CHAPTER 2

INTERNATIONAL PERSPECTIVES ON WRONGFUL CONVICTION

2.1 Introduction

*Judicial Error or miscarriage of justice will “invariably identify at least some element of an earlier conviction as a mistake: whether evidential, procedural or material irregularity”*. - Edmond\(^73\)

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”\(^74\)

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 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


\(^74\) ‘Wrongful Conviction: International Perspectives On Miscarriages of Justice’, Ed. By C. Ronald Huff And Martin Killias, PG. 3
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 conviction was quashed on appeal because of procedural inadequacies rather than factual errors.

Wrongful conviction, though initially recognized in U.S. and 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

\[^{75}\] IBID
\[^{76}\] HUFF, RATTNER AND SAGARIN (1996)
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”\(^77\). Whereas in our country, India, the reason can be chiefly attributed to prosecutorial misconduct, especially in high profile cases.\(^78\) In countries like China and United States, the abuse by police and their misconduct has accelerated the convictions of innocent individuals.\(^79\)

“Inadequate legal representation, shoddy police investigations, eyewitness misidentification, racial prejudice, and falsified evidence are additional factors that contribute to wrongful convictions around the world.”\(^80\) 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”\(^81\). In the Country of Japan, four individuals who were sentenced to death were legally exonerated between the years of 1983 and 1989. Later, in 2014, the case of an individual who is supposed to be the “longest serving death row inmate in the world”\(^82\) was exonerated by the court, after it was found that the evidence against him was falsely fabricated.

\(^80\) HTTP://WWW.DEATHPENALTYWORLDWIDE.ORG/WRONGFUL-CONVICTIONS.CFM#A1-1
\(^81\) HTTPS://DEATHPENALTYINFO.ORG/INNOCENCE-LIST-THOSE-FREED-DEATH-ROW
\(^82\) HTTPS://WWW.NYTIMES.COM/2014/03/28/WORLD/ASIA/FREED-AFTER-DECADES-ON-DEATH-ROW-MAN-INDICTS-JUSTICE-IN-JAPAN.HTML
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 of the 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.”

In this Chapter, our main concern is to understand the approach of different countries towards wrongful conviction. The changes brought in their criminal justice system, can provide valuable literature for improving our country’s system. Such comparative study would provide several intellectual opportunities to understand the reasons and causes of wrongful conviction, through an international perspective. The ultimate goal is to comprehend the instances of cases of wrongful conviction in various countries, to highlight the loopholes and inadequacies in their trial, to focus on the approach undertaken by the victims of such miscarriage of justice to deal with the situation and

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83 HTTPS://WRONGFULCONVICTIONSBLOG.ORG/2013/08/15/MISCARRIAGES-OF-JUSTICE-IN-CHINA-PROMPT-NEW-GUIDELINES/
84 HTTP://WWW.HERALD.CO.ZW/HIGH-COURT-UPHOLDS-HIV-MANS-RAPE-APPEAL/
85 HTTP://WWW.DEATHPENALTYWORLDWIDE.ORG/WRONGFUL-CONVICTIONS.CFM#A1-1
to discover the factor that led to the emergence of truth and the exoneration of such people.

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 United States is unique without implicit or explicit comparisons between the United States and elsewhere?”

When we start the argument of the difference in perspectives of various countries in order to pursue the idea of justice then there 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.

86 (ZIMRING, 2006;615)
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.

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.”\(^{87}\) 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.

“The term *moral panic* was introduced by British sociologist Stanley Cohen in a study of how British society responded to confrontations between youth on motorcycles and police.”\(^{88}\) Though this definition is quite restrictive in the meaning, however the term can be broadly implied to “a branch of social construction theory, according to which, from time to time, societies ‘discover’ social problems that are brought to collective attention by activist called claim-makers.”\(^{89}\).

C. Ronald Huff has suggested four principal factors that lead to wrongful conviction in any criminal justice system- “overzealousness by police and prosecutors; false and coerced confessions and improper interrogations; forensic errors, incompetence and fraud; and the adversary system itself.”\(^{90}\). The pressing urgency of protecting the

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88 Cohen, 1972, 2002
89 Wrongful Conviction: International Perspectives on Miscarriages of Justice, Ed. By C. Ronald Huff and Martin Killias, PG. 12
90 Huff, Rattner and Sagarin, 1996; Huff 2004
society from any further similar damages, weakens the traditional legal system and makes it more vulnerable to errors. It increases the chances of wrongful arrest leading to wrongful prosecution and subsequently wrongful conviction.

In such cases, the police and investigative authorities have often abused and forced the accused person to sign the confession statements. They imply all kinds of techniques to extort the confession from the accused, sometimes even illegal techniques. “There are many reasons why suspects might confess falsely to a crime they did not commit. These reasons can include torture, brutality, threats, fear, fatigue and deception by interrogators.”

It is observed during trial, that the police even fabricate the evidence to support the confessions extorted from the accused. It is only during re-trial that these errors come out before the judiciary.

This theory has been applied by Grometstein, to organized sexual abuse of children which has spread to United Kingdom and more recently to France. This movement began in early 1980s in the states of U.S and Canada and then gradually spread to United Kingdom, the Netherlands, Australia and New Zealand. This phenomenon has resulted in the arrest and conviction of thousands of innocent people that became victim of miscarriage of Justice.

The suggestion given by Grometstein is that ‘innocence commissions’ shall be set up in every jurisdiction that would perform the function of ‘criminal case review commissions’ and would consider cases which come within the contours of certain sensitive cases, where it can be apprehended that there are certain intrinsic errors in the investigation and prosecution of a case.

2.2 The Contribution of Forensic Science

“Just as police and forensic scientists are portrayed as routinely oriented toward producing cases sufficiently robust (or tainted) to warrant and produce successful prosecutions, so too, many legal commentators appear equally confident in the unreliability of

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91 IBID
92 PG. 12
prosecution forensic science and the reliability of the scientific evidence designed to acquit in the high-profile miscarriage of justice cases.93

The criminal justice system of many countries has been revolutionized by the development in forensic science such as the advancement of DNA technology, which have considerably helped in finding the real culprits. However, there are certain risks and drawbacks involved in this technology as well, that needs utmost attention. This technological advancement cannot be blindly relied on. Certain factors that need to kept in my mind are- “admissibility of scientific evidence, uniqueness, the notion of match, confirmation bias, false inference, lack of transparency and contradictory physical evidence”94.

In numerous cases of exoneration, the contribution of new and improved tools of forensic science is undeniable. With the advent of DNA testing and other technological advancements, new evidence and new facts have been brought before court during trial in appeals. The most crucial aspect of forensic science is that it brings new pieces of evidence before the jury without challenging “the integrity of the legal system, being an extraneous factor to it”95. During the early 1990s the technology was not that advanced to the extent it is now. Hence, some errors or mistakes on the part of the investigative authorities were inescapable. However, now with the help of the advanced techniques, especially DNA testing, many conviction have been overturned during the past few countries. This trend has been witness by many nations including, U.S., U.K., Canada, African countries and Asian countries. The techniques have been highly valuable for cases involving murder, rape and other forms of sexual assault.

94 WRONGFUL CONVICTION: INTERNATIONAL PERSPECTIVES ON MISCARRIAGES OF JUSTICE’, ED. BY C. RONALD HUFF AND MARTIN KILLIAS, PG. 6
95 BEATRICE SCHIFFER AND CHRISTOPHE CHAMPOD, ‘JUDICIAL ERROR AND FORENSIC SCIENCE’, PG. 33
Beatrice and Christophe in their chapter Judicial Error and Forensic Science have discussed two of the most significant cases where forensic science has contributed immensely to find the real culprit and free the innocents who are convicted. They are “Ragina vs. Dallagher” case and “Regina vs. Michael Shirley” case. Both the cases “involve an appreciable contribution of forensic science as inculpatory and exculpatory evidence”\(^\text{96}\). Thus, it becomes indispensable to discuss these cases in brief.

**Regina vs. Dallagher Case**

This is a unique case representing the significance of forensic evidence that, first, led to a wrongful conviction and then, finally, led to the exoneration of the person who was wrongfully convicted. The evidence in this case played both the role of inculpatory and exculpatory evidence.

In 1996, a deaf, elderly woman was murdered by a burglar at her home. The key evidence that police had, was the ear print of the window of deceased’s room. It is believed that the burglar must have listened to find out about the presence of any person inside the room, by putting his ear on the window. Since the police could not find any suspects, it tried to follow the movements of well-known burglars near the crime scene. After a thorough investigation, the police found Mark Dallagher as the culprit. He was arrested by the police and his ear prints were taken as evidence. During his trial, in 1998, two ear experts confirmed that the ear prints of Dallagher matched with those on the window. One of those ear experts was a Dutch policeman, who had experience in dealing with ear prints over a decade, but did not possess a formal forensic science qualification.

Based on the testimonies on the two experts, the Leeds Crown Court, held Dallagher guilty for the murder and sentenced him to life imprisonment. This case was applauded as major success in the field of forensic science. “The case made legal history as the first in which ear prints led to a successful prosecution. Norman

\(^{96}\) BEATRICE SCHIFFER AND CHRISTOPHE CHAMPOD, ‘JUDICIAL ERROR AND FORENSIC SCIENCE’, PG. 33
Sarsfield, of the Wakefield crown prosecution service, described it as a great step forward for forensic science. 97

During the trial, Dallagher had pleaded guilty clamming that he had a major injury in his ankle and thus was handicapped at the time of murder. He filled appeal petition against his conviction in 2002 and in 2003 a re-trial was ordered. “The experts for defence questioned the scientific validity and strength of ear prints as identification evidence.” 98 During re-trial, the ear prints from Dallagher were again analysed with those found on the window. This time more advanced technology of DNA testing was used. It was found that the ear prints were not of Dallagher. Dallagher was acquitted of all the charges. In 2004, Dallagher was exonerated after spending seven years in prison.

The case received public and media attention. The DNA profiling technique was both applauded and criticized in the case. But it could be concluded, that the techniques that were available in 1998, were inadequate and were not sufficient to taken as evidence in court. However, with the advancement of technology, the improved DNA profiling, can be used in more efficacious ways as evidence.

**Regina vs. Michael Shirley Case**

The case of Michael Shirley is regarded as the first exoneration based on new DNA profiling technology. In 1988, Michael Shirley was wrongfully convicted for the murder of a woman named Linda Cook. The conviction was primarily based on the DNA evidence collected from the body of the victim and a footwear mark of a shoe. These evidences that were not properly tested led to wrongful prosecution of Michael, who was charged with the murder and rape of Linda Cook. He served 16 years in prison, before being exonerated by the Court.

In December 1986, Linda Cook, a 24-year-old barmaid was found murdered on waste-ground. Linda’s body was found half naked and she had been brutally raped and murdered by her killer. Police found traces of semen on her body. They also

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98 [BEATRICE SCHIFFER AND CHRISTOPHE CHAMPOD, ‘JUDICIAL ERROR AND FORENSIC SCIENCE’, PG. 34](BEATRICE SCHIFFER AND CHRISTOPHE CHAMPOD, ‘JUDICIAL ERROR AND FORENSIC SCIENCE’, PG. 34)
found a foot print with a logo of the shoe near her body, which they apprehended, was that of the killer. The Police started its search by interrogating all those people who were present near the crime site at the time of murder.

Michael Shirley, an 18-year-old Royal Navy sailor had taken taxi to Buckland estate, which was close to the murder sight, to drop off a friend. Police conducted the DNA testing of all those suspects who were present near the murder site. At that time, the forensic testing was not that advanced, and the only available means to test was to match the blood from the specific evidence to that of the accused. The semen found on Linda’s body had the same blood group to that of Michael. “It was asserted at that time, that he same blood group was shared by 23.3 percent of British adult male population.” Further, the footprint also matched with that of Michael.

Michael was arrested in 1987 because of the evidence against him with the police. “When police arrested Shirley, he had cuts and scratches on his body and bloodstains on his trousers. Detectives suspected that both came about during the attack.” Michael was tried for the murder and rape of Linda and in 1989 he was convicted for the charges by Winchester Crown Court. However, Michael claimed that he was innocent from the very beginning and after his conviction he filled appeal petitions. He campaigned to prove his innocence including hunger strike. “Eventually in 1992, the Criminal Case Review Commission examined his case and decided that it should be reviewed the Court of Appeal.”

By the year 1999, the DNA profile techniques were improved new techniques had emerged. In 2001, the semen from the body of Linda and Michael’s DNA were examined. It was found that both the DNAs were very different and did not match. In 2003, The Appeal Court quashed Michael’s conviction and exonerated him.

“Shirley’s later exoneration of the murder after serving 16 years of his sentence is significant as the first time that a UK court quashed a previous conviction on the basis of presentation of new DNA evidence. It was also the first occasion in which the

99 BEATRICE SCHIFFER AND CHRISTOPHE CHAMPOD, ‘JUDICIAL ERROR AND FORENSIC SCIENCE’, PG. 34
100 HTTP://NEWS.BBC.CO.UK/2/HI/UK_NEWS/3039608.STM
101 IBID
Criminal Cases Review Commission supported an appeal on the basis of newly available DNA evidence. After serving the minimum tariff of 15 years, Shirley would have been released from prison had he confessed the killing to the parole board, but he refused to do so and said: *I would have died in prison rather than admit something I didn’t do. I was prepared to stay in forever if necessary to prove my innocence.*”

These two cases have highlighted the importance of the new DNA testing techniques. The also put a challenging question, about how much weight shall be given to the forensic evidence n trial. As has been aptly stated by Edmond that “Previously safe and reliable convictions are destabilized by the identification supposedly flawed scientific evidence and bad scientists. In stark contrast, the new evidence tends to be described, in largely idealized terms, as good or reliable science.”

DNA evidence has been termed as the “gold standard in forensic science”. The expeditious and exceptional development of forensic evidence, especially DNA, has been acclaimed as a key method of finding out the truth in any criminal case. The significance of giving DNA testing such important place in the evidence was debated and question at many occasions. However, it has established itself an important factor carrying significant weightage in any trial.

The admissibility of DNA testing has been thoroughly debated United States in many cases. The jury has given certain guidelines in some of the landmark cases where the admissibility of DNA techniques should be considered. These cases are the *Daubert v. Merrell Dow Pharmaceuticals, Inc* and *Kumho Tire Co. v. Carmichael*. In both cases, the court gave certain principles that can be used as guidelines for judges to decide on the admissibility of forensic evidence. The principles can be summarized below

105 509 U.S. 579 (1993)
106 526 U.S. 137 (1999)
“1. Whether the expert’s technique or theory can be or has been tested; that is, whether the expert’s theory can be challenged in some objective sense, or whether is it instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability.

