CHAPTER 6

SUGGESTIONS & CONCLUSIONS

The process of criminal justice endlessly advances in reply to the varying economic and social conditions of the wrongfully prosecuted. It is the primary obligation of the judiciary to maintain the equilibrium. Criminal law that is guided with societal fortification and recommends guidelines of conduct and on other side the freedom, safety and stability of the individual in the society.436

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

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

It is an established principle that “searing injustice and consequential social injury is caused when the law turns upon itself and convicts an innocent person”437. Various fundamental principles like “presumption of innocence” and other principles have been incorporated in the criminal procedural code, to ensure that such injustice is not


caused. One of such grave injustice is when an innocent is accused for a crime, he never committed. “Although there is evidence of its occurrence in most criminal justice systems, wrongful conviction remains underdeveloped from a criminological perspective. The result of a confluence of factors and actors, wrongful conviction stands as evidence that criminal justice systems are not immune to error.”

“Erroneous convictions can have immeasurable consequences for exonerees, original crime victims, and families.”

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

Getting it done, police examination is the patient, orderly, and impartial look for, revelation of, and assessment of every single applicable certainty of a presumed offence happened. The objective is to understand that whether an offence ever happened and how to recognize and catch the perpetrator(s). It can all be corrected and rejuvenated by creating strong periphery around the principles of criminal law. On the other hand, if we see towards European nations, where interrogations and investigations is managed by investigative judges who are very much prepared legal officers in national services (offices) of law. Investigative procedures which are being

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followed (beside government cases) is completely under the control of nearby police divisions. European police reports are exceptionally made point by point where some portion of the official dossier are equipped to finding out reality; American reports are interior archives that serve capacities other than advising the indictment, for example, investigating staff. Police are not particularly prepared to incorporate exculpatory data in reports, in spite of requests to incorporate “all” data. A pressure to perform as fast as possible makes it troublesome for police to compose far reaching reports, and police are prepared to not report data that could prompt suits that are civil in nature and are against themselves or their concerned offices and its team.  

The proposed study is a doctrinal analysis of the apex court decisions to study the different aspects of wrongful conviction. The wrongful conviction is a growing problem in Indian criminal justice system. The Incident of wrongful prosecution involves a situation where a person is wrongfully prosecuted and convicted and found not guilty at the appellate stage. This situation leads to a large number of issues and problems to such person as they not only suffer the coercion, torture and forced confession during the police investigation but are also adjudged to be guilty based on flimsy grounds. Despite found not guilty in the end, there tale of victimization remains horrific. Apart from experiencing unfair deal in the criminal justice system, they tend to suffer a secondary victimization in the form of stigmatization by the community. The present study was done to examine such instances of victimization as a serious miscarriage of justice to understand the factors responsible for this problem. The idea is also to develop some insights into a possible legal regime to make arrangements for compensation, rehabilitations and other entitlements of the victims of crime. The thesis comprises of six chapters in total which starts from the introduction, research and design in Chapter one, then International perspective of wrongful conviction in second Chapter. Third chapter talks about the institutional perspectives of Indian criminal justice system. In fourth chapter there is a in-depth analysis of cases related to terror, murder, rape where conviction was overturned.

440 Murty, K. encountered with urban decay because of deindustrialization, engineering imagined, government lodgin, & vyas, an. g. (2010). post-conviction dna exonerations. diary for u. encountered with urban decay because of deindustrialization, engineering imagined, government lodgin. china government funded administration, 7(7), 82-83.
Fifth chapter talks about Understanding sources and factor of wrongful conviction with an appraisal of selected cases. The thesis ends up with chapter 6 articulating the suggestions and conclusion of the thesis.

The present study is predominantly based on data and information collected from a number of cases decided by Supreme Court. Doctrinal model is used to study and analyse this research with the help of identification of cases.

In order to analyse the data the following doctrinal techniques are used. Data identification was done for the identification of specific cases where instances of failure of criminal justice system Identification of courts /categories/themes was done in such a way that cases were selected from almost every state jurisdiction in such a way to balance the quantum of legal proceedings and travesty of justice.

Data reduction was done for developing the arguments in keeping the objectives of study in view. The list of cases that were researched and analyzed were set to a certain criterion and there the cases were measured with certain variables. Once the analysis of the cases is finished then the factors were measured and the interpretation has been done that resulted into the justification of the objectives and research questions.

6.1. Suggestions

After understanding the loopholes in criminal justice system that lead to wrongful conviction in India and other countries, few measures can be suggested for decreasing the incidences of miscarriage of justice. The role played by the instruments of criminal justice machinery viz. police, prosecutors, defence lawyers, judges etc. in pursuit of a fair trial is very crucial. Certain prominent wrongful practices in the trial process have been recognized which if corrected can help to reduce or completely eradicate the dispute of wrongful conviction.

