcare, interpreter services, and different investigation-related administrations;


4. Data around the criminal Justice system;

5. Custodial discharge qualification majority of the data.

6. Majority of the data once What's more referrals for accessible victimized people administrations;

7. Notice about situation events;

8. A sitting tight range uprooted starting with Also out of the sight and listening to of the litigant Also resistance witnesses;

9. Auspicious profit about property being held to evidentiary purposes;

10. Support advising managements or lenders In affected Eventually Tom's perusing the victim’s collaboration in the investigation/prosecution. 

Ensuring protection of an individual in the criminal justice system law and order are integral parts of a civilized society. It is the responsibility of the state that an effective criminal justice system is maintained in order that we maintain law and order. If a person is wrongfully convicted, then it is only an indicator of the state’s failure in that responsibility. There is intrinsic in this duty the responsibility to bring the wrongfully prosecuted to justice as much as offering redress to the victim. You will appreciate that the victim of wrongful conviction suffers two ways in the criminal justice system.

Firstly, it is personal, because it is the victim of wrongful conviction who suffered jail time. Secondly, the victim of wrongful conviction is condemned for rest of his life with societal demise and hate, due to the failure of criminal justice system.

---

Traditionally, when a person is arrested in different charges, he is presumed guilty where due to lack of responsibility played by the investigating officers, political corruption, media trial, false confessions if there leads to wrongful conviction of a person who is otherwise innocent. A truth is that inadequate attention is paid to the welfare and concerns of the victim of wrongful conviction. 68 These people are punished in such a way that even if they are wrongfully convicted and are later exonerated but still after going into the society they are publicly hated, demised whether due to public disgust and hatred for a particular crime or the story attached to it. 69

We are familiar with the procedure that in every civilized state a suspect who commits a crime is apprehended, brought to trial, and if found guilty convicted and sentenced. I ask the question, does this achieve 'complete justice' as constitutionally envisaged. I ask the further question whether the criminal justice system ends there. What if the person who is arrested is a victim of malicious prosecution, what if the person is convicted in a rape case in absence of any DNA sample where it would have made him innocent? Is the victim consigned to the limbo of forgotten things?70

On May 16, 2014, the Supreme Court of India acquitted the six defendants, stating in their judgment: "We intend to express our anguish about the incompetence with which the investigating agencies conducted the investigation of the case of such a grievous nature, involving the integrity and security of the nation."71

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 finds 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

71 Abdambhai, Sulemanbhui, Aimeri & Ors. vs. State of Gujarat, Nos. 2295-2296 of 2010 (Supreme Court of India, Crim. Appellate Jurisdiction, 5-16-2014)
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. Even after almost 70 years being an independent nation, the criminal justice system has failed to stop certain evils that come in subordination of being wrongfully convicted, that are-

1. Illegal detention by the police
2. Torture
3. Malicious methods of investigation
4. Harassment of family members
5. Continuing surveillance even after exoneration.

Above are some of the many factors that are weakening the stature of the criminal justice system where a common thought of process which evolve is that once an individual is arrested for a serious crime, he is not coming out as a dignified member of society even after a exoneration by law.

These principles are fundamental to the governance of the country and it is the duty of the state to apply these principles for it has pledged to establish a just and fair state committed to social, economic and political justice which includes the promotion of the welfare of the people by securing and protecting, as securely, as it may, a social order in which justice shall guide all institutions of national life.

On the other hand, we have the chapter on provisions for the protection of the accused from the time of his arrest until the end of his trial. Victims here as we all know are persons who have individually or collectively suffered torture, including physical or mental injury, emotional suffering due to insult of individual and family due to wrongful prosecution, economic loss or substantial impairment of their rights guaranteed by the constitution, but ironically, we do not make similar provision to address their suffering in the meticulous manner in which they deserve to be.
“Serious constitutional and human right violations have been observed by this court in the present case. None of the accused before this court who all come from very poor families, have any previous criminal record. They have suffered detention and trial for an offence they have never committed. In the words of the Hon'ble Supreme Court if civilization is not to perish in this country as it has perished in some others to well known to suffer mention, it is necessary to educate ourselves into accepting that respect for rights of individuals is a true bastion of democracy and therefore, it is necessary for the State to repair the damage done by its officers to the rights of its citizens.”

1.7 Methodology

1.7.1 Statement of Research Problem

The proposed study is a doctrinal analysis of the apex court decisions to study the different aspects of wrongful conviction. The wrongful conviction is a growing problem in Indian criminal justice system. The Incident of wrongful prosecution involves a situation where a person is wrongfully prosecuted and convicted and found not guilty at the appellate stage. This situation leads to a large number of issues and problems to the such person as they not only suffer the coercion, torture and forced confession during the police investigation but are also adjudged to be guilty based on flimsy grounds. Despite found not guilty in the end, there tale of victimization remains horrific. Apart from experiencing unfair deal in the criminal justice system, they tend to suffer a secondary victimization in the form of stigmatization by the community. The present study is to examine such instances of victimization as a serious miscarriage of justice to understand the factors responsible for this problem. The idea is also to develop some insights into a possible legal regime to make arrangements for compensation, rehabilitations and other entitlements of the victims of crime.

72 Rudul Sah V. State of Bihar, AIR 1983 SC 1086
1.7.2 Objective

➢ To explore the factors responsible for wrongful conviction through the study of selected supreme court decisions.

➢ To understand the issues and problems faced by the exonerees at the stage of trial at the lower court level.

➢ To develop a perspective on the rights, compensation and rehabilitation of the exonerees on account of the victimization faced by them.

➢ To develop a criminal justice framework for preventing wrongful conviction and suggesting certain mechanism for rights, compensation and rehabilitation to the exonerees on account of victimization faced by them.

1.7.3. Research Questions

1. What are the factors dealing with police, prosecutors, defence lawyers, judges etc. that are responsible in the causation of wrongful conviction?

2. What are the implications and consequences that arise as a result of the wrongful conviction of an accused?

3. What are the areas of improvement leading to mitigate the sufferings of exonerees within the framework of criminal justice system.

1.7.4. Research Design

➢ The present study is predominantly based on data and information collected from a number of cases decided by Supreme Court.

➢ Doctrinal model is used to study and analyse this research with the help of identification of cases.

➢ In order to analyse the data the following doctrinal techniques are used.

1. Data identification – Identification of specific cases where instances of failure of criminal justice system.
2. Identification of courts/categories/themes – Cases were selected from almost every state jurisdiction in such a way to balance the quantum of legal proceedings and travesty of justice.

3. Data reduction – developing the arguments in keeping the objectives of study in view.

The list of cases that were researched and analysed were set to a certain criteria and there the cases were measured with certain variables.

Once the analysis of the cases is finished then the factors were measured and the interpretation has been done that resulted into the justification of the objectives and research questions.