2. Whether the technique or theory has been subject to peer review publication.

3. The known or potential rate of error of the technique or theory applied.

4. The existence and maintenance of standards and controls.

5. Whether the technique or theory has been generally accepted in the scientific community.”

Thus, with the help of these principles, one can decide whether the DNA evidence shall be admissible or not. Use of DNA profiling for the purpose of identification of culprits was first applied in United Kingdoms, where Professor Alec Jeffreys from the University of Leicester used DNA profiling for identification in 1985. Since the use of DNA testing has spread to several countries. With the advent of new DNA profiling techniques, almost every country utilizes the method.

It can be concluded that though DNA testing and other forensic science tools are highly efficient and precise in identification purpose, “Nonetheless, the DNA strength does not amount to factual certainty. The process is essentially probabilistic and by its nature, it requires well-thought-out and balanced communication at both the investigative and evaluative stages.”

2.3 Wrongful Conviction in the United States

United States has been experiencing the problem of wrongful conviction even before becoming an independent nation. The nation’s history conspicuously depicts how

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107 BEATRICE SCHIFFER AND CHRISTOPHE CHAMPOD, ‘JUDICIAL ERROR AND FORENSIC SCIENCE’, PG. 36
108 BEATRICE SCHIFFER AND CHRISTOPHE CHAMPOD, ‘JUDICIAL ERROR AND FORENSIC SCIENCE’, PG. 43
certain classes of society were subjected to the miscarriage of justice. Before independence, being a colony of British empire, Americans were subjected to irrational accusations that were secret in nature. They accused were not even given the right to know about the accuser or the charge they were being accused for. However, after independence, with the adoption of Bill of Rights and the Constitution, certain rights were given to the citizens regarding fair trial which are followed sincerely till now.

The ‘status difference’ extends throughout the history of America. “The citizens of America have always been conscious of the distinctions in socioeconomic class.”\(^{109}\) The discrimination was subjected, in particular, to the blacks and lower class individuals having inferior social status. This class discrimination influenced the decision of the police and the judges regarding who shall be held guilty and what punishment should be given to them. “Sadly, such discrimination continues to occur today despite important social and legal reforms, and such discrimination is evident in many cases of wrongful conviction in United States.”\(^{110}\)

The idea behind discussing, the roots of miscarriage of justice through historical context, is to better comprehend the contemporary criminal justice system in America. The pioneering research done on wrongful conviction in United States, was the book by Professor Edwin M. Borchard, titled “Convicting the Innocent: Sixty-Five Actual Errors of Criminal Justice”\(^{111}\) in 1932. After his work, many research scholars and criminologist dedicated to study the causes of wrongful conviction in the country. Earlier, the research focussed on individual cases and their analysis, but from the early 1990s a trend had begun to study wrongful conviction in a more generalized approach, taking into consideration media attention and public opinion.

The significance of public opinion about wrongful conviction has grown tremendously in past few years. The media attention given to the exoneration of individual through DNA testing has sensitized the public and the policy makers. The highly-publicized exonerations


\(^{110}\) C. Ronald Huff, ‘Wrongful Convictions In The United States’, PG. 59

have also provoked campaigns ad debates for abolition of death penalty in the United States. Various studies have highlighted the urgency to explore the errors and reasons for erroneous conviction in capital punishment cases. In a research study conducted by Radlet, Bedau and Putnam (1992) it was argued that “at least twenty-three innocent persons have already been executed in the United States”113. A recent study undertaken by J.S. Liebman in 2000, in which thousands of cases involving capital punishment were studied over a period of twenty-three years, found “serious, reversible errors in nearly seven of every ten cases”114.

The urgency in finding the reasons for errors leading to wrongful conviction are primarily two. First, it results in death of an innocent individual if he is given death sentence or in case of life imprisonment the person has to suffer for countless years of his life in prison, making him vulnerable to all forms of abuse in the prison. Second, the real offenders who has committed the crime are free to commit more crimes which poses a huge danger to the society.

The Incidence of Wrongful Conviction in United States

There is no precise data on the number of wrongful conviction in United States. However, through various research studies conducted with limited sample, we can get a general overview about the rate of wrongful conviction in the country. One such study was conducted by Huff, Rattner and Sagarin in 1996 where prosecutors, judges, law enforcement officials and attorney generals were interviewed to “estimate what proportion of all felony convictions resulted in wrongful convictions”115. Based on the response it was suggested that an error rate of 0.5 percent was prevalent in the system. “Based on Uniform Crime Report Data for 2000, if we assume that system is 99.5 percent accurate, we can estimate that about 7,500 persons arrested for index crimes are wrongfully convicted each year in United States.”116

113 C. RONALD HUFF, ‘WRONGFUL CONVICTIONS IN THE UNITED STATES’, PG. 60
114 IBID
115 C. RONALD HUFF, ‘WRONGFUL CONVICTIONS IN THE UNITED STATES’, PG. 61
Further in a study conducted by Scheck, Neufeld and Dwyer in 2000, it was found that “in DNA testing conducted in 18,000 criminal cases, more than 25 percent of prime suspects were excluded prior to trial.”\(^\text{117}\) The National Registry of Exonerations, a joint project by the University of California Irvine, the University of Michigan Law School and Michigan State University College of Law, has maintained a systematic data base for all the cases of exonerations in United States since 1989. As per a report published by them in 2012, a total of 873 individuals have been exonerated in U.S. from January 1989 through February 2012.\(^\text{118}\) The registry states that till date 2,161 individuals have been exonerated and 18,750 years have been lost by those who were wrongfully convicted.

The National Registry of Exonerations has also provided a list of people who were wrongfully convicted and had to spend more than 30 years in prison before being exonerated. The longest incarceration period served by an innocent is of 41 years, where a man named Ledura Watkins was convicted for the charge of murder. He was acquitted by the court after 41 years, when the defence proved through DNA sampling that he was innocent.\(^\text{119}\) According to the Innocence Project Report, till now 350 exonerations have been carried out through DNA testing.\(^\text{120}\)

These findings raise serious questions about the accuracy of the U.S. criminal justice system.

**Causes of Wrongful Conviction in the United States**

Several research studies have pointed out the consistent factors leading to wrongful conviction in the country. These include “eyewitness errors, overzealous law enforcement officers and prosecutors, false or coerced confessions and suggestive


\(^\text{119}\) HTTP://WWW.LAW.UMICH.EDU/SPECIAL/EXONERATION/PAGES/CASEDETAIL.ASPX?CASEID=5159

\(^\text{120}\) HTTPS://25YEARS.INNOCENCEPROJECT.ORG/IMPACT/
interrogations, perjury, ineffective assistance of counsel, forensic errors and the adversarial system itself.”

121 These factors can be further explained in detail.

1. Misidentification by Eyewitness

Most of the study conducted for wrongful conviction, have suggested that majority of the cases where innocents are convicted owe their roots to misidentification by the witnesses. A survey conducted by C. Ronald Huff, “79 percent of the respondent ranked witness error as the most frequent type of error resulting in wrongful conviction”

122 Many other studies have also suggested similar results. Factors like psychological, social and cultural factors can significantly influence the eyewitnesses and their statements. Thus, concerns regarding the fairness of their statement needs the judges through several parameters by the police officers and the judges. The credibility of the statements given by eyewitnesses shall be appropriately tested.

2. Police and Prosecutorial Misconduct

A study conducted by the Centre of Public Integrity in 2003, cited that in more than 2000 cases the judges have held that prosecutorial misconduct is the principal factor for wrongful conviction or wrongful prosecution.

123 It is often observed, that in certain cases the police officers are biased towards the accused or they have immense pressure to arrest a person responsible for a crime, that they knowingly hide the exculpatory evidence of the accused.

An analysis done by the Centre of Public Integrity highlighted the following variants of misconduct done by police or prosecution. “Courtroom misconduct (includes making inappropriate or inflammatory comments in the presence of jury, mischaracterizing the evidence or the facts of the case to the court, or making improper closing arguments); mishandling of physical evidence (includes hiding, destroying or tampering with the evidence, case files and case records); failing to disclose exculpatory evidence; Threatening, badgering or tampering with witnesses;

121 C. RONALD HUFF, ‘WRONGFUL CONVICTIONS IN THE UNITED STATES’, PG. 61
123 CENTRE FOR PUBLIC INTEGRITY, (2003), ‘INVESTIGATING AMERICA’S LOCAL PROSECUTORS’, WASHINGTON, DC, AUTHOR
using false or misleading evidence; harassing, displaying bias toward or having a vendetta against the defendant or defendant’s counsel (including selective or vindictive prosecution, which includes instances of denial of speedy trial)124 and many more forms of misconduct.

3. False and Coerced Confessions

Another significant reason for wrongful confession is the coerced confessions or confessions taken by the police by subjecting the accuse to torture and abuse. According to the study conducted by Scheck in 2000, “one in four cases of DNA exoneration, involved false confessions”125. It has been observed that the police officers in some of the selective ‘elitist’ units are more prone to subjective interrogation. These units function with more independence from the rest of the organs of criminal justice system, for example the narcotics enforcement and street gang units.

To support the above argument, a testimony given by a police officer in one the scandals involving Los Angeles Police Department can be cited here-

“Well, sir, make no bones about it, what we did was wrong-planting evidence…. Fabricating evidence, perjuring ourselves- but our mentality was against them….. We knew that Rampart’s crime rate, murder rate, was the highest in the city… Lieutenants, captains and everybody else would come to our roll calls and say this has to end and you guys are in charge of things. Do something about it. That’s your responsibility….. And the mentality was, it was like a war, us against them…”126

Sometimes police officers conduct interrogation for more than 24 hours at a stretch. In such situation, the accused is under duress to sign his confession statement, because he becomes mentally and physically tired of negating his claim.

124 IBID
126 MCDERMOTT, T. (2000 DECEMBER 31), PEREZ’S BITTER SAGA OF LIES, REGRETS AND HARM, LOS ANGELES TIMES
4. Inadequate Assistance by Defence Counsel

The issue of inadequate legal assistance by the defence attorney, came to light in the famous case of Powell v. Alabama in 1932. The case, also known as the Scottsboro Boys case, was the first case in which appeal was allowed for the “ineffective assistance of the counsel”. Though the problem of poor legal assistance by defence lawyers is widespread in the country, nothing much has been done about it. During appeal in higher courts, very few cases are allowed for re-trial based on the inefficient assistance by their lawyers. The resources with the defence lawyers are scant, which worsens their interest in the case. Sometimes defence lawyers are overloaded with cases and they cannot devote their full attention for investigating a particular case.

Further the adversarial system poses greater threat to fair trial when the defence lawyers are inefficient. The accused is not only inadequately represented by his defence lawyer, but also vulnerable to “plea-bargaining” tool used by many such defence lawyers. Attorneys who don’t have sufficient time for investigating a case, often lure their clients with false promises in the name of plea bargaining. Huff, Rattner and Sagarin in their book titled ‘Convicted but innocent: Wrongful Conviction and Public Policy’ have stated that “even more threatening to our adversarial system’s assumption are the ‘guilty plea wholesalers’ who make comfortable livings by pleading defendants guilty without investigating cases or even interviewing the defendants.”127

5. Errors in Forensic Evidence

There is no doubt about the significant advancement in forensic science that has led to considerable improvement in the accuracy of criminal justice administration. Majority of the cases involving exoneration are based on DNA testing. However, the techniques and methods needs to be used with caution by only the trained expertise. One cannot blindly rely on forensic evidence given the factors like quality control, training and in some cases ethics of those working in forensic labs, must be considered.

In some cases, it was observed during later stages of trial that the forensic experts can tamper with the evidence for numerous reasons. They can intentionally distort

evidence, to prove an innocent defendant as a guilty convict. Such practices need to be curbed. It is indispensable, that the forensic labs shall be given independent status, free from any law enforcement agency or police control. Equal access to the analysis of evidence shall be ensured to the prosecution and the defence. In most cases, the labs are considered part of the police authorities. The approach of “We arrest them and you help convict them” needs to be checked upon by the judiciary.

6. The Adversarial System

The adversarial system supports all the factors mentioned above and escalates the chances of wrongful conviction. The adversarial system in comparison to the inquisitorial system, focuses more on the ‘process’ rather than finding the truth. The system hinges on the arguments of the prosecution and defence for establishing the truth. However, the prosecution has always the advantage of more resources (including human resources and budgetary resources). Further, the defence lawyers, mostly, rely on the evidence placed by the police instead of carrying on their independent investigation.

If the investigation carried out by the police is erroneous or biased, the defence will not have any evidence to support its case. Here, it becomes necessary for the police to carry out fair and objective investigation, which is not always the case.

Those who support the adversarial system claim that it is better than the inquisitorial system, because there are greater chances of securing justice when both the sides present their cases through their evidence and the tier of the fact decides the outcome. However, this is based on the assumption that both the sides would conduct independent and thorough investigation to support their argument. Unfortunately, these assumptions are highly debatable.

Recent Legal Reforms in United States

The Innocence Protection Act, 2003

The Innocence Protection Act, 2003 was formulated to bring certain reforms in the criminal justice system that would reduce the incidence of wrongful conviction in United States. The Act is sub part of The Justice for All Act 2004. The Innocence
Protection Act provides DNA testing as a necessary opportunity to every accused, especially in case of death sentence. The act provides the following provisions:

1. Ever convicted offender will be given an opportunity to prove its innocence through DNA testing.

2. The state has the obligation to provide legal assistance to the accused who are being tried for a death penalty, at every stage of the trial.

3. To provide adequate compensation mechanism to those who have been proved innocent.

4. The government would provide the public with adequate reliable information relating to death penalty laws and its administration.

The chief sponsor of the Act, gave the following statement at a press conference while introducing the Bill, in 2002-

“The death penalty machinery is broken. More than 100 people have been released from death row- not on technicalities, but because they were innocent. The Innocence Protection Act addresses the very same problem that the public is concerned about. Thirty-one members of the Senate and 246 members of the house are cosponsors of the bill. If we put ourselves in the place of those who are wrongly convicted, we surely would act. A year may not seem like a long time on Capitol Hill, but it is an eternity for someone sitting, wrongfully convicted, in a death row prison. For every wrongfully convicted person on death row there is a true killer who may still be on the streets. The parade of wrongfully convicted people being released from death row undermines public confidence in our system of justice.”