6.1.1 Ensuring Fair trial

The following measures can be taken to ensure that an innocent is not convicted for a crime he never committed.
1. **Statements given 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. 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**

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. These include 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; using false or misleading evidence; harassing etc. Any variant of such misconduct should be checked and appropriately dealt with.

3. **False and Coerced Confessions**

The confession statements given by the accused shall be thoroughly checked during trial. 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. He should be given adequate opportunity to explain himself during trial.

4. **Inadequate Assistance by Defence Counsel**

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. 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. Such practices shall be checked.

5. Errors in Forensic Evidence

The techniques and methods involving DNA testing 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.

6.1.1.1 Rights of Accused

A. Pre-Trial Rights

1. Knowledge of the accusations:

It is common knowledge that a person will be in a better position to defend himself if the person has a comprehension of the charges against him or her. But the right to fair trial right will remain to be dead letter of law if the person who is asked to defend himself in the court is not informed of the accusations against him. There are numerous provisions in Criminal Procedural Code stating the same principle as Sections 228, 240, 246 and 251.

2. Aid of Counsel:

This precondition of fair trial has a two-pronged requirement i) the accused has had a fair and legitimate avenue to secure for himself a counsel of his/her own choice and ii) It is the prerogative of the state to provide a counsel and to utilize the suggestions of the Law Commission of India, used in its the 14th report, as “a service which a
welfare state owes to its citizens. Further the mandatory-ness of this right can be ascertained by the fact that it has been further enshrined in the constitution under Article 22(1) which in clear terms states that no individual will be denied the right to take legal assistance from an advocate and will be given the right to be defended by a legal practitioner. This right is recognized as being *sin que non* with a fair trial because it is a fact that, coupled with the general illiteracy and ignorance prevalent in India, it cannot be expected that the accused has knowledge of the law and also that the accused cannot be expected to defend himself in a court where the prosecution is conducted by an experienced and competent prosecutor, because alas he lacks the professional skills to do the same. In Indian legal system, the right to fair trial has been recognized under section 303 of Criminal Procedural Code which gives a statutory right to any individual accused of criminal charges to consult a legal practitioner, of his or her choice.

This right has also been recognized by the supreme court of the United States in the much-celebrated case of *Powell v. Alabama* wherein the court said: “The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and the knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step of the proceeding against him. Without it, though he be not guilty, he faces the danger of conviction because he does

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441 SUDHIR AT 7
442 SEC 303: RIGHT OF PERSON AGAINST WHOM PROCEEDINGS ARE INSTITUTED TO BE DEFENDED. ANY PERSON ACCUSED OF AN OFFENCE BEFORE A CRIMINAL COURT, OR AGAINST WHOM PROCEEDINGS ARE INSTITUTED UNDER THIS CODE, MAY OF RIGHT BE DEFENDED BY A PLEADER OF HIS CHOICE.
443 *POWELL V ALABAMA*, 287 US 45 (1932)
not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect.”

In the much discussed Indian case of Huassainara Khatoon (IV) v. Home Secretary, State of Bihar the Supreme Court observed: “The right to free legal services is, therefore, clearly an essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.

The supreme court of India has consistently laid emphasis on this right and the serious ramifications it has in the defence of the accused and the fair trial rights of the same, and the absence of the aid of a counsel constitutes a “fundamental defect” in the proceedings.

In Mohd. Sukur Ali v. State of Assam, the Supreme court observed that: “We are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel’s negligence or deliberately, even then the court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation the court should appoint another counsel as amicus curiae to defend the accused. This is because liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important fundamental right of the fundamental rights guaranteed by the constitution. Article 21 can be said to be the ‘heart and soul of the fundamental rights’.

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444 IBID
446 PARA 7
447 (2011) 4 SCC 729
The Apex Court also held in the case of *Suk Das v. Union Territory of Arunachal Pradesh*\(^ {448}\), that a conviction of an accused without being provided the opportunity of legal representation is wrongful conviction and is unconstitutional. It observed “the High Court persisted in taking the view that since the appellant did not make an application for free legal assistance, no unconstitutionality was involved in not providing him legal representation at State cost. It is obvious that in the present case the learned Additional Deputy Commissioner did not inform the appellant that he was entitled to free legal assistance nor did he inquire from the appellant whether he wanted a lawyer to be provided to them at State cost. The result was that the appellant remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. This was clearly a violation of the fundamental right of the appellant under Article 21 and the trial must accordingly be held to be vitiated on account of a fatal constitutional infirmity, and the conviction and sentence recorded against the appellant must be set aside.”\(^ {449}\)

**B. Trial Rights**

1. **Right to Bail**

In the case of *Motiram v. State of Madhya Pradesh*\(^ {450}\), the Supreme Court had to face the challenge of deciding some of the most critical issues regarding bail given to those who can’t afford the sureties. In 1978, the Apex court had to decide on three important issues. First, whether the Criminal Procedure Code, 1973, entitles a person to get bail based on personal bond. Second, what should be the criteria for repayment of the amount submitted for bail and how should that be calculated. Thirdly, in case an individual is living or residing in a different district or state, or he is the owner of properties which are located in different districts or states, whether his bail demand can be rejected on the same grounds.