2.4 Wrongful Conviction in the United Kingdom

*England and Wales* –

The problem of ‘wrongful conviction’ and ‘miscarriage of justice’ in United Kingdom, has been recognized as early as 1980, when the Royal Commission on

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128 LEAHY, P. (2002, SEPTEMBER 24), (COMMENTS AT PRESS CONFERENCE), WASHINGTON, DC
Criminal Procedure (RCCP) was established. The popular belief that “the criminal trial starts with an arrest and ends in a trial and conviction” is a misguided one.\textsuperscript{129} The criminal justice system of United Kingdom has failed numerous times in securing justice to victims and sentencing the actual offender. The state’s coercive power should only be exercised in justified cases. The need to provide safeguards in the criminal justice system in United Kingdom to prevent wrongful conviction, was felt through the early 1930s. These safeguards included legislative reforms, compensation mechanisms and certain rights to the convicted individuals.

Over the last 20 to 30 years, UK criminal justice system has witnesses many cases involving miscarriage of justice through wrongful conviction. There cases highlighted the ‘errors’ that needed to be reformed to prevent wrongful conviction. The UK criminal system reforms have focussed more the procedural errors during pre-trial and trial stages, rather on the rights of the wrongfully convicted victims. The reforms have focused on the procedural irregularities regarding evidence, especially during appellate stages.\textsuperscript{130}

This approach was clarified in the case of \textit{R v Hickey and Others} in the following words-

\begin{quote}
\textit{This Court is not concerned with the guilt or innocence of the appellants, but only with the safety of their convictions. This may, at first sight, appear an unsatisfactory state of affairs, until it is remembered that the integrity of the criminal process is the most important consideration for courts which have to hear appeals against conviction. Both the innocent and the guilty are entitled to fair trials. If the trial process is not fair, if it is distorted by deceit or by material breaches of the rules of evidence or procedure, then the liberties of all are threatened. (R v Hickey and Others, part 4).}"
\end{quote}

\textsuperscript{129} \textsc{Clive Walker and Carole Mccartney, ‘Criminal Justice And Miscarriage Of Justice In England And Wales’}

\textsuperscript{130} \textsc{Criminal Appeal Act, 1986}
In England, initially “wrongful convictions were overturned because they were deemed to be ‘unsafe in law (s. 2 of the Criminal Appeal Act 1995) and not because the successful appellants were or even might be innocent. As such, the quashing of the convictions of appellants believed to be factually guilty was also a normal feature of the criminal appeals system if they were obtained in breach of due process (for instance, R (Mullen) v Secretary of State for the Home Department)”\textsuperscript{131}.

The adversarial system in criminal justice administration in the county has also been considered as a major factor in wrongful conviction. The propagators of the inquisitorial system have signified the importance of expert witnesses and forensic evidence during the stages of investigation and trial. The Criminal Justice and Public Order Act 1994 was enacted keeping in mind the importance of statements given by witnesses. Section 34-39 provide “potential penalties for the failure to answer police questions and failure to testify at trial”. Further the reforms in Criminal Justice Act 2003, was enacted to achieve “fair balance between the rights of the prosecution and defence”\textsuperscript{132}.

Other significant legislative reforms include “expansion of prosecutorial rights of appeal, such as provisions regarding tainted acquittals under section 54 of the Criminal Procedure and Investigations Act 1996. Further Part X of the Criminal Justice Act 2003 removed double jeopardy protection for some defendants. Both Acts also introduced new disclosure regimes, as well as protocols on the timing of pleas. The 1996 Act introduced mandatory defence disclosure, a direct response to accusations of ‘ambush’ defences. In addition, the Criminal Justice Act 2003, Part V, demands the disclosure of all expert reports sought by the defence, whether used or not”\textsuperscript{133}.

Thus, it can be seen from the above mention legislative reforms that provisions regarding interrogation, procedure of trial and pre-trial have been carried to reduce the errors leading to wrongful conviction in UK. These reforms are attempts to include

\textsuperscript{131} C. RONALD HUFF AND MICHAEL NAUGHTON, ‘WRONGFUL CONVICTION REFORMS IN THE UNITED STATES AND THE UNITED KINGDOM: TAKING STOCK’

\textsuperscript{132} HOME OFFICE, JUSTICE FOR ALL (LONDON: HMSO, CMND 5563, 2002), 13

\textsuperscript{133} CLIVE WALKER AND CAROLE MCCARTNEY, ‘CRIMINAL JUSTICE AND MISCARRIAGE OF JUSTICE IN ENGLAND AND WALES’
the “instruments of inquisitorial investigation”\textsuperscript{134}. Though these reforms have been implemented in the criminal justice administration of UK, but, still the problem of wrongful conviction has not been controlled. At present, there are many cases involving individuals who are innocent but have been wrongfully convicted or incarcerated by the law enforcements authorities.

**Conclusively Innocent’ vs ‘Not Guilty beyond Reasonable Doubt’: The UK Supreme Court rules**

In a landmark judgment, the definition of miscarriage of justice and concept of innocence was exaggerated by the UK Supreme Court. In most of the judgments the need of conclusive innocence was way too confined and it was also held that compensation will be granted to those who have failed to prove their innocence without any reasonable doubt.

To quote Justice Baroness Hale:

“Innocence as such is not a concept known to our criminal justice system. We distinguish between the guilty and the not guilty. A person is only guilty if the state can prove his guilt beyond reasonable doubt… if it can be conclusively shown that the state was not entitled to punish a person, it seems to me that he should be entitled to compensation for having been punished. He does not have to prove his innocence at his trial and it seems wrong in principle that he should be required to prove his innocence now.”\textsuperscript{135}

**Causes of Wrongful Conviction in United Kingdom**

There are various causes for miscarriage of justice through wrongful conviction in UK. The cases where individuals have been exonerated after proving their innocence, have been studied by various research scholars are criminologist. The established reasons that were analysed in these cases are broadly listed here-


\textsuperscript{135} R (ON THE APPLICATION OF ADAMS) (FC) V SECRETARY OF STATE FOR JUSTICE [2011] UKSC 18.
1. *Fabricated Evidence*

One of the principal reasons for wrongful conviction is false and fabricated evidence, to prove the guilt of the accused. Sometimes, the co-accused provide false evidence, implicating an innocent individual as guilty. Even the police have in many cases, tampered with the evidence or produced false evidence, just to show the court that the arrest made by them were based on thorough investigation. The *Birmingham 6* and *Tottenham 3* cases, involve such behaviour that has been highly criticized by the jury and is no more excusable.

2. *Unreliable Eyewitness*

The identification process must be carried out with precision and caution. Sometimes the police or the eyewitness “may prove to be unreliable when attempting to identify an offender, especially if the sighting was momentary and in a situation of stress.”136 Factors like psychological, social and cultural factors can significantly influence the eyewitnesses and their statements. The testimonies given by witnesses during identification parade shall not be blindly relied upon.

3. *Expert Testimonies*

The statements given by various experts during trial, have to be supported by other evidence. In cases like *Birmingham, Ward, Kizko* and “cot death cases”, the convictions were primarily based on the testimonies given by experts, whether forensic or statistic. During re-trial these testimonies were held to be baseless and illogical. Thus, it can be said that “the evidential value of expert testimony has been overestimated in a number of instances only for it later to emerge that the tests being used were inherently unreliable, that scientists conducting them were inefficient”137.

4. *Confessions obtained under Duress*

One of the major reasons for wrongful conviction is the confessions obtained from the accused under force and coercion. It has been reported in many cases that police have,

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136 Report Of The Departmental Committee On Evidence Of Identification In Criminal Cases (The “Delvin Report”) (1975-76 H.C. 338)
137 Clive Walker and Carole McCartney, *Criminal Justice And Miscarriage Of Justice In England And Wales*, pg. 192
through illegal means, extorted confessions from the accused after hours of torturing and abuse. During interrogation, the accused is often suffering through mental pressure and instability, and is sometimes not sure of the importance of the signing the confession statement. In many cases the sole reason for conviction is the confession of the accused, though there is no evidence to prove him guilty. Examples of such cases include Guildford 4, Birmingham 6, Ward, Cardiff 3 and Tottenham 3 cases.

5. Police and Prosecutorial Misconduct

In the contemporary criminal justice administration, the police department is majorly responsible for investigation and collection of evidence. Both, the prosecution and defence heavily rely on the evidence and witnesses for their case. The general approach of the Police officers is to find inculpatory evidence and witnesses to prove the guilt of the person arrested. In many cases, it has been observed that police officials are biased towards the prosecution. The defence lawyers don’t have enough resources to conduct investigation and have limited accessibility to the evidence collected by Police.

6. Judicial Misconduct

The conduct of judges can sometimes lead to wrongful conviction. Sometimes the judges are biased towards the prosecution and the victim. They have pre-conceived notions about certain criminals or certain crimes, for example sexual assault of children. They have already made their minds to convict the accused in some cases. As was seen in the case of Maguire 7, the judiciary failed to appreciate the defence’s submissions led to unfair conviction of the convicts.

7. Procedural Irregularities relating to Appeal

The problems relating to appeal in court are many. The financial difficulties to hire lawyers and lack of access of lawyer are common hindrances while filling an appeal petition. Sometimes the ground of appeals is not accepted by the Appellate court, without doing a proper investigation into the case. “There has to be reliance on extra-
legal campaigns that may or may not be taken up by the media dependent on factors that have little to do with the strength of the case.”

The Mechanism to Redress Wrongful Conviction

The Royal Commission on Criminal Justice

Also, known as ‘the Runciman Commission’, was established to consider the reasons and factors of errors in the criminal justice system of UK, leading to miscarriage of Justice. The commission submitted its report in 1993. The commission worked according to the bureaucracy and pragmatism of the British Government, rather than on principles and philosophy of law. The report had hardly emphasized on conceptualizing the reasons for miscarriage of justice. “It simply emphasized the need for effectiveness of the criminal justice system in England and Wales in securing the conviction of those guilty of criminal offences and the acquittal of those who are innocent. The approach of the Commissioners was criticized sharply, as it allowed for lobbying by official interest groups on grounds unrelated to any analysis of past cases and also for greater political freedom for the government of the day to interpret, meld and select from the reform agenda.”

The Criminal Case Review Commission

Since the Royal Commission on Criminal Justice could not succeed in getting the desired results, ‘The Criminal Case Review Commission’ was set up in 1997, under the Criminal Appeal Act, 1995. The Commission brought certain changes in the procedures relating to appeal in the Court of Appeal. It helps in referring cases to the Court of Appeal, if it finds the grounds are justified. Though CCRC has been doing exceptionally well in the past few years, however “a chorus of criticism is growing, with continued dissatisfaction with delays and a perceived low referral rate. Rejected applicants have also complained that reasons for non-referral are often cursory, while

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138 CLIVE WALKER AND CAROLE MCCARTNEY, ‘CRIMINAL JUSTICE AND MISCARRIAGE OF JUSTICE IN ENGLAND AND WALES’, PG. 192
139 RUNCIMAN REPORT (LONDON: HMSO, CM. 2263,1993)
140 CLIVE WALKER AND CAROLE MCCARTNEY, ‘CRIMINAL JUSTICE AND MISCARRIAGE OF JUSTICE IN ENGLAND AND WALES’, PG. 193
many researchers are frustrated by the lack of analysis and ‘value-added’ work that the CRCC is so well placed to carry out, or at least facilitate”\textsuperscript{141}.

**Compensation Mechanism**

In United Kingdom, the Legislative structure through which the Home Secretary specifies the conditions upon the received applications, is constrained to pay remuneration for imprisonment or wrongful conviction as provided in the provisions of section 133 of the Criminal Justice Act 1988. This section is in compliance with UK’s international obligations. It was witnessed as the prevailing strategy, due to which the Home Secretary with care awarded ex-gratia payment to the ones who have agonised negligence due to wrongful conviction or involvement of police or public authority. In both the strategies, critics figured out that the Home office was convinced by the conception that remuneration was simply for “the misery occurred due to conviction”, disregarding the multiple ways in which the failure of justice hurts, also the people linked with the one who has been acquitted, namely his family. Compensation will be granted only if the applicant is not acquitted due to legal technicalities and if fully innocent or there is no proof of “beyond reasonable doubt”\textsuperscript{142}.

In addition to these legal reforms, compensation mechanism for the wrongfully incarcerated needs to be enforced. Although there are certain provisions under the criminal Justice Act, 1988 and ex gratia payments for providing financial compensation, but the provisions are narrowly construed and needs to be revisited in light of changing trends of cases.

Thus, it can be concluded by stating that “Criminal Justice systems should be judged, inter alia, on the number of injustices produced by them in the first place, and, second,

\textsuperscript{141} IBID

on their willingness to recognize and correct those mistakes. The British system could improve on both counts.”

2.5 Country-wise report

Below there is a list of the most prominent cases of wrongful conviction all over the world and how the story started with a misidentified fact and how it falls to the verge of wrongfully prosecuted person into a convict for years before he finally gets exonerated from the criminal justice system.

1. Armenia

The case of Poghosyan and Baghdasaryan vs. Armenia, which came before the European Court of Human Rights, was an infamous case of wrongful conviction and police torture in the country of Armenia. The applicant in this case, Mr Armen Poghosyan, had filled the case in the European Court demanding compensation for his wrongful conviction. He was arrested by the Armenia Police in 1998, on the suspicion of having committed rape and murder. After being arrested he was subjected to police torture and abuse. He was forced by the police to make his statement confessing the crimes. Later, primarily based on his confession, the Lori Regional Court, in 1999, found him guilty sentencing him to fifteen years’ imprisonment. The verdict was upheld by the Criminal and Military Court of Appeal and the Court of Cassation. During the trial the applicant was could not establish his claim that he was made to confess under coercion and pressure.

In 2003, the General Prosecutor’s Office filed a petition asking for the reopening of Poghosyan’s case on the ground that the real culprits have been caught and identified. There was material evidence to prove that Mr Armen Poghosyan was innocent and was wrongly framed. After hearing the plea, Court of Cassation found that the applicant was wrongfully convicted and all the evidence against him were illegally


144 Application No. 22999/06, In The European Court Of Human Rights, Judgment Date: 12 June 2012
fabricated by police. The court also ordered interrogation of the police officers responsible for coerced confession of Mr Armen Poghosyan. Two police officers were sentenced for abusing the detainee and manufacturing proof. Finally, in 2004, after serving 5 years and 6 months in jail, the applicant was exonerated by the court.

After being acquitted, the applicant suffered “psychological, physical and material damage as a result of the unlawful actions of the police officers and the investigating authority”145. The he filled an application in the European Court of Human Rights for violation of his rights under Convention for the Protection of Human Rights and Fundamental Freedoms in 2006. The court condemned the state for the violation of human rights in such horrific manner and ordered to pay compensation for both pecuniary and non-pecuniary damages to the applicant.

2. Australia

Collin Campbell Ross Case

This is one of the first historical case where posthumous pardon was granted to a person who was wrongfully convicted and subsequently executed 86 years ago. Collin Campbell Ross, the victim of wrongful prosecution and conviction, was charged for rape and murder of a minor girl in Australia in 1921. He was the owner of a wine shop, and was believed to have lured the minor girl into his shop, offered her some alcohol and then raped and murdered her. In 1922, just after 115 days of murder he was executed by the court orders.

Ross was indicted on the premise of a few witnesses who affirmed that Ross admitted to them. Further, a few strands of blonde hair on a coat at Ross' home was alleged to be found. In 1993, a teacher named Kevin Morgan started looking into Ross' case. Morgan found a document in the prosecutor office containing the Alma’s hair tests, which had been thought lost. In 1998, two forensic specialists - the Victorian Foundation of forensic science and medicines and the crime scene investigation division of the Australian Government Police - found that the two heaps of hair did not originate from a similar individual, in this manner discrediting with sureness, the

145 Ibid 22

**Max Stuart Case**

Another horrifying case of wrongful conviction was the case of Max Stuart. He was arrested by the police for the charges of rape and murder in 1958. Gilbert Stuart was a resident of Australia who was held as convict for murder based on his signed admission in 1959, though it was submitted by him that he was illiterate. Stuart claimed that the police department literally treated him like an animal and they use to beat him and kept him hungry. The Law Society of the locals were monetarily weak and hence were inefficient in paying the legal fee of Max and hence he was convicted.

When Max Stuart was taken to police custody on the suspicion of being the culprit, he was interrogated by a group of senior police officers. They deduced a confession statement from the story conveyed by Max. A typewritten document was prepared in the form of confession. This document was the key evidence in prosecuting him. However, during his trial max contended that his confession statement was wrongly interpreted by the police as he didn’t have good knowledge of English language and the statement made was forged by the police officials. The advocate representing, Max gave strong evidence that the sophistication of the words in the confession and the structure of the words in the confession were simply inconsistent with this man's level of understanding of English, and his experience and sophistication in life.

After Stuart was awarded death penalty to death, there were great number of newspaper printings and circulations in Australia on in the name of Stuart which were with a good outcome in getting his punishment changed to life sentence.\footnote{Kevin Morgan (2012) Gun Alley: Murder, Lies And Failure Of Justice (2ND ED., UPDATED). Hardie Grant Books (Australia) Melbourne.} He severed 15 years as sentence.

\footnote{Mayes, Andrea (June 29, 2002). "AFTER 41 YEARS, CONVICTED KILLER CAN APPEAL". The Age. Innocence Network.ORG – 22/04/2017}
Darryl Beamish Case

Darryl Beamish, at the young age of 18 years, was wrongfully prosecuted and convicted for the murder of a famous socialite and granddaughter of big industrialist. He was arrested by the police officials in 1959. He claimed that during interrogation by the police officials, he was abused and forced to sign the confession statement. However, his claims were unsuccessful and he was sentenced to death by the jury in 1961.

Darryl Beamish was deaf and mute. He constantly claimed that he was innocent and that his confession was taken under duress. He made six appeals in the court during the long years that he spend in jail. He spent 15 years in jail after his death sentence was commuted to life imprisonment and was finally released in 1977. In 2005, his appeals were finally heard and it was proved that he was not the real murdered. It was later confirmed that Brewer's murder was likely been executed by Perth serial human phsycopath killer Eric Edgar Cooke, who admitted to the murder before his execution.

This period of forty-five years between the time of conviction and exoneration is considered to be the longest time in the Australian history for any wrongful conviction. After being exonerated he was also awarded sufficient compensation by the state.

3. Canada

David Milgaard’s Case

David Millgard’s case has received considerable media attention in Canada. The case signifies the worst miscarriage of justice in the country. David was only 16 years old when he was wrongfully convicted for the murder of a woman. He served 25 years in jail, before his case was heard again. He was finally exonerated in 1999.

In 1961, a woman named Gail Miller, was found brutally murdered by the Police in the city of Saskatoon. David with his friends was on a road trip and had stayed for a day in Saskatoon in his friend, Albart Cadrain’s apartment, during the time of murder. After few month of the murder, Albart informed Police that his friend David was in
the city when the murder happened. He also alleged that he had observed an unusual behaviour of David during their road trip. He also claimed to have seen blood on David’s cloth. Later during re-trial, it was proved that Albert had given this tip to the police in return of heavy amount of money as reward. This was a big clue to the police, since several months after the murder police was not able to find the suspect.

After Albert’s information, police started interrogating all the people who had been with David during the trip. All his friends initially denied any possibility of David being the murderer. Initially, all of his friends told the police that David was with them during the entire road trip. However, the police were very suspicious about David, thus the police kept on calling David’s friend for interrogation numerous times. Eventually all his friends changed the story and admitted that David was behaving unusual and was not with them for some time.

This was sufficient evidence for the police to arrest David. “On May 30, 1969, David was arrested and charged with the rape and murder of Gail Miller – a crime that had been committed by serial rapist Larry Fisher, who was not yet known to police.”

The primary evidence against him during trial, were the testimonies made by his friends. In 1970, David was held guilty of rape and murder by the court and was sentenced to life imprisonment. He made numerous appeals to the Saskatchewan Court of Appeal and the Supreme Court of Canada, but all of them were rejected.

During his 23 years in prison, he was subjected to physical and sexual abuse in prison. He even attempted suicide on several occasions. During his years in prison, Larry Fisher was arrested for the rape and attempted murder in some other case. After his conviction, both police and media started suspecting him for the case of Miller as well.

“On December 28, 1988, David applied to the Minster of Justice for a review of his conviction, but the Minister dismissed the application. David immediately tried again, filing a second application on August 14, 1991, arguing that Fisher had killed Gail. This time, as public

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149 HTTPS://WWW.AIDWYC.ORG/CASES/HISTORICAL/DAVID-MILGAARD/ visited on 22/06/2017
pressure mounted in light of many media reports about David’s wrongful conviction, the Minister asked the Supreme Court of Canada to give an opinion about what should happen next in David’s case. On April 14, 1992, the Court concluded that David’s conviction should be quashed and a new trial ordered. After 23 years in prison, David was finally a free man.”\textsuperscript{150}

Though his conviction was quashed, however was not yet legally exonerated by the court. During his new trial, with the assistance of Association in Defence of the Wrongly Convicted (AIDWYC), David was able to prove his innocence. During trial, DNA testing conclusively suggested that the semen found on the body of the victim was not of David but of Larry. This was sufficient evidence for his innocence. In 1999, David was given huge amount as compensation for his wrongful conviction. In 2003, the government announced that a royal commission would be set up to investigate into the reasons of David’s wrongful conviction.

David’s story has been highlighted in many movies, serials and books. His story was the inspiration for many scholars to conduct on research on the causes of wrongful conviction and wrongful prosecution, both nationally and internationally.

**James Driskell’s Case**

The wrongful conviction of James Driskell’s, in 1991, was a major blow to the Canadian Criminal Justice System. James was convicted for the murder of his friend, Perry Harder, on false testimony and wrong DNA test reports. James Driskell and Perry Harder used to run a shop called “chop shop” where they used to sell parts of stolen vehicles. In 1989, police arrested both of them, since they were indulged in illegal business of stolen cars. The two were charged with various criminal offences, including possession of stolen property.\textsuperscript{151}

\textsuperscript{150} HTTP://WWW.CBC.CA/NEWS/CANADA/SASKATCHEWAN/DAVID-MILGAARD-25TH-ANNIVERSARY-OF-RELEASE-1.4071825/ visited on 22/06/2017

During their arrest, Perry accepted to plead guilty as per the offer of prosecution. The deal was that he would plead guilty for his offenses and thus would get lesser punishment for it. However, James contended that the deal was that after Perry would plead guilty for the offenses of “chop shop”, then James would automatically be freed from the similar charges. However, during the day of trial, Perry did not come to the Court and eventually the charges against James were dropped off. After few days, he was found dead near a railway track. He was shot twice in his chest.

After finding the body of Perry, the police presumed that, James had killed Perry, so that he could not accept his guilt in the court room. According to Police, the reason for murdering Perry was that, Perry would not be able to testify against James in the court. However, the truth was that James was under the impression that we would not be involved in the offenses of their shop, if Perry gave the pleadings.

Eventually James was arrested for the first-degree murder of his friend Perry in 1990. The prosecution’s case primarily was based on two pillar. First, were the testimonies given by two people, Reath Zanidean and John Gumieny, who were notorious criminals themselves. They testified that James had planned the murder with them so that Perry could not testify in court. The other evidence was the three strands of hair recovered from James van. The forensic experts, at that time, tested it and declared that “the chances were small that the hairs [from James’ van] came from someone other than Mr. [Perry] Harder.”

In 1991, the court held him guilty for the murder and sentenced him to mandatory sentence for first degree murder: life imprisonment without any opportunity of parole for at least twenty-five years. He subsequently filed appeals in higher court but couldn’t succeed in any of them. In 2002, the Association in Defence of theWrongly Convicted (AIDWYC), supported his case and initiated the forensic test for the evidence of hair. It came out that those were not the hair of the deceased. On further investigation of the case it was found that the two people who had testified against James, were given huge amount of money for wrongfully testifying. Some of the Police officers were also responsible for the framing of evidence and testimonies.

152 AIDWYC, “JIM DRISKELL.” (SPRING 2005) VOL. 5 THE AIDWYC JOURNAL, P. 4
In 2003, James filled a petition, with the assistance of AIDWYC, for ministerial review of his conviction. After going through all the new evidence and forensic reports, the Ministry acquitted James of all the charges. In 2005, James was exonerated after spending nearly 13 years in jail. The ministry also ordered inquiry into the reasons for the wrongful prosecution and conviction.

**Robert Baltovich’s Case**

In another shocking incidence of wrongful conviction, a young man Robert Baltovich was held guilty by the court for murder of his girlfriend. Shockingly, there was not even a single evidence that could directly lead to Robert being the culprit. All the evidence was circumstantial evidence based on the unreliable testimonies of eye-witness.

In 1990, Robert was arrested on the unreliable testimonies of two eye-witnesses, for charge of murder of Elizabeth Bain. One of the eye witness claimed that she saw some man sitting with Elizabeth, just few hours before her disappearance. She was initially not sure of who the man was. The initial description of the man, given by her was very different from what Robert looked. However, after reading certain articles in newspaper that pointed towards Robert being the suspect for Elizabeth’s death, she linked the image of the man in her min to that of Robert. Further, since she could not remember accurately the face of the person sitting with Elizabeth, she was hypnotized and during her hypnosis, she revealed that she saw Robert.

The second eyewitness, David, testified that he had seen a man driving Elizabeth’s car after the day of murder. He admitted that he did not see the person properly, as he was not praying proper attention to it. However, he too, somehow linked the looks of Robert to that of the man he had seen. “Despite these questionable features of the Crown’s case, the jury found Robert guilty of the second-degree murder of Elizabeth.

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Robert was convicted on March 31, 1992. He was sentenced to life in prison with no eligibility for parole for the next 17 years.**154

Robert filled several appeals but all of them were rejected by the court. Finally, in 2000, the Association in Defence of the Wrongly Convicted (AIDWYC), took his case. “When AIDWYC began looking into Robert’s case, it found innumerable problems with the court proceedings. First, the judge had instructed the jury members in a way that placed too much emphasis on the Crown’s case while ignoring and belittling parts of Robert’s case, rather than taking a balanced view (which is the judge’s job). Among the many problems with the judge’s comments to the jury was the fact that he left out some important cautionary statements about the reliability – or lack thereof – of the prosecution’s eyewitness testimony, which could have led the jury to rely too heavily on this evidence. AIDWYC also argued that eyewitness evidence derived from hypnosis should not have been included, since hypnosis is a controversial technique that can affect memory in unpredictable ways (discussed further below). With AIDWYC’s assistance, Robert brought these problems to the attention of the Ontario Court of Appeal, urging the Court to set aside his wrongful conviction.”*155

The Court of Appeal began a new trial, with all the new evidence and claims. The court did not allow the eye-witnesses to testify this time. Thus practically, there was no case again Robert since there was no significant evidence. Robert was acquitted, after trial, in 2008 after spending 18 years in prison for a crime he did not commit.

**Donald Marshall Jr. Case**

Donald Marshall’s name is synonymous with the fight for justice for the wrongfully convicted in Canada. At a very young age of 17 years, Mr Marshall was arrested by the police for murder of his friend Sandford Seale in 1971. On May 28, 1971, Mr. Marshall and his friend Sandford Seale were having a routine discussion in park, when an old man named Roy Ebsary came and joined them. Ebsary later stabbed

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154 ROBERT BALTovich, “UNIVERSITY TO PRISON TO FREEDOM & EXONERATION” (SPRING 2009) VOL. 10 AIDWYC JOURNAL, PG. 4-5
155 R V BALTovich [2004] OJ NO 4880 AT PARA 58, 84-99, 126-128, 137, 191, CCC (3D) 289
Seale and ran away. Five days later, Mr Marshall was arrested by the Police or the murder. His arrest was made on the ground that Marshall was already been arrested and imprisoned for minor offenses. He had also joined a gang of men dealing with illegal activities. Though there was no sufficient evidence to prove his guilt, he was arrested on the basis of his previous criminal records.

After a three-day trial, he was convicted by the court for the murder of his friend in 1971. After waiting for almost 11 years serving in prison he was released by the Nova Scotia Court of Appeal in 1983 “after a witness came forward to say another man had stabbed Seale and several prior witness statements connecting Marshall to the death were recanted.”156

In 1990, he was exonerated by the royal commission who conducted a thorough investigation into his case and found many loopholes and faults in his trial. The primary reason for his conviction was systemic racism at the hands of the police, judges defence lawyers and many bureaucrats. A seven-volume report was prepared by royal commission. The report stated, “The criminal justice system failed Donald Marshall Jr. at virtually every turn from his arrest and wrongful conviction for murder in 1971 up to and even beyond his acquittal by the Court of Appeal in 1983”.157 The judgement that came for his exoneration was one of the landmark judgements of the Canadian judicial system that shook the bedrock of malicious and failed investigation.158

4. China

Teng Xingshan’s Case

In 1987, Teng Xingshan, a butcher by profession was arrested for the murder of a woman named Shi Xiaorong. She was working as a waitress in some restaurant and had gone missing in 1987. The police recovered the mutilated body of a woman in a river. The police assumed it to be the body of Shi Xiaorong. Further since the body

156 HTTP://WWW.CBC.CA/NEWS/CANADA/WRONGFULLY-CONVICTED-DONALD-MARSHALL-JR-DIES-1.781139
157 IBID
158 IBID
was mutilated in a very professional manner, the police pinned their suspicion on Teng, since he was a butcher. Somehow, the police and the jury linked all the facts and circumstances of the case and held Teng guilty for the rape and murder. They relied heavily on the confession statement made by Teng. The 1989 verdict of the court reads that “Teng confessed his crime on his initiative and his confession conforms with scientific inspection and identification”\textsuperscript{159}. However, the truth is that the confession was taken by force and coercion.