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\(^{448}\) 1986(10)ACR345(SC),

\(^{449}\) PARA 7

\(^{450}\) MOTIRAM V. STATE OF MADHYA PRADESH, 1978(SC) 1594, 24TH AUGUST1978
It was observed by the Apex Court that the criminal procedural law is having various shortcomings and lacunas with regard to the representation of the poor section of the society. It has various ambiguous laws and complexities that need to be clarified through some amendments or guidelines. The ‘balance of the procedural law’ for various sections of society needs to be inculcated in the legislation with regard to some specific issues that have been raised in this case. As has been mentioned under Article 14 of the Constitution of India, “the right to equality before law” shall be put to practice in all procedures of criminal trial.

2. Right to Speedy Trial-

In *Hussainara Khatoon*[^451^], the apex court has laid down certain binding recommendations to the subordinate courts regarding the protection of right to speedy trial. This was an important step made by the Hon’ble Supreme Court towards the protection of under trial prisoners. The action was taken on account of a research article published in a famous newspaper, where it was stated that out of the total number of prisoners a large number are under trials waiting for their trial for years. Most of the under-trials have been arrested for minor charges, the punishment of which would not be more than few months, however these detainees have been in the prison since 3 to 10 years. Therefore, to redress the negligence on part of the state, the apex court released all the 18 under-trials in the case and advocated the importance of speedy trials and fast track courts. This initiation from the side of the court was a major development in the criminal justice system. The court observed that speedy trial is unquestionably an indispensable feature related to ‘just fair and reasonable’ procedure enshrined under Article 21 of Indian Constitution and it is the constitutional obligation of the state to arrange a legal system which satisfies these requirements after the commencement of trial; so that it can dispose of speedily trials on daily basis and thereby enhance reduction in the number of under trial prisoners.

The Supreme Court looked at this as a blatant violation of human rights and said that the procedure followed which led to the imprisonment of these individuals “cannot possibly be regarded as ‘reasonable, just or fair’ so as to be in conformity with the

[^451^]: HUSSAINARA KHATOON V. STATE OF BIHAR, 1979 SCR (3) 532, 9TH MARCH 1979
requirement of Art. 21.” Further commenting on speedy trial, it observed: “Speedy trial is of the essence of criminal justice and, therefore, delay in trial by itself constitutes denial of justice. Though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Art. 21. Speedy trial which means reasonably expeditious trial, is an integral part of the fundamental right to life and liberty enshrined in Art. 21. Art. 21 confers fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be ‘reasonable, fair and just’. If a person is deprived of his liberty under a procedure which is not reasonable, fair or just, such deprivation would be violative of his fundamental right under Art. 21 and he would be entitled to enforce such fundamental right and secure his release.”

Further, in case of Motilal Saraf v. State of J&K\textsuperscript{452} the Supreme Court elucidated that it is important to commence a system that supports speedy trials. The court also pointed out that the idea of speedy trial is vital to the principles enshrined under Article 21 of the Constitution.

Commenting on the pace of disposal of our cases the Supreme Court in the case of Babu Singh v State of U.P observed: “Our justice system, even in grave cases, suffers from slow motion syndrome which is lethal to ‘fair trial’. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable and the innocent being absolved from the inordinate ordeal of criminal proceedings.” Speedy trial was recognized as a fundamental right in the case of Sheela Barse v Union of India as well.

\textbf{6.1.2 Criminal Liability for Malicious Prosecution:}

We despite being a good lawyer, judges, citizens choose to remain silent. It is the duty of attorney in England that he/she will attend the arrested person within one hour of his arrest and he has the rights to access police station any time he wants. This is a factor of other developed countries that apart us from them and make our criminal

\textsuperscript{452} MOTILAL SARAF V. STATE OF J&K, 2006 SC (CRL.J) 774, 29\textsuperscript{TH} SEPTEMBER 2006
system less smooth and efficient, factors like this should be adopted by our constitutional machineries and relevant upgrades necessarily be done.

“Charge a person of an investigating agency for falsifying a case with an evil intention” has been made exceptionally inconvenient by the current legal system. The UAPA is required to displace the provisions of section 197 of the CrPC which require the government authorisation before registration of case, alter and to comprise of a charge which enforces criminal liability upon investigating officers who are accountable for wrongful prosecutions.