A 1994 newspaper report supplied by the authorities stated, “After a week of skilful interrogation, including psychological warfare and gathering evidence, police officers made a breakthrough. On September 29, this vicious criminal finally confessed to having raped and murdered the victim. On August 5, while loitering around Zhang Ying village, he stole a shirt and then walked to the vicinity of the Xinhua Road police station, where he saw Ms. Kang ride her bicycle into a corn-field path. He went after her, knocked her off her bike, dragged her into the field, beat her unconscious and raped her. He then used the shirt to strangle her to death.”\textsuperscript{160}

After conviction, Teng pleaded his innocence on several occasions but all in vain. The Court dismissed all his appeal petitions. In 1989, China executed him by firing a bullet in his head. It was an unfortunate incident where an innocent person was executed by the state. Even, his parents were not told about the execution. They only came to know a day later after his execution.

In 2005, the ‘murder victim’, Shi Xiaorong, suddenly appeared before the authorities stating that she was very much alive all these years. She stated that she had never known Teng nor was acquaintance to him. She had been sold in a marriage in 1987 and thus she disappeared. This came as an utter shock to the society and huge embarrassment to the state. After Shi’s statement, Teng Xingshan was posthumously exonerated in 2006. His parents and relatively fought all these years just to prove their son innocent.

\textsuperscript{159} HTTP://EN.PEOPLE.CN/200506/16/ENG20050616_190670.HTML, visited on 22/06/2017
\textsuperscript{160} HTTP://WWW.EXECUTEDTODAY.COM/2009/04/27/1995-NIE-SHUBIN-OOPS/, visited on 22/08/2017
Huugjilt’s Case

In 1996, a young boy named Huugjilt heard some cries of a woman in a public toilet. He immediately rushed to the site and found the body of a woman who was raped and murdered. He reported the incident to the police officials. Some days later he was arrested by the police on charges of rape and murder of the same woman. He was tried by the court on the basis of his confession which was obtained by the police after torturing him. He was convicted by the court in April 1996.

Just 61 days after his conviction he was executed in June 1996. After nearly 10 years, in 2005, a serial rapist, who was arrested for some other offense also confessed to the rape and murder of the woman in 1996. Further, after his confession in 2005, it took more than nine years for the police officials to clear Huugjilt’s name from the case. Finally, in December 2014, Huugjilt was posthumously exonerated by the Court.

“The murder happened during an anti-crime drive and detectives admitted being under pressure to secure a conviction. Delivering his judgement, the judge in the court in Hohhot apologised and bowed to the tearful parents of the executed teenager. ‘The Inner Mongolia Higher People's Court finds Huugjilt's original guilty verdict... is not consistent with the facts and there is insufficient evidence,’ the court said in a statement. ‘Huugjilt is found not guilty’. As an expression of the court's sympathy 30,000 yuan ($4850; £3080) was given to Huugjilt's parents.’”\(^\text{161}\)

5. France

Jean Calas Case

This is one of the most significant cases that reshaped the criminal law in Europe and ignited the revolution of criminal justice reform and religious toleration in France. The case dates to 1760s, when a Huguenot cloth merchant named Jean Calas, was

\(^{161}\) HTTP://WWW.BBC.COM/NEWS/WORLD-ASIA-CHINA-30474691 /visited on 22/08/2017
arrested and convicted for the murder of his own son. In 1761, the eldest son of Calas, was found hanged in his father’s cloth shop. There was some speculation that his son was going to convert to Catholicism.

The local population of the city Toulouse, where Calas lived, were mostly Roman Catholic. Provoked by the estranged death of the elder son of Calas, an ‘anti-Huguenot hysteria’ broke out in the city. The local population thought that Calas had murdered his son in order to punish him or prevent him for his conversion to Catholicism. Thus, under the pressure of the outbreak, Calas was arrested and subsequently convicted for his son’s murder.

However, Calas claimed that his son had committed suicide because of unknown reasons. But his plea was unheard. The jury too had anti-Huguenot prejudices which was clearly reflected in their judgement. In 1972, the local magistrates found him guilty and condemned him to death sentence. The very next day he was publicly executed and burnt to ashes.

Disturbed by the incident, the relatives of Calas brought his case to the notice of Voltaire, a famous French writer, historian and philosopher. After studying the case, Voltaire was convinced that the jury had not taken a fair decision and that they were prejudiced interest to the Huguenot community. Voltaire initiated various press campaigns to inform the European population about the huge injustice in this case and to convince them that the case needs to be re-examined. Voltaire’s initiatives were successful and a 50-judge panel reviewed the case of Calas. Finally, in 1965, the panel exonerated Calas of all the charges and also ordered the government to pay sufficient indemnity to the family.162

**Patrick Dils Case**

The case of Patrick Dils highlighted the major loopholes and predicaments in the criminal justice system of France. This is the case where the youngest person was sentenced to life imprisonment in the history of France. In 1989 Partick Dils, 16 years old, was wrongfully convicted for the brutal murder of two children. In 1987, Patrick

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162 HTTPS://WWW.BRITANNICA.COM/BIOGRAPHY/JEAN-CALAS / visited on 22/08/2017
was arrested by the Police officer on suspicion of killing two children that took place in 1986. The site of murder was few metres away from Patrick’s residence. After 36 hours of continuous police interrogation, Patrick confessed of murdering the two and also declared that he doesn’t know why he killed them. Though later he retracted his confession.

The investigation of the case, from the very beginning was faulty and the investigating officer was an incompetent one. There were three primary suspect of the crime arrested by the investigative authorities. Patrick Dils was one of them. The other two suspects were released by the court during trial since there was no proper evidence nor was there any confession statement made. However, the confession made by Patrick was considered the sole evidence against him. Though he retracted his confession several times, but the judiciary did not accept it. Patrick’s parents claimed that he was only 16 and thus was immature and unaware of the significance of his confession statement. In 1989, Patrick was sentenced to life imprisonment, notwithstanding the fact that he was a minor and should have been given lesser punishment.

From 1990 till 1994, Patrick made several appeals to the court. He also requested a presidential pardon but failed in all of them. In 1997, a chief warrant officer named, Jean-François Abgrall, found about a new fact regarding the children’s murder case. He found that a serial killer, named Francis Heaulme, was also present at the site of murder and had seen children playing at the site. Heaulme had himself confessed this statement that the children had thrown stones at him when he was riding his bike. Though he didn’t confess that he had killed them. This new revelation by Heaulme was a turning point for the case. With the initiatives of Abgrall and Patrick’s parents, the case was reopened.

In 2001, a new trial began where all the new evidence and facts were brought before the court. Francis Heaulme was brought as a key witness, though he refused to confess that he had committed the murder. To everyone’s shock, the court convicted Patrick to 25 years’ imprisonment. Finally, in April 2002, a third trial began at the courts of Appeal. “Evidence was produced by the police, showing that Patrick Dils
did not have time to commit the crime: the children died around 17:00, while Patrick Dils was back home until about 18:45. For the first time, Patrick Dils spoke of the torments he endured in prison; he was beaten, mocked and raped.”

After hearing the prosecution and the defence lawyers, Patrick was exonerated of all the charges on 24th April 2002. His case was the epitome of the criminal law amendments that happened in 2001 which laid emphasis on the presumption of innocence, which now authorises appeals to the Assize Court.

6. Germany

Host Arnold Case

Host Arnold was a school teacher in Germany who was wrongfully convicted for the brutal rape of her colleague Heidi. He was falsely framed by his colleague for brutally raping her. During trial in the court there was no proper evidence apart from the statement of the false victim. However, since the rape law in Germany were very strict and pose a difficulty defence, Arnold failed to prove his innocence. In rape cases, the accused is presumed to be guilty. The accusation is taken as primary evidence. Often in false cases the accusers benefits from the presumption of innocence, due process of law and all other subsidiary laws.

“In the original rape trial ‘the prosecution could not present any conclusive evidence, but the court believed Heidi K., and followed their presentation in full. [...] She had Charisma and could convince people. In her tears, evidence seemed to crystalize’. Impeccably groomed Heidi K. had taught class, minutes after the alleged rape in a much-frequented room, after an alleged escape over a fire ladder and vomiting. Her anal fissure was found in her second medical exam, non-existent in the first exam. She alleged to have been threatened by the accused, a week after the fake rape. But the accuse had a good alibi he was in prison. In spite of such glaring inconsistencies, Horst Arnold was convicted.”  

163 W RONGFUL C ONVICTION: I NTERNATIONAL P ERSPECTIVES ON M ISCARRIAGES OF J USTICE B Y C. RONALD HUFF (EDITOR), M ARTIN K ILLIAS (EDITOR), 2002

Arnold was convicted by the court and had to serve his full sentence of 5 years from 2001 till 2006. After coming out of the prison, an advocate offered to assist him pro-bono because he had discovered that your accuser has a long history of outrageous lying. In 2011, after going through all the facts and circumstances, the court exonerated him of all the charges. The victim who had wrongfully accused Arnold of rape charges was given a sentence of five and a half years.

7. Iran

Atfeh Sahaaleh’s Case

Atfeh Sahaaleh was a 16-year-old girl who was wrongfully convicted by a religious head in Iran. She was accused of violations against modesty for being engaged in a sexual association with a 51-year-old wedded man named Ali Darabi. She was convicted and given death sentence for “crime against chastity”.

Atfeh had a disturbed childhood, since she had lost her mother at a very young age. Her father was a drug addict and thus could not take proper care of the child. The town of Iran where she lived, Neka, was principally under the control of religious institutions and their heads. In a town where there was heavy dominance of the religious institutions, “moral policing” was very common. The job of such moral police is to ensure that every individual follows the sacred Islamic Code. Atfeh was often subjected to moral policing by the religious heads.165

Atfeh was caught in an illicit sexual relationship with a married man Ali Darab. As per a documentary made on her execution it is suspected that Circumstances under which Atfeh's was arrested were uncommon and unexpected. “The moral police said the locals had submitted a petition, describing her as a ‘source of immorality’ and a ‘terrible influence on local schoolgirls’. But there were no signatures on the petition - only those of the arresting guards.”166

Just after three days of her arrest, the trial began. Atfeh contended that the relationship was a forced and abusive one. She was forced into the relationship and

165 HTTP://NEWS.BBC.CO.UK/2/HI/PROGRAMMES/5217424.STM, visited on 23/07/2016
166 IBID 44
was raped several times by the man. Surprisingly there is no transcript for the trial available to public. Further, under Sharia law in Iran, the age of sexual consent for girls is only 9 years. Thus it became very difficult for tefah to prove the allegations of rape. According to Iranian lawyer and exile Mohammad Hoshi rape is very hard to prove in an Iranian court. “Men's word is accepted much more clearly and much more easily than women”.167

In the end of the trial, when Atefah, who was only 16 years old, sensed that she has failed to convince the judges, got frustrated. In frustration, she shouted back at the judge and threw off her veil in protest. This act offended the judge and was seen as huge disrespect for the judiciary. She was thus sentenced to execution and Ali Darab was given 95 lashes as punishment.

On 15 August 2004, Atefah Sahaaleh was hanged in a public square in the Iranian city of Neka. The execution was made public to teach others a lesson. The execution was challenged on several grounds. The trial and judgment were not as per the Iranian Law. The major loopholes during trial were. The Judge got Atefah's age wrong - she was 16, not 22 as he described her.

Atefah was convicted for "adultery" though she was not married. Atefah was never given a second chance of appeal. The notice of the date of execution of the convict was not given to the family. The most shocking and unusual fact is that the judge himself executed the convict, though the judge is meant merely to preside, with the killing being done by a separate official.

“After the execution of Atefeh, Iranian media reported that Judge Rezai and several militia members, were arrested by the Intelligence Ministry. The execution is controversial because as a signatory of the International Covenant on Civil and Political Rights, Iran promised not to execute anyone under the age of 18. Atefeh's father had passed her birth certificate to the civil authorities, lawyers involved, journalists and Judge Rezai. Pursuant to continual complaints filed by Atefeh's

family, and heavy international pressure about her execution and the way the judge mishandled the case, the Supreme Court of Iran issued an order to pardon Atefeh.”

8. Ireland

Nora Wall Case

Ms. Nora Wall, a former nun, was wrongfully convicted of raping a 10-year-old girl named, Regina Walsh. The victim, Regina, was in the care of the Sisters of Mercy children's home, where Nora Wall was working. She was convicted on the basis of rape charges made by the victim, Regina and the statement of evidence given by a witness named Patricia Phelan.

In 1999, Ms Wall was tried for the offense of rape. The witness Patricia testified against her. Though Ms Wall pleaded that she was innocent and was being framed, the jury solely relied on the witness statements. She was held guilty and sentenced to life imprisonment for the charges. After a week of conviction, The Director of Public Prosecutions made application to the Court of Criminal Appeal to have the verdicts set aside. “The ‘principal reason’ the DPP was doing so was that a witness had been called to give evidence in the six-day trial despite a decision by the DPP that that witness should not be called.”

Because of the inefficiency in the communication system of the prosecution, Ms Wall was wrongfully convicted. The witness, Patricia, had a history of making false accusations and fabricating evidence, that was untrue. She even admitted to have fabricated the evidence after the trial was complete. Further even the victim who had accused Ms Walls for rape charges had a history of “unsubstantiated allegations” against many other people. It was found that she was not mentally stable and had been visiting psychiatric. During trial, the victim had asserted that all her allegations were made on mere “flashbacks” of memory she had.

Considering these new facts, the Court of Criminal Appeal (CCA) in 2005 declared Ms Wall’s conviction a miscarriage of justice.\textsuperscript{170} Though she was declared innocent by the court of criminal appeal, her name and reputation was badly tarnished. She became the first woman to be convicted of rape in Ireland. She further filed a suit for damages for wrongful conviction. The High Court awarded her substantial amount as damages in 2016.

**Sallins Train Robbery Case**

Sallins Train Robbery case is one the most dramatic and famous cases in the criminal justice history of Ireland. It is a case that highlighted the torture and abuse by the police officials of accused person during police custody. The case relates to the offense of robbery that took place in 1976, when a mail train was robbed near Sallins in Ireland.

It was estimated that around 200,000 Irish pounds were stolen. Immediately after the robbery, five members from Irish Republican Socialist Party, were arrested. Out of these five members, two of them fled the country during bail. While the other three, namely Osgur Breatnach, Nicky Kelly and Brian McNally, signed the confession statement under the duress and abuse of Garda Síochána (the police force of Ireland).

After their confession statements were signed, the trial began in the Special Criminal Court. “The trial of Kelly, McNally and Breatnach in the Special Criminal Court became the longest-running trial in Irish criminal history, at 65 days, before it collapsed due to the death of one of the three judges, Judge John O'Connor.”\textsuperscript{171}

During trial, all the three-accused asserted that they were subjected to police torture and beating. One of them, Nicky Kelly, told the court that he was subjected horrifying abuse and beatings, “his head was rammed off lockers, put down the toilet and spat on. He also claimed he was hit in the back with a chair, kicked, kneed in the groin and

\textsuperscript{170}Https://Www.Irishtimes.Com/Opinion/Nora-Wall-Case-1.1287375, Visited 14/09/2016
boxed in the ears.”\footnote{Ibid 231} But the court held that the wounds were self-inflicted and not inflicted by Police.

All the three accused were convicted, however Nicky Kelly fled the country before the day of conviction since he had anticipated that he would be convicted for an offense he never committed. The other two accused were sentenced to nine and twelve years respectively and Kelly was sentenced in absentia. In 1980, 4 years after conviction, the McNally and Breatnach were acquitted by the Court of Appeal. Their acquittal was based on the sole ground that their confession statement was taken under duress by the Police.

It was observed that “The late 1970s was a black period in Irish law enforcement and judicial history, one that severely damaged the reputation of an Garda Síochána (police officer). An investigation by Amnesty International, which probed 28 cases between April 1976 and May 1977, concluded that people had been ill-treated while in police custody. The abuses ranged from pushing and shoving to severe beatings, and food and water deprivation”.\footnote{HTTPS://WWW.IRISHTIMES.COM/CULTURE/STAGE/THE-DRAMA-AND-DEBACLE-OF-THE-SALLINS-TRAIN-ROBBERY-1.2161447 / 09/12/2017}

After hearing the news of acquittal, Nicky Kelly returned to Ireland from USA in anticipation of a similar successful appeal. However, he was sentenced to jail. In 1983, he started a hunger strike in prison which lasted for 38 days. On July 17, 1984, he was released by the Minister of Justice on Humanitarian Grounds. “In 1992, Nicky was granted a presidential pardon by the then President of Ireland, Mary Robinson, and received £1 million in compensation”\footnote{HTTPS://WWW.INDEPENDENT.IE/REGIONALS/WICKLOWPEOPLE/LIFESTYLE/WRONGLY-JAILED-FOR-TRAIN-HEIST-30662223.HTML / Visited 13/06/2015}.

Sharing his experience of being imprisoned for an offense he never committed, Nicky Kelly said “It's very hard to come to terms with imprisonment. When you are jailed for something that you did do, you have a deadline, but when you are jailed for
something you didn't do, it's totally unreal. You never accept it. You are fighting it every day you are there.”

9. Italy

Amanda Knox and Raffaele Sollecito Case

In November 2007, Meredith Kercher, a 21-year-old British student, was found murdered in her apartment. She was sharing this apartment with another girl named Amanda Knox. Soon after the murder Amanda Knox, her boyfriend named Raffaele Sollecito and a local bar owner Patrick Lumumba were arrested for the charge of Meredith’s murder. The arrest was made on the basis of illegal interrogation. A few days later a man named Rudy Hermann Guede was arrested by the police from the evidence of CCTV footage and his DNA present on the body the victim and at the murder spot. He was the real culprit where all the evidence, witnesses and even his own confession were used against him during trial.

However, during trial Amanda Knox and Raffaele Sollecito were also held guilty on the basis of DNA evidence that was procured from the murder weapon. In 2009, they were convicted by the court (along with Rudy Guede) in the murder of Meredith Kercher, and sentenced to 26 and 25 years respectively.

“US Senator Maria Cantwell issued a statement after the guilty verdict saying: I am saddened by the verdict and I have serious questions about the Italian justice system and whether anti-Americanism tainted this trial. The prosecution did not present enough evidence for an impartial jury to conclude beyond a reasonable doubt that Ms. Knox was guilty. Italian jurors were not sequestered and were allowed to view highly negative news coverage about Ms. Knox.”

175 Ibid 213
177 Http://Www.Amandaknoxcase.Com
After trial, Amanda Knox and Raffaele Sollecito appealed at the higher Court in Italy. The trial began and this time the primary evidence against them, the DNA evidence, was re-examined through better technology and expert review. In 2011, they were acquitted by the court after nearly spending four years in jail.

However, their agony didn’t end here. In 2013, the Italian Supreme Court annulled the acquittal and called for a new trial. This was based on some of the new witnesses that came before the court. In 2014, in the absence of Amanda Knox the Supreme Court re-convicted both of them. Finally in 2015, after filling an appeal for their re-conviction the Supreme court pronounced them innocent. The Supreme Court held “The Court deliberated for 10 hours before declaring that the two did not commit the crime, a stronger exoneration than merely finding insufficient evidence to convict.”

The case was termed as the “case of the century” by many. It highlighted the inefficiencies in the Italian criminal justice administration. The police official, the investigative team and even the judiciary was heavily criticized for their carelessness and wrong judgment.

Giuseppe Gulotta Case

Giuseppe Gulotta was wrongfully convicted for the murder of two police officers in 1976. He was falsely accused for the murder. This case is also known as “Alcamo Marina slaughter” case. Though he pleaded guilty and contended that his confession was taken by torture by the police officials, the court held him guilty and convicted him to imprisonment. He was jailed for 22 years for the conviction.

In 2007, one of the investigators who had worked on the case admitted to having extracted Gulotta’s confession under torture. Finally, he was acquitted in 2012, after

178 Https://Www.Nytimes.Com/2014/01/31/World/Europe/Amanda-Knox-Trial-In-Italy.Html
179 Http://Themurderofmeredithkercher.Com/Pdf/Translation_Supreme_Court_Report_V1.0.Pdf
180 HTTPS://WWW.CTVNEWS.CA/WORLD/AMANDA-KNOX-MURDER-CONVICTION-OVERTURNED-1.2300012
spending almost his entire life in jail. In 2016, the State government paid him 6.5 million euros, for being wrongfully convicted for 22 years.\(^{181}\)

10. Mexico

Jacinta Francisco Marical Case

This is one of the landmark cases in Mexico which highlight the plight of indigenous population of Mexico and how they become easy target for the officials. Jacinta Francisco Marical was wrongly prosecuted for the offense of kidnapping six federal agents. She was later convicted by the court, along with two other women, for imprisonment of 21 years.

In 2006, six Federal Investigative Agency (AFI) Agents, not dressed in uniform, raided a street market in main square of ‘Santiago Mexquititlán’ in Mexico. The AFI agents asserted that they visited the street market to carry an operation to locate illegal distribution of drugs and private DVDs. During the official operation many local vendors protested this intrusion of the agents, since the agents started confiscating the DVDs. This led to tension and many of the local vendors together opposed the six AFI agents and held them hostage for some time.

After some time, their senior was called and the matter was resolved by paying the vendors the amount for the damages caused in the operation. For the locals, the matter ended there, however the AFI officials “filed a complaint with the Federal Attorney General’s Office in which they alleged that they had been kidnapped for several hours by the protestors on Santiago Mexquititlán’s main square.”\(^{182}\)

Nearly four month later, in August 2006, Jacinta Francisco Marcial was arrested for the said kidnapping. However, she was falsely informed that she was being taken for interrogation regarding felling of a tree. Jacinta was illiterate and could hardly speak or understand Spanish language. She was taken to court where she was ‘pressed’ to sign papers, she did not understand. She was not provided with an interpreter during

\(^{181}\) HTTPS://WWW.THELOCAL.IT/20160425/7000-ITALIANS-ARE-UNJUSTLY-IMPRISONED-EACH-YEAR

\(^{182}\) Amnesty International Report On Jacinta Francisco Marical, August 2009
judicial proceedings. She was completely unaware of the dire consequences of signing those papers.

As per the Amnesty International Report, “Only when she arrived at the ‘Centro de Readaptación Social de San José El Alto’ prison did she realize that she was being charged, together with two other women, of having kidnapped six AFI agents during the incident in the market of Santiago Mexquititlán on 26 March 2006.” As per evidences and witnesses, Jacinta Francisco is an indigenous woman who was selling ice creams at her stall at the square in March 2006, when the alleged incident happened. She was in no way connected to the kidnapping of the agents. All the vendors present that day have stated that she had no role to play in the alleged incident.

“The only evidence on file to implicate her in the events of that day was a newspaper clipping from the local newspaper “Noticias” taken when Jacinta was passing at the back of the crowd of protestors.”183

Amnesty International gave strong criticism to the case. The took up the case of investigation. As per the organization “the charges against Jacinta were fabricated and that she has been framed as a convenient target simply because of her marginal status in society as a poor indigenous woman.” Finally, in 2014, after much criticism and work done by the human rights lawyers, Jacinta was ordered to be released. “In May 2014, a Mexican Court ordered the federal attorney general’s office to compensate Jacinta for damages resulting from her unjust incarceration. The court also ordered that she should be publically declared innocent.”184 She served three years in prison, before getting a bail for the crime she never committed.

Through this case, it was the first time that Mexican government was held accountable for the wrongful prosecution and conviction of an innocent citizen. The government was ordered to offer a public apology along with compensation money to Jacinta.

11. Netherlands

Lucia de Berk Case

Lucia de Berk’s Case represents one of the biggest miscarriages of justice in Dutch legal history. Lucia was paediatric nurse by profession. She was arrested in 2001, after a 6-month-old baby died in a hospital, under Lucia’s care in The Hague. Lucia was initially charged with poisoning the baby. After her arrest, the investigators related several deaths in the same hospital to this incident. They were suspicious because when these deaths or near deaths incidents occurred Lucia was alone with those patients.

After the investigation, the prosecutor charged Lucia with 13 killings and 5 attempted murders, that occurred between 1997 and 2001. In 2003, the trial court held her guilt for three murders and four attempted murders, primarily centered around the 6-month-old baby. She was given life imprisonment, for which there is no provision of parole under Dutch law. The trial court decision was partially based on the “testimony by a statistician who put the odds at one in 342 million that it was mere coincidence she had been on duty when all the incidents deemed suspicious occurred.” Further some of the entries from Lucia’s diary were taken into account, where she wrote about strange compulsion and about how she gave in those compulsions. However, these entries were abstract and could not be related to murders in absence of any direct evidence. Somehow, the prosecution was able to link all the evidence and the judiciary relied upon it.

In 2004, she appealed in appellate court. The decision of the appellate court came as more disturbing judgment, where Lucia was convicted of four additional murders and three attempts to murder. After her conviction, many doctors and statisticians campaigned against the miscarriage of justice and demanded a re-trial. Her conviction became controversial in media. Finally, in 2008, the Supreme Court started the re-trial of the case and Lucia was released from jail, after serving nearly six years in jail.

pending re-trial. In April 2010, she was exonerated by the court and the country's attorney general personally apologised for her ordeal.\footnote{Ibid}

This case revealed how wrongful prosecution can lead to miscarriage of justice subjected to innocent people. In this case, there was no proper evidence to proof Lucia guilty. However, the prosecutors and the jury relied on evidence that was not worthy and should have been re-examined. This case is a perfect example of miscarriage of justice.

12. New Zealand

Aaron Farmer Case

Aaron Framers Case is another example of miscarriage of justice at the hands of prosecution and judiciary. Aaron Farmer was wrongfully convicted for the offense of raping a 22-year-old victim. The conviction was primarily based on the victim’s identification of the accused. Aaron was suffering from autism, when he was convicted and had to spend two years before being legally exonerated.\footnote{\url{HTTP://WWW.NZHERALD.CO.NZ/NZ/NEWS/ARTICLE.CFM?C_ID=1&OBJECTID=10719246}}

In 2005, Aaron was convicted of raping a 22-year-old girl. The victim had identified him when some photographs were shown to her and she picked him in the photos. The victim was very adamant that Aaron was the culprit, though she had no significant proof to give. The chief investigative officer who was handling the case, proved in the court that the DNA collected from victim’s cloth and body matched with that of Aaron. The DNA evidence was the primary reason for his conviction. He was held guilty by the trial court and sentenced to eight years in prison.

Aaron and his family made endless appeals claiming that Aaron was innocent. In 2007, the New Zealand’s Court of Appeal conducted the re-trial and overturned his conviction. “In preparation for farmer’s retrial new DNA tests of the victim’s cervical swab and fingernail scrapping were then performed using more sensitive techniques than were available at the time of his trial”\footnote{\url{HTTP://FOREJUSTICE.ORG/DB/FARMER--AARON-LANCE-.HTML}}. Pending his trial, he was granted bail after spending two years in jail. The principal reason for his re-trial was his lawyer’s

\begin{thebibliography}{99}
\item \footnotetext[186]{Ibid}
\item \footnotetext[187]{\url{HTTP://WWW.NZHERALD.CO.NZ/NZ/NEWS/ARTICLE.CFM?C_ID=1&OBJECTID=10719246}}
\item \footnotetext[188]{\url{HTTP://FOREJUSTICE.ORG/DB/FARMER--AARON-LANCE-.HTML}}
\end{thebibliography}
failure to produce an alibi witness for Aaron. In 2008, the court, based on new evidence, exonerated Aaron and dismissed all the charges against him.

“Associate Justice Minister Nathan Guy today formally apologised to Mr Farmer and announced he would get $351,575 to compensate him for the trauma and loss he suffered because of his wrongful conviction. The Court criticized a police detective who told Mr Farmer his DNA had been found on the victim and his clothes matched the description of the offender - when both claims were untrue.”

The police and investigation team for this case were heavily criticized for their carelessness and undisciplined work. The principal detective was also condemned by the media and the judges for wrongfully framing charges on Aaron, who was clearly an innocent man.

13. South Africa

Thembekile Molaudz Case

Thembekile Molaudz was a former Pretoria taxi driver who was wrongfully convicted for the murder of Dingaan Makuna, a policeman, during a botched hijacking in 2002. He served nearly 11 years in prison and was subjected to horrifying torture and abuse by the wardens of the jail. In the time of 11 years he served, He filed many appeal petitions but all of them were denied. His prayers were, finally answered when a warden serving in his prison took notice of his case and referred his matter to Wits Justice Project(WJP).