6.1.3 Impunity for Police/Investigation

No framework is available for falsified cases in law, to offend investigating officers. The cases against officials cannot be registered without getting previous sanction from the government according to section 197 of the Cr.P.C. The supreme court allowed imposition of pecuniary liability in landmark D.K. Basu case [(1997) 1 SCC 416], upon an officer where a fundamental right was violated.

UAPA’s Section 49 (Protection of action taken in good faith) expressly affords impunity to police officers engaging in malicious prosecution.

It says:

“No suit, prosecution or other legal proceeding shall lie against—the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorised in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder; and any serving or retired member of the armed forces or para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.”
Is there any possibility for a detained person to give evidence of “good faith” for his hostile prosecution? No interest was shown by court and media to ask if the trial ended on the release on the basis of technicality or in the absence of terror conspiracy or acts. Restrained language is chosen by the court knowing the fact that every single evidence which was presented and the court have different reactions when it comes to maliciousness of trial, has been dismissed.

6.1.3.1. Accountability through Punishment

“The sentencing decision is the symbolic keystone of the criminal justice system: in it, the conflicts between the goals of equal justice under the law and individualized justice with punishment tailored to the offender are played out, and society’s moral principles and highest values-life and liberty-are interpreted and applied.”

To keep a check on the growing number of cases of illegal arrest and wrongful conviction, we need to incorporate a mechanism in our judicial system for punishing the errant judges, magistrates, the police and the public prosecutor. The need of the hour is to make the various ‘agents of prosecution’ accountable for their acts. Their misconduct shall not only be corrected but also be subject to trial and punishment by appropriate authority. A precedent must be set that no one can get away after ruining the lives of thousands of innocent people. Apart from the occasional mild punishment, like temporary suspension or transfer of errant policemen, there is a need to bring them to trial and impose punishment worthy of falsely implicating citizens.

“For instance, “the lower court judges who convicted and sentenced six people for their alleged involvement in the 2002 Akshardham terror attack in Gujarat, were ultimately proved to be wrong, as is apparent from the Supreme Court judgment that acquitted them. But the convicted men had to spend about a decade in jail. Should not the Gujarat high court judges pay a penalty for their failure to examine the evidence in its entirety, before hastening on a sentence? Surely it was due to judicial irresponsibility that the six-accused had to languish in jail for years.”

Judicial system is the voice of justice. However, their opportunity of decision is constrained by the statutes and criminal codes prevailing in the country. The significant discretion given to judges has been countered by sentencing guidelines evolved during the course of time since late 1970s. There are various reports and publication issued by the law commission for uniformity in the decision making process. Some contend these structures unduly limit a judge's capacity to suitably measure the variables that assume a part in condemning, while others feel that extra measures, for example, obligatory minimum sentencing laws, are expected to compel legal prudence further. A comprehensive assessment of sentencing outcomes in present day India must integrate understanding of the sentencing proclivities of individual judges with the way discretion is shaped and controlled.

6.1.4 The Right to Compensation

6.1.4.1 Modalities of Awarding Compensation:

Courts are the only platform where an offended individual can look for compensation and we have witness very less attention when it comes to the cases of wrongful prosecution. The entire phenomena legal system when into consideration can take the aggrieved individual to experience the trauma of wrongful conviction all over again. The question which arises here is, what is the most transparent and efficient way of rewarding rehabilitation and remuneration?

It has already been acknowledged that at present there are no framework which are up to mark. If the government helps in identifying the harm of wrongfully convicted individual, it will fasten up the healing process. The person who has not committed faults and errors will get occupied.

Devaki Nanda V. State of Bihar attained a remarkable achievement. In this case pension of petitioner was detained for twelve years. Inspired, Purposive and Deliberate, harassment of the petitioner were few of the reasons for which “Exemplary costs” were awarded.
Police had blinded definite prisoners and it was supposed that state was responsible to compensate the victims. This supposition was made in the leading case of Khatri V. State of Bihar (the Bhagalpur binding case).

As articulated by Justice Verma, cure is accessible in public law in the form of compensation under Articles 32 or 226. Principle of sovereign immunity cannot be given to state for the breach of Fundamental Rights.

As stated in Rudal Shah v. State of Bihar, before awarding compensation the courts must be convince that the power by the authorities was transparently exceeded and acted with absolute ignorance of law. The court took reference from Article 9(5) of the International Treaty on civil and Political Rights, 1966, i.e.: “Enforceable Right to compensation shall be given to the victims of Illegitimate arrest or detention”; to buttress its belief that award for compensation is not distant to the method of enforcement of an assured Fundamental Rights.

In Sebastian Hongray V. Union of India, Rs. 1 lakh were awarded to the widows as an exemplary costs by the court. The Supreme Court also awarded compensation in respect of persons who went missing from army custody.