In 2002, a policeman was murdered during a botched hijacking in Mothutlung, South Africa. Twelve suspects were arrested, Molaudz was one of them. Several identity parades were held where the witness had to identify the possible culprit out of these 12 suspects. The deceased policeman’s daughter who was the key witness in the murder also participated. But, none of the witnesses identified Molaudz. Still he was arrested by the police and tried by the court.

189 HTTP://WWW.NZHERALD.CO.NZ/NZ/NEWS/ARTICLE.CFM?C_ID=1&OBJECTID=10719246
During trial, there was no substantial evidence to prove him guilty. As per the reports “no gun residue was found, there were no witnesses, no independent corroboration, no fingerprints and no tangible evidence linking him to the crime.” The only evidence against him was a confession made by a co-accused. This co-accused was later described by the High Court as a ‘reckless liar’. Thus, primarily based on the confession made by the co-accused, Molaudz along with other accused persons were held guilty and were sentenced to imprisonment by the court.

The real agony of Molaudz began when in the prison where he physically and sexually abused by the wardens. He wrote in a letter to Judicial Conduct Committee that he was made to strip naked and was given shocks by shock-shields just for fun of the wardens. He spent eleven painful years facing the abuse every day. He made several appeals including the High Court and Supreme Court, but none of them were accepted.

He also had to fight a long legal battle to procure his trial transcripts, which were being constantly denied to him. He had to spend a huge amount of money, to hire a good lawyer who could get him his trial transcripts. This was a clear violation of law, because according to the law in South Africa indigent inmates are legally entitled to their records at State expense.

After serving painful 11 years, he was assisted with legal aid from Wits Justice Project and a senior advocate who were committed to end miscarriage of justice to innocents. His case was heard by the Constitutional Court. In 2013, the Court overturned his conviction and held “his case demonstrated exceptional circumstances that cry out for flexibility on the part of the Court and that the ‘interests of justice’ required the relaxation of the legal principle.”\footnote{Https://Www.Sapeople.Com/2015/06/30/Thembekile-Molaudzi-Wrongfully-Convicted-South-African/}

Molaudzi wrote in an impassioned 2012 letter to the Judicial Conduct Committee that “\textit{No one has felt the agony and anguish I’ve been through, I’ve endured horrors almost beyond human imagination. This (my conviction) is a shocking failure of}
our legal system and no person in this country is prepared to face that reality. Many nights I lay awake pondering what I can do to get assistance. I did not commit crime, crime is committed against me. Should I just fold my hands and rot in jail for a crime I did not commit?”

15. United Kingdom

Stefan Kiszko Case

The devastating case of Stefan Kisko is regarded as the worst miscarriage of justice at the hands of British Government. Stefan was an innocent man who was wrongfully convicted for rape and murder of an 11-year-old girl. Stefan was suffering from an ailment called hypogonadism due to which he had growth abnormalities and behavioural problems. Owing to his condition he became an easy prey for the police and was forced to confess the crime he never committed.

Stefan, a tax clerk by profession was arrested by the police in 1975 for the charge of murder and rape of girl child. In October 1975, the victim’s body was found stabbed 12 times and there was evidence that she was sexually assaulted as well. After finding the body, the police interviewed 6000 people in search of any clue for the culprit. During interrogation, few girls reported that they had seen a man indecently exposing himself, just few days before the murder. Two of those girls identified Stefan as that man. Without any further delay police arrested Stefan and began to search for evidence that could prove his guilt. The police never tried to look for other clues that could lead them to the real culprit.

“The police questioned Kiszko closely. They were convinced he was the murderer, and they seized on inconsistencies between his various accounts of the relevant days as further demonstration of his guilt. They paid no attention to his gross social backwardness; they did not tell him of his right to have a solicitor present; when he asked if he could have his mother present when he was questioned, they refused;
they did not caution him until well after they had decided he was the prime suspect.”192

After nearly two days of questioning, he confessed his crime after being assured that he could return home to his mother if he did so. He later withdrew his confession but the court didn’t accept it. The confession statement made by him was the primary evidence against him. Further during trial few young girls testified against him stating he had exposed himself indecently to them on several occasions. “This they later confessed was totally untrue, but they said it for a ‘laugh’.”193 In 1976, the trial court held him guilty and sentenced him to life imprisonment.

After his conviction, Stefan’s mother campaigned against the conviction, stating his son was innocent and was wrongly framed. After 14 years, his case was reopened. During trial, it was proved “by scientific evidence that Mr Kiszko was physically incapable of leaving his sperm at the murder scene”. The DNA evidence at the site was the primary evidence which did not match with that of Stefan. In 1992, his conviction was quashed by the Appellate Court.

But, unfortunately, the psychological impacts and distress for being in jail and abuse faced by him from other inmates had completely destroyed him. Just after a year from being released from jail, he died from heart attack. In 2007, the real killer of the girl was found. But this did not help Stefan in anyway, who suffered his entire life due to wrongful prosecution and inadequate interrogation by the police.

**Sally Clark’s Case**

This is another tragic case in the history of Britain, where an innocent mother was wrongfully put behind bars for killing her own sons. The case highlights the secondary victimization of the wrongfully convicted people. Sally Clark became a target of miscarriage of justice, a horror she could never come out from.

Sally, a British Solicitor, by profession was convicted for the murder of her own sons and was sentenced to life. Her first son, born in 1996, suddenly died out of natural

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193 Ibid
causes a few weeks after his birth. The death was assumed to be a natural tragic cot
death. In 1998, he second son was born and he too died few weeks later in a similar
manner. After the death of her second son, Sally was arrested as being the prime
suspect for the death of both sons.

During trial, Professor Roy Meadow appeared as a witness and based on his statistics
he stated, that “the chances of two babies dying of cot death in such an affluent family
was 73 million to one”\textsuperscript{194}. Later the royal Statistical Society stated there was no
rational basis for such statement. Sally’s conviction was primarily based on his
statement. In 1999, Sally was convicted for killing both her sons and was given two
life sentences.

In 200, Sally filed her first appeal which was dismissed. Finally, in 2003 Sally filled
her second appeal which was accepted and heard. During trial, it was established that
both the sons had died out of natural causes owing to cot death syndrome. Further the
statement given by Professor Roy was also discredited. In 2003, her conviction was
overturned by the Court of Appeals in London. She spent three years in jail. After her
release, “other cases that relied on evidence from Meadow were re-examined, and
another mother, Angela Cannings, also had her conviction for murder overturned”\textsuperscript{195}.

Unfortunately, Sally could never recover from her wrongful conviction. She became
an alcoholic addict and died in 2007, due excessive consumption of alcohol. At the
time of her release she stated to the media that “\textbf{Today is not a victory. We are not}
victorious. There are no winners here. We have all lost out.”\textsuperscript{196}

\textbf{Derek Bentley’s Case}

Derek Brantley’s Case is one of the longest legal battle fought against wrongful
conviction in Britain. Derek, a young boy was hanged for the murder of a police
officer, when he was just 19 years old in 1953. He was an illiterate and mentally
challenged man. His grave is inscribed with letters “A Victim of British Justice”.

\textsuperscript{194} Http://Www.Top5s.Co.Uk/5-‐Tragic-‐British-‐Miscarriages-‐Of-‐Justice/
\textsuperscript{195} Http://Www.Telegraph.Co.Uk/News/Uknews/Law-‐And-‐Order/11075284/When-‐Innocent-‐Men-
Go-‐To-‐Jail-‐Miscarriages-‐Of-‐Justice-‐In-‐Britain.Html
\textsuperscript{196} Http://Www.Telegraph.Co.Uk/News/Uknews/Law-‐And-‐Order/11075284/When-‐Innocent-‐Men-
Go-‐To-‐Jail-‐Miscarriages-‐Of-‐Justice-‐In-‐Britain.Html
Shockingly, he was not even convicted for the offense of murder, but was held guilty, merely, as a party to the murder.

In 1952, Derek and his 16-year-old friend Christopher Craig attempted to carry out a burglary in a warehouse. “Craig was armed with a revolver, and Bentley carried a knife and a knuckle duster. Both of these items were given to him by Craig.” The police got the information about the same and they reached the spot. The police officers tried to grab them but they tried to escape. In this process, Derek and Christopher was caught by the police. Christopher was asked to hand over his revolver, but he denied. During this time, the famous words were by Derek to Christopher- “let him have it! Chris”.

Christopher started firing from his revolver and killed a police officer and injured many. Later he was captured by the other police officers. During the process of firing, Derek is believed to have been standing with the injured police officers and made no attempt to run. He, in fact was shocked with the sudden behaviour of his friend.

During trial, “Bentleys alleged instruction to Craig, was seen as mentally aiding the murder of PC Sidney Miles. The law of the land at that time was able to convict Derek as a ‘party to the murder. This was based on the judge’s interpretation of the phrase ‘let him have it’.”

“Both men were charged with murder, even though Bentley didn’t even take his weapons out of his pocket. Because Craig was under 18, it was the mentally challenged Bentley that was hanged. Bentley’s death led to a 45-year campaign to get his conviction overturned; he was eventually given a posthumous pardon in 1998.”

**Stephen Downing’s Case**

Stephen Downing’s case also known as ‘Bakewell Tart’ murder case is considered to be one of the “longest miscarriages of justice in the British legal history”.

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197 HTTPS://WWW.TOP5S.CO.UK/5-Tragic-British-Miscarriages-Of-Justice/
198 HTTPS://WWW.TOP5S.CO.UK/5-TRAGIC-BRITISH-MISCARRIAGES-OF-JUSTICE/
199 IBID
200 HTTPS://WWW.TOP5S.CO.UK/5-TRAGIC-BRITISH-MISCARRIAGES-OF-JUSTICE/
a 17-year-old young boy who only had a reading age of 11, was convicted for the murder of a girl named Wendy Sewell. He spend 27 years in jail, before being legally exonerated.

In 1973, Wendy Sewell was killed by a man who attacked her with axe handle and sexually assaulted her. After few days of the attack, she died in the hospital. Stephen who at the time of the crime was working in a nearby cemetery heard the screams of the victim. He found her badly wounded and tried to help her. In this process, some blood of the victim got on his clothes. It was these blood stain that made police doubt on him. He became the prime suspect in the eyes of police.

He was taken to the police station and was interrogated for several hours. “He was never informed by police that he was under arrest or in custody and was not told of his right to consult a solicitor. He was convicted mainly on the basis of a confession obtained after he had been interrogated by Derbyshire police for more than seven hours, during which time he had to be shaken awake and officers took bets on whether he would confess.”

During trial, he was found guilty by all the members of the jury, though he pleaded not guilty all the time. His conviction was based on his confession and the blood stains on his clothes. The jury convicted him of the murder and was sentenced to be detained indefinitely. He was not even eligible for parole since he never accepted that had committed the crime. He served 27 precious years of his life in prison.

Finally, in 2001 the court accepted his appeal petition. He was released on bail in 2001, pending his trial. In 2002, the Court of Appeal quashed his conviction and pronounced him innocent. At the age of 44 he was freed from the painful experience he endured for 27 long years. After his acquittal, he stated “I don’t really have much of life, yes I am free… but I am still paying for a crime I didn’t commit.”

16. United States of America

Kirk Bloodsworth Case

Kirk Bloodsworth is the first American, to be given death penalty and later was exonerated by DNA testing. Kirk Bloodsworth was a former marine officer, who had taken up the job of waterman in Maryland, was convicted for the rape and murder of a nine-year old girl, in 1985. He was given capital punishment for the charges and in 1986 during a re-trial, he was sentenced to two life terms.

In 1984, a nine-year-old girl named Dawn Hamilton, was found murdered in a wooded area. She was sexually assaulted, raped and crushed to death with a rock. Bloodsworth was arrested by the police, when an unidentified man informed the Police, that he had seen Bloodsworth with the victim during the day of murder. During his trial, five witnesses testified that they had scene Bloodsworth at the site of murder or near the site, on the day of the crime. Further, the prosecution also had forensic evidence of the shoe marks on the body of the victim matching with those of Bloodsworth. In 1985, he was held guilty by the trial court and sentenced to capital punishment.

In 1986, the Maryland Court of Appeals, overturned Bloodsworth’s conviction and ordered a re-trial. The conviction was quashed because it was found by the court that the prosecution had “illegally withheld potentially exculpatory evidence from the defence [Bloodsworth v. State, 307 Md. 164 (1986)]”203. However, even during re-trial he was convicted by the court and sentenced to two life terms.

In the early 1990s, a new DNA testing technology had emerged known as PCR (Polymerase Chain Reaction), which was better than the DNA testing techniques present during Bloodsworth trial. Bloodsworth, took this opportunity to prove his innocence and the prosecution also agreed to test the evidence from the site of crime with the new technology. The tests were performed and it was established that Bloodsworth was innocent. After confirmation from FBI, in 1993, Bloodsworth was

released from prison. In 1994, he was given full pardon based on his innocence and was exonerated. He served 9 years in prison for the crime he never committed.

“In 2004, the Justice for all Act authorized the establishment of the Kirk Bloodsworth Post-conviction DNA Testing Grant Program, a grant program that provides funding to states to help defray the costs associated with post-conviction DNA testing.”204

**James Lee Woodard Case**

James Woodard was wrongfully convicted for the murder of his girlfriend in 1981 and was sentenced to life imprisonment. He served 26 years in prison before being exonerated in 2008. His case is one the most disturbing cases in the history of miscarriage of justice. The principal reason for his conviction was the prosecutorial misconduct where the exculpatory evidence was not bought before the court during trial.

On 31st December 1980, a woman named Beverly Ann Jones was found murdered near Trinity river in the country of Dallas. She was sexually assaulted and then strangled to death205. Next day, her boyfriend, James Woodard was arrested for the charges of murder and sexual assault. During trial, in May 1981, one of the neighbours of Woodard testified that she had seen him arguing with the victim on the day of murder. She also stated that she saw them from several hundred feet’s away. Woodard claimed that he was innocent and also presented alibi witnesses who testified, that he was not with the victim on the night of crime. On 21st May, 1981, the court held him guilty for the charges of rape and murder and was sentenced to life imprisonment.

After his conviction, he made several appeals to higher court and the District Attorney, to re-investigate his case. He filled several writs of habeas Corpus as well. All of them were rejected by the trial Court. He was criticized for misusing the law and filling too many appeal petitions. After the law pertaining to DNA testing made available to all the convicts was passed, Woodard filed a new petition for testing the

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204 IBID
205 HTTPS://WWW.INNOCENCEPROJECT.ORG/CASES/JAMES-LEE-WOODARD/
evidence again. However, his petition was rejected because there was no evidence available to be tested.