In Mohanlal Sharma V. State of U.P., it has been perceived that under Article 21 prisoners are bound to the right to Monetary compensation.

In Patil V. State of Maharashtra, handcuffing was considered as mandate consequence for compensation.

Media is also liable in a certain way, for not properly showing the true facts and fabricating for the sake of entertainment.

Collective consciousness: - Suppressing the blame on collective consciousness, blame is always on individual. In Md. Amir khan case after spending 14 years in jail he was awarded meagre amount of 50 thousand. Comprehensive legislation need to be passed. There should be accountability on the media also.

DK Basu and Youth bar association case needs to be implemented fruitfully.
In D.K. Basu V. Union of India, Supreme Court referred to the Articles 9(5) of the I.C.C.P.R. According to which the pecuniary compensation was most appropriate and productive, and sometimes, the only worthy cure for grievances on human rights’ abuse, and by leaving the offended party at the mercy of remedies provided in civil law, court’s role as the care taker and custodian of the citizen’s inalienable rights will be undermined to an inadmissible degree.

In R.S. Sodhi V. state of U.P., a bus was carrying sikh pilgrims, the officials dragged down 10 young Sikhs from the bus, thereafter they were taken to nearby jungle and were shot dead. In this case the state was made responsible to award compensation to the petitioners. There are many such cases especially of army and custodial violence, where obvious deformities on the individual officer’s part went unpunished, state is legally entitled to pay the compensation.

In Saheli V. Commissioner of police, Delhi, propounded the main reasons behind the award of compensation for the importance of Fundamental Rights. The court stated that measures for destruction lies for physical damages and death, assault, bodily harm, false imprisonment, since damages showcased remuneration for mental pain, loss of liberty, indignity and death.

In the cases of ignorance of Fundamental Rights, Nilabati Behra V. State of Orissa, explained the main reasons behind the award of destructions. It is considered as remarkable case. The Supreme Court laid down incomprehensible terms referred from the Article 32 which forced commitment on the court “to mould such new weapons requires complete justice and enforceable Fundamental Rights of the individual having legal attitude.”

In M.C. Mehta v. Kamal Nath case Supreme Court under Article 32 provides power to give compensation to the victims of pollution. The damages were assumed as stated below:

a. Damages for mending the ecology and habitat.

1. Damages to those who have suffered loss due to pollution.
2. Absolute destruction, so that people are restricted from causing environment pollution.

Human rights commission has power to reward compensation under section 18(a) of the protection of Human rights Act, 1993. In Power Corporation Ltd. V. National Human Rights Commission has right to approve the required compensation.\(^{454}\)

Compensatory justice is defined as Therapeutic and constructive in nature and tendency by the criminologists and penologist. It is bound to ensure enforcement of other Human Rights and Fundamental Freedoms as stated in constitutional and statutory laws. It covers few methods of restitution, restoration, restitution, correction and rehabilitation. Justice is delivered to the abuse of power and victims of crimes as the right to compensation stays elementary when it comes to it’s mechanism. The constitutional and Human rights Jurisprudence is worth praising as it explains logical balancing of the principles of rule of law with the different modes of administration and it’s rising oppression.

6.1.4.2 A recollection towards Compensatory Jurisprudence in India for the idea of compensating wrongful conviction

A stable status in society, where there is efficient towards respecting the various pillars like dignity, equality and liberty are some things which can never be avoided when talking about constitutional guarantee to a citizen. In modern period, throughout the world the renewal of doctrine of natural rights in the configuration of human rights is a considerable progress when it comes to jurisprudential field.

The Habeas Corpus writ, in the period of human rights alertness provides abundant service , it also holds the potential for testing human modesty and glory in the constitutional view.

\(^{454}\) AIR 2010 All 139
Powers vested under Article 32 of the constitution of India were solicited by the Supreme Court which led to the introduction of compensatory jurisprudence and it holds stupendous value in the contemporary period which led to the escalation of events like Police misrule, Illegitimate imprisonment, Political disorder, cruelty against women, custodial abuse, Unkindness in jails and alternatives of critical human rights violation.

The courts of law serve the legitimate prerogatives of persons on being defrauded of crimes-offences-human rights’ abuse. It is a favourable method of applying fundamental rights and is legally identified as Monetary remuneration.

The Aristotelian Theory of “corrective Justice” needs the award of pecuniary remuneration. Whenever, one party disregards the restrictions placed upon it’s conduct with regard to another party. Customary law of torts identifies destruction as a cure that delivers remuneration, encourages preclusions, declare rights, absolves the citizens’ dependency on the inviolable conduct of their fundamental rights and connects corrective justice.

The case of a TADA convict, who served 23 years in jail deals with the issue. He was arrested by Hydrabad police in 1994. The only evidence was the confessions. The Supreme Court in 2016 said the confessions are not admissible and therefore acquitted the accused. The case of Ryan International case also addresses the same issue. Under, UAPA, obtaining bail is impossible. MACOCA mentions that the custody of the person can be increased from 90 days to 180 days. The case of Rudal Shah and Lilabati Behra, says that there should be compensation mechanism applicable. There should be two factors to deal such issue, (i) pecuniary and (ii) non-pecuniary actions.

6.1.4.3 Indian constitution Safeguards enshrining the Right to Effective Compensation-

The illegitimate move of assistance which pretends to be in the public interest and which showcase protection as a target, is a bit soothing when it comes to the Right of
Compensation. The compensation is provided to the victim of state aggression under three heads of the constitution of India, 1950

“Indian criminal laws and the provisions mentioned in it, holds great value as stated in the Report of the committee on Reforms on criminal justice system.” Justice to victims of crime and abuse of power” which was headed by Justice V.S. Malimath. “ Medical Justice to the Bhagalpur blinded victims” and “compensatory justice to the union carbide victims” are examples of the liberal package of reliefs and remedies forged by the apex court as concluded by the report.”

Still there are also some non-governmental organisations who are validly raising voice in a manner to strengthen the stature of law making bodies and also to derive a system of providing interim relief to the victims of human rights. The commissions like National Human Rights Commission and the state human rights commission have done an applauding job in supporting the principal of Rule of Law.

There has to be a strong legal adherence to Right to compensation as according to be guaranteed by Law under constitutional remedies.

Shouldn't we maintain connections on a regular basis with victim support structures? And finally should we not be sensitized to the trauma and well-being of the victims charged wrongfully and exonerated from serious crime. Should the adjournment of cases be refused unless other than for compelling cogent reasons?

What should be the role of the judiciary be in relation to victims’ rights. The Hon’ble Supreme Court of India again went on to observe that the duty of the state does not end with executive and administrative action but was also answerable for the hardships of the victims for humanitarian or reasons of social welfare on the grounds of equity. We have a series of celebrated cases that have resulted in for miscarriages of justice.

[^455]: # ARTICLE 32: RIGHT TO CONSTITUTIONAL REMEDIES ENFORCEABLE IN THE SUPREME COURT OF INDIA; # ARTICLE 226: RIGHT TO EFFECTIVE REMEDY ENFORCEABLE BY THE AGGRIEVED CITIZENS IN THE HIGH COURT OF THE STATES; AND, # ARTICLE 300: TORTIOUS LIABILITY OF THE STATE.
Should there then be a horizontal expansion of fundamental rights guaranteed by the constitution of India?

Are we not 17 years into the new millennium continuing to practice archaic law? Where is that inter-generational trust that we will hand down a better legal system to our future generations? For example, isn’t it time that we re-evaluate our principles of punishment in the context of addressing the plight of victims where for example the victim of wrongful conviction are called upon to sustain this trauma through life after spending a term of imprisonment at the cost of the state and then exonerated?

There are different ways of achieving this objective but perhaps the easier way may be for the victim to pursue compensation within the criminal process or what we describe as the adhesion procedure. The framework of the law in India on this matter finds its place in the provisions of the Constitution of India 1950, the Code of criminal procedure 1973. A person who has faced the vengeance of the failure of the criminal justice system shall have rights to be enforced in order to provide it with a place to stand in a dignified condition after being exonerated. But till now the criminal justice system has been lacking on this front and has failed to provide that support in the form of compensation and acknowledgement to be a free man. Even after almost 70 years being an independent nation, the criminal justice system has failed to stop certain evils that come within wrongful conviction. They are-

6. Illegal detention by the police
7. Torture
8. Malicious methods of investigation

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457 Victims may be confused as to the purpose of their inclusion in the prosecution, and feel discouraged if prosecutors do not represent their wishes (Englebrecht, 2011). Despite the shortcomings of the criminal justice system, the largest category of victims that feel injured by the process do those whose cases are not prosecuted, despite the victim want the case to move forward. “Very often a victim’s first view of the criminal justice system is the law enforcement officer who responds to the scene of the crime. It is critical that this officer be well-trained and informed about victims’ rights and services. If the officer does not refer the victim to appropriate assistance and compensation programs, that victim may never receive the help he or she needs to heal.
9. Harassment of family members

10. Continuing surveillance even after exoneration.

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

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

The most important point that can come into mind at this instant is how can a state support a person who is wrongfully convicted?

Notwithstanding their proven reliability, the tussle of being embedded back to societal fixtures is problematic for the wrongfully convicted; the procedure of non-reimbursement is impartial and another hurdle to the injustice to them. The nation has an obligation to offer support to the wrongly condemned in the given ways:

• Reparation – *A total at least can be intended on the base of minimum salaries*

• Prearrangement of Instant Facilities comprising:
  - Finances for everyday supplies, diet, transportation
  - Prearrangement for reasonable accommodation;
  - Procedures offering health support and therapy assistances;
  - Assisting with receiving training and development in refining talents to get a decent occupation

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458 ARTICLE 21, CONSTITUTION OF INDIA 1950.
Rightful assistance to appreciate the privileges of a civilian, erased felonious histories, and reclamation of guardianship of families.  