In 2006, Woodard wrote to the Innocence Project of Texas asking their help for re-testing the evidence again. In 2007, the evidence was tested and Woodward was declared innocent. “A further investigation showed that prosecutors had evidence that Jones was with three men on the night, including two later convicted of unrelated sexual assaults. The evidence was withheld from Woodard’s defence lawyers.”

In 2009, Woodard was exonerated and was pardoned by the Government. He also received a compensation amount of $2,187,000 for being wrongly incarcerated for 28 years in jail.

David Camm’s Case

David Camm, a former state trooper, was wrongfully convicted for the murder of his wife and two children, in 2002. He was convicted by the court, though he had an alibi of 13 people, who spoke for him. His erroneous conviction and prosecution can be mainly attributed to the professional misconduct of the prosecution and the investigative authorities. The evidence collected was erroneously interpreted, the real evidence was never tested.

In September 2000, David Camm found his wife and two children, a son named Brad aged 7 years and daughter named Jill aged 5 years. He had been playing basketball, at a church, at the time of murder, and was shocked to see the bodies when he returned home. Finding his family in such horrifying state, he tried his best to retrieve them by performing CPR. In this process, his shirt got some stains of blood from the bodies. He quickly informed the Police about the incidence.

Few days later, police arrested David with the charges of murder of his wife and children. The primary reason for his arrest, was his shirt carrying the stains of blood, which were described by a state forensic analyst, as “the result of high velocity blood

206 HTTPS://WWW.LAW.UMICH.EDU/SPECIAL/EXONERATION/PAGES/CASEDETAIL.ASPX?CASEID=3765
207 IBID
spatter consistent with the spatter produced by shooting someone." This case got extensive media coverage and there was huge moral panic among the police officers and the prosecutors. During the trial, the t-shirt of David was produced as primary evidence. The second evidence that was produced in the court was the testimonies given by various women alleging that David had extramarital relationship with them. Though this evidence was not related to the crime, however it established the motive of David to kill his family. The trial court held David guilty for the three murders and sentenced him to 195 years in prison.

David made appeal to the higher court, which was accepted on the ground that “the introduction of the extramarital affairs had been unfairly prejudicial”. The Court reversed the conviction and ordered a new trial in 2004. During the trial, a key evidence, a sweatshirt found near the body of Brad was sent for DNA testing again. This time the DNA matched to that of a man named Charles Boney, whose records were registered with the FBI database. Later the police also found a hand print of Boney at the place of crime. The police, now, had sufficient proof that Boney was certainly involved in the crime. Further, the police also found through forensic evidence that David’s daughter, Jill, had been sexually assaulted before her murder. The police suspected that David had first assaulted her daughter and then killed the family.

During interrogation with Boney, he stated that he was present at the site of crime when the crime happened. He said that he had come to David’s house to sell him his gun and had witnessed David killing his family. The court tried both David and Boney this time. They both were convicted with murder of David’s family and for the conspiracy to commit murder.

David did not give up. He filled a second appeal in court in 2006. This time, the prosecution alleged that David had sexually assaulted his daughter and when she told the entire family, David killed all of them. The police also found through forensic evidence that David’s daughter, Jill, had been sexually assaulted before her murder.

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208 HTTPS://WWW.CBSNEWS.COM/NEWS/DAVID-CAMM-WALKING-FREE/
209 HTTPS://WWW.LAW.UMICH.EDU/SPECIAL/EXONERATION/PAGES/CASEDETAIL. ASPX?CASEID=4291
The police suspected that David had first assaulted her daughter and then killed the family. However, the defense layers repeatedly denied such allegations and claimed that Boney was the real culprit. The court, again convicted David of murder. This time he was given life sentence without parole.

In 2009, the Indiana Supreme Court quashed the conviction and order a third re-trial of the case. The court was convinced that “Camm’s defense had been unfairly prejudiced by the introduction of the highly speculative evidence suggesting he had molested his daughter.” In 2013, during the third trail, the defense was able to prove that the real culprit was Boney, whose DNA was found on all the bodies of the victims including the finger nails of Kim. Finally, on 24th October 2013 David was acquitted by the Indiana Supreme Court. In 2014, he filled a suit claiming compensation for wrongful conviction and spending nearly 13 years in prison.

2.6 Role of International Organisations in Redressing Wrongful Conviction

Amnesty International

Amnesty International, popularly known as Amnesty or AI is one of the most significant Non-Governmental Organisation, involved in helping the wrongfully convicted individuals. It has global impact and fundamentally works for human rights issues. It claims to have a human capital of over seven million people as its members and supporters working round the globe. The declared watchword of AI is “to conduct research and generate action to prevent and end grave abuses of human rights, and to demand justice for those whose rights have been violated.”

Amnesty constantly keeps a watch on human rights violations and drives initiation for its restoration in accordance with international laws and standards. The organisation work as a watchdog and put pressure on concerned governments, by creating public opinions and mobilisation, to rectify the abuses happened inside its jurisdiction. They are the third oldest human right organisation, after the International Federation for Human Rights, who has laid down a major landmark in the area of human right protections.

HTTPS://WWW.CBSNEWS.COM/NEWS/DAVID-CAMM-WALKING-FREE/
Amnesty has contributed significantly for many issues, but one of their crucial functions has been their work on capital punishment. AI is off the viewpoint that, capital punishments are "the ultimate, irreversible denial of human rights". Their efforts were acknowledged by the international community by presenting them the Nobel Peace Prize for "campaign against torture" in 1977 and the United Nations Prize in the field of Human Rights in the year 1978.

**Important Works**

Amnesty International’s major focus is on the prisoners’ rights. The core philosophy of it is to protect the rights of individuals who are imprisoned or vetoed from expressing their opinion. The organisation is devoted to opposing any mode of repression of freedom of expression. AI is also committed in fact finding of various cases that are reported nationally and internationally, picturing human right issues.

However, they have maintained a clear strategy of non-intervention on political questions. One of the main reason for not doing so, according to the organisation philosophy is, because of the principles incorporated in The Universal Declaration of Human Rights. The preamble of the UDHR anticipates situations where individuals could "be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression". For instance, if an individual has been sentenced a specific punishment, after being allowed a fair trial, for his participation in the events involving violence, Amnesty will not interfere as there is no Human right violation involved. Amnesty has taken a neutral stand towards political violence; it neither supports nor reprehend on a governmental strategy for engaging martial forces in supressing armed rebellions.

Nevertheless, AI has always taken strong stand against those who wilfully advocate or induce violence in struggles against repression and ensured that a minimum humane standard would be adhered by governments and armed opposition groups during such calamities. AI condemns abuses like inhumane tortures, hostages and political killings of captive and takes strong stands against all kinds of capital punishments,
irrespective of the crime committed and the criminal background of the accused or the
manner in which the state executes death penalty.

Objectives

“Amnesty International’s vision is of a world in which every person
enjoys all of the human rights enshrined in the Universal Declaration
of Human Rights and other international human rights standards. In
pursuit of this vision, Amnesty International's mission is to undertake
research and action focused on preventing and ending grave abuses of
the rights to physical and mental integrity, freedom of conscience and
expression, and freedom from discrimination, within the context of its
work to promote all human rights.”

Amnesty International closely works with governmental, NGO and private entities
("non-state actors"). The following are the fundamental areas where Amnesty works:

- Inhuman and degrading treatments against prisoners and accused.
- Elimination of all forms of capital punishment
- Ensuring Fair trails
- Protection of political and religious prisoners (prisoners of conscience)
- Protecting the rights of Women, children, minorities and indigenous
groups
- Safeguarding the fundamental right to personal dignity.
- Refugee rights

As discussed earlier, the main objective of Amnesty is to abolish the death penalty
and extra judicial killings. It also tracks the disappearance cases. The organisation
works for better prison conditions and ensures that it satisfies the minimum standards
as specified under international human right instruments. Fair trails, are another

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major area on which AI ensures its promptness. The organisation make sure that the right is available for all political prisoners.

It also ensures that free education is available to all children worldwide. The legality of decriminalising abortion another major issue dealt by AI under women’s rights. They have done considerable contributions in the areas like fighting against the recruitment of children in war front, protection of third gender rights, against inhuman and degrading treatments, unauthorised killings in armed rebellions, protecting the rights of refugees, immigrants, and asylum seekers etc.

The modus operandi of Amnesty International in exposing important information about pertinent issues to public for generating public opinions is by publicising their reports. These reports are known for their impartial and accurate contents. It is prepared by way of an exhaustive research and survey including the personal interviews of victims and authorities, witnessing the actual trials, coordinating with native human rights campaigners, and by keeping a close watch on the media. They are prompt in circulating timely press releases and in distributing facts and figures via newsletters and web portals. They also have their own official agencies who undertake official assignments to make courteous and persistent inquiries about important matters. Another technique adopted by AI in mobilising the public opinion is by way of thematic campaigns and legal writings. It also includes work relating to media and publicity, and public campaigns. Every so often, the campaigning is infused with other fundraising activities.

In the matters of urgency, Amnesty calls for crisis response networks, with the help of its support groups. It believes the huge size of its human resource network as one of its key strengths. The responsibility taken by Amnesty International is tremendous on getting citizens aboard and engaging them in human rights issues. These public engagements act as a strong influencing element on nations and governments to deliver their subjects justice they deserve.

To complete, the organisation started its work, back in 1960s, by writing letters for releasing the imprisoned people who were detained behind bars for their non-violent expressions. Today it has grown into a huge network having power to attend sessions,
and information provider for the U.N. One thing is sure, the activities of this non-
governmental organisation changed the way of our living.

As pointed out by Felix Dodd, in a recent document: “In 1972 there were 39
democratic countries in the world; by 2002, there were 139. This shows that non-
governmental organisations make enormous leaps within a short period of time for human rights”.

The Innocence Project

The Innocence Network is a non-profit legal organisation comprising of 68
organizations from different corners of the globe, committed in furnishing pro-bono
legal services for exonerating innocent people who are wrongfully convicted for
various crimes. It offers assistance to those people who have been victimized as
subjects of wrongful conviction, it also works for reparation of wrongful convictions.
Presently, the Network consists of 55 organizations which are based in United States
and 13 from outside United States.

Majority of the members associated with Innocence Network are based in United
States and their work is centred on improvising the criminal justice system in the
United States. However, there are a handful of non-U.S. organizations, who joined
this project by meeting after fulfilling the criteria of its membership. The organisation
as an International Committee, strongly motivates other nations to join hands with
them in bringing sister networks across the world.

History

It all started, in early 1990s, with the development of a new scientific testing method
known as DNA testing. This invention initiated a number claims registered through
various organisation, demanding exoneration of people who were innocent and
wrongfully involved and convicted in various criminal cases. Before the advent of
DNA, it was nearly impossible to prove these claims of innocence.

Subsequently, during the late 1990s, several clinical aid programs were introduced to
law schools, that undertook an extensive research on the roots of wrongful
convictions. The course offered identification of claims of innocence based on non-DNA evidence, by studying the misidentification and false confessions of eyewitness. In 2000, the first Innocence Network Conference was unofficially met in Chicago, in the disguise of 10 clinical programs organised under its banner. Presently, Innocence Network has its annual conferences in each spring. By the fall of 2004, the organisation decided to give a structure to their networking.

They initially decided to describe their organisation as a loosely affiliated network. A planning committee was created under the aegis of a group of directors, to decide on the membership criteria and structure, for the setting up of guidelines for its members. In November 2005, the Network had it first 15 official members. Following to that a Network Executive Board was also established. During the few years, the Network member’s size has expanded to nearly four times its original size. Currently the Network has its roots in the USA, United Kingdom, Canadian states, AU, Ireland, NZ (New Zealand).

Further, it is now expanding in Netherlands, Argentina, S.A. (South Africa), Italy, France and Taiwan. It has strong associations with various law schools and other educational institutions. It has its units of public defender agencies, and associations with free-legal aid wings of reputed law firms across the globe.

2.7 Compensation Mechanism

a) New Zealand:

A report was prepared by The Law Commission of New Zealand in 1998(Report No 49) on “Compensating the Wrongly Convicted” it talks about new compensating strategy for those cases where:

1) It is confirmed that the claimant is not guilty

2) The claimant was not discharged before or at the judgment due to the failure of criminal justice system.

3) Where the claimant was left with the only option of imprisonment. (Para 9)
Claimants should be put in a position where they can prove their innocence so that the guilty ones are not able to make any sort of profit out of it. (Para 127). Compensation is justified only when the innocence of a person has been figured out.

b) Australia:

Proving of innocence is not mandate when it comes to Australian law, unlike New Zealand. It only requires inventions of new facts which indicates failure of justice.

The individuals must have:

- It’s conviction of a criminal offence only after the final judgment of the court.
- To go through and complete the punishment because of the conviction.
- The conviction been pardoned on the fact that newly discovered fact indicates and concludes that there has been a failure of justice.

‘According to law’ the Right to compensation has been provided to individuals under section 23(2). It has been materialised that it is not mandatory for a convicted person to be imprisoned- a minor penalty, such as fine or even the pronouncement of a conviction may consign to punishment in the wording of section. Right to compensation is unforeseeable upon the conviction being swapped or the person is being overlooked after the conclusion of new facts which proves that there has been failure of justice as per section 23(3).

c) France and Germany:

It has not been acquired globally that Right to compensation is completely based on the conclusion of innocence as demonstrated by the cases of France and Germany.

Articles 622 to 626 of the French Code de Procédure Pénale give effect to article 14(6) of ICCPR. Conviction will only be reconsidered in France when new facts gets discovered, creating the doubt about the guilt of the convicted person. If the newly discovered facts prove that the convicted person is not guilty then only the “reviewing

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212 in 2004, the australian capital territory (act) incorporated a slightly reworded version of article 14(6) iccpr into a statute. Under s 23 of the human rights act 2004 (act), compensation should be expected only by those individuals who have been wrongfully convicted.
court” will nullify the conviction or redirect a trial. Compensation will be claimed only if the retrial results in an acquittal.

In Germany, an act of parliament (the Law on Compensation for criminal prosecution proceedings) was passed in 1971 which stated that any applicant who has undergone destruction due to criminal conviction which got revoked later shall be compensated by the state (Article 1)- it is not mandatory for the applicant to prove his innocence. The Right to compensation is also applicable where the person has experienced damages because of the order of remand or other types of detention, the only prerequisite which is taken care of is that claimant should be acquitted or if the prosecution is neglected.