Supreme Court has always accorded higher status to the personal liberty than sovereign immunity. The court for the first time in Bhim singh v. Stae of Jammu and Kashmir, held illegal detention in police custody as one of the greatest stain on the rights envisaged under Arts. 21 and 22(2) The court directed state to pay Rs. 50,000/- as compensation by exercising its power under Art 32(2). However, there are cases where court has resisted in providing compensation for deprived freedom and liberty, one of those is the Akshardham case.

Hazaribagh administrative lapses of the authority was exposed by Free Legal Aid Committee and brought to the court. Veena Sethi v. State of Bihar, in this case prisoners were detained for a period from 19 to 37 years in which some are declared insane at the time of arrest, which is in itself a ground of acquittal. But no action was taken by authorities for their release. It had been held by the court that the state shall compensate these prisoners for their illegal detention in contravention of Art. 21 of the Indian Constitution.

Supreme Court has awarded compensation in few terror cases but has not built any framework on how compensation for wrongful conviction should be calculated.

6.1.4.4 How to calculate compensation in India

The Supreme Court has awarded compensation in few terror cases but has not built any framework on how compensation for wrongful conviction should be calculated.

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The state assumes the responsibility of conducting investigation after registration of case by the police. The state or its investigating agency after assuming the responsibility of investigating the truth or veracity of the allegation cannot act without a sense of impartiality. Not merely the trial but the investigation should also be impartial. Fairness of trial will carry with it the fairness of investigation and with the fairness of investigation will carry impartiality in investigation not aimed at benefiting either the defended or the prosecution. In brief we can say that an investigation should not suffer from any ulterior motive or hidden agenda to either help or harm a person. This principle of fair trial is guarantees in our Constitution under Art 21 read with Art 14 thereof.

Though court is generous in awarding compensation to the victim but mire often miss the culpability of the individual who are responsible for the wrongful incarceration and prosecutions. Section 211 of the Indian Penal Code has been invoked very rarely against the public officials who are responsible for the wrongful incarceration of the person leading to grave loss of his liberties and hampering a decent life free from stigma and isolation.

Victims go through most troublesome experiences like illegitimate imprisonment and abuse (physical and psychological), trial and detention, the loss is very deep. Family members are broken, businesses destroyed, children have to often abandon their studies overall normality of life is hampered.

Eleven accused of the Jaipur SIMI case spent almost three and half year in very small airless cells. They were abused and insulted and with each passing day was getting more depressive for them. Their business were destructed and their families also face disgrace and humiliation.

**Psychological costs:**

“The failure of justice requires long term psychological stress at the initial stage of arrest in custody, it also includes sufferings of overwhelming threat. There was also long term psychological trauma:
years of fear, separation and dishonour in the claims of innocence.” It was concluded by the Adrian Grounds reports.

The acquitted ones went through severe psychological deficiencies which includes “encountering change in personality after disastrous experiences” and PTSD. Out of 18 16 cases showcased panic disorder, paranoid symptoms and depressive disorders. It was concluded that “A firm clinical impact of irreparable damage which cannot be cured”. “Psychological Consequences of Wrongful Conviction and Imprisonment” by Adrian Grounds, *Canadian Journal of Criminology and Criminal Justice*, 2004, 46:165-182.

**6.1.4.5 International Recognition of The Right to Compensation**

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

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

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

“Article 8 of the Universal Declaration on Human Rights, 1948 recognizes the right to appropriate compensation.


Article 9 (5) of the international Covenant on Civil and Political Rights, 1966: ‘Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.’

Article 5, Para 5 of the American Convention on Human Rights, 1969: Right to Compensation which is enforceable by victims of arrest or detention.


UN Declaration of Basic Principles of Justice for the Victims of Crime & Abuse of Power, 1985 provides for:

1. Access to justice and fair treatment;
2. Restitution;
3. Compensation; and
4. Assistance.”
6.1.4.5.1. Mechanism of Awarding Compensation in the US State Laws

As far as the law on compensating victim of wrongful confinement is concerned, United States has been a benchmark. In USA, these laws are under states jurisdiction, who are empowered to legislate on this issue, as of 2017 there are 32 states of US have the laws which provide monetary or non-monetary compensation to the victim of wrongful incarceration. In most of the states these victims are provided reintegration services like health care, employment training, counselling and educational aids. Some states also provide litigation costs. Method for determining the amount of an award, compensation laws, falls into one of three broad categories.

The amount of award under these laws is:

a) Indexed to an average, median or per capita income;

b) Set with or without limits at the discretion if certifying authority (e.g., claims commissioner, judge or board); or

c) Some states specify amount payable per year or per day of incarceration. Some state laws specify duration and method of payment (e.g., lump sum or instalments).

Utah, Virginia and Connecticut falls under the category of determining monetary compensation amount indexed to average, median or per capita income. Connecticut award a claimant an amount equal to or up to twice the median household income for the states for each year of incarceration, as determined by U.S. Department of Housing and Urban Development. This amount is prorated for any partial year served in incarceration.

I. The commissioner can decrease or increase the amount of award according to his discretion on relevant grounds, these factors can be as following;

a. His or her income, age, level of education and vocational training at the time of conviction;

b. Damage to his reputation;
c. Loss of family relationships;

d. Severity of his crime for example weather under death sentence for which he/she is convicted;

e. Whether he/she was registered as a sex offender and the duration of the registration;

f. Other damages like prosecution, conviction, incarceration arising from or related to the arrest.

Set Maximum Adjusted for Inflation Based On Years Served.

In the state of Illinois award amount is adjusted annually for the inflation in CPI, is also based on the years person served in wrongful conviction, the specified maximum amount is as follows:

1. Up to 5 years- $85350;

2. From 5 to 14 years- $170,000;

3. More than 14 years- $199,150.

The court has discretion to set monetary damage that range from $30,000 to a maximum of $60,000, in Vermont, for each year of wrongful incarceration with lost wages. As shown in Table 1, 11 states specify the amount within the statute that should be awarded for each year of incarceration. Texas, Colorado and Washington have additional amount for yime period served on parole, death row or as sex offender. Louisiana, Mississippi, Florida and North Carolina set aggregate maximum. Hawaii provide additional amount for extraordinary circumstances.

6.1.4.5.2. Mechanism of Awarding Compensation In New Zealand

New Zealand under the Compensation and Ex Gratia Payments for Persons Wrongly Convicted and Imprisoned in Criminal Cases (POL Min (01) 34/5, 12 December 2001) has embraced and directed an optional system of compensation. There is no actual right to compensation, so it is still an ex-gratia payments. The non-mandatory compensation has been provided in the framework. The guidelines set a starting point
of NZ$100,000 and help in identifying pecuniary and non-pecuniary loss for each year served in jail. According to their guidelines, compensation should be similar to the amount payable for the tort of false imprisonment.

New Zealand Law Commission Report define the loss in following ways:

**Non-pecuniary losses:**

- loss of reputation;
- loss of liberty;
- loss or interruption of personal relationships and family; and
- emotional or mental harm:

**Pecuniary losses:**

- Loss of future earnings abilities:
- loss of livelihood, including loss of earnings, with adjustments for income tax and for benefits received while incarcerated;
- loss of property:
- costs incurred by or on behalf of the person in obtaining acquittal or pardon: and
- other consequential financial losses resulting from detention or imprisonment.

**6.1.4.5.3. Compensation and Rehabilitation**

This can be concluded from the above context that the society holds compassion to assist the wrongfully convicted. There are basically two purposes for rehabilitation schemes:

a) To remove the bad repute which gets attached to the individual.

b) To provide right to compensation for the materialistic destruction.
These are some temporary recommendations on the grounds of practices from across the world and on the experience of working with those wrongfully prosecuted or convicted:

- Unliquidated damages, placed on the ground of least sum Served every year, as well as monetary compensation based on other factors like emotional trauma, measurable material damage, opportunity cost etc.

- Immediate Services, Including:
  - Financial support for basic requirements like food, transportation subsistence funds;
  - Help in fixing low-cost housing;
  - Provision of psychological, medical/dental care, and/or counselling services;
  - Assistance in education;
  - Development of workforce skills;
  - Formal acceptance to remove criminal records, gain public benefits, and reclaim guardianship of children.
  - Official Acknowledgement of a Wrongful Incarceration.
  - Apart from this, many alternatives like business opportunities, government jobs, to further education must also be considered as an option.

6.2 The Conclusion

The idea of justice states that no person should be victimised due to failure of any criminal justice procedure. The public prosecution system that is been followed and is developing with every progressive year in United Kingdom – where the prosecution lawyer or the defence lawyer have a right to interact and counsel the person arrested within one hour of his arrest. it’s the duty of the arresting officer to immediately inform the state prosecution services, so that the process can be initiated and the criminal justice process can be initiated.
The conventions pronounced in the **Shahejadkhan Mahebubkhan Pathan v State of Gujarat**\(^{460}\) shall be referred efficiently by the machinery of criminal justice system.

The judgment in *Adambhai Suelembhai Ajmeri v. State of Gujrat* (akshardham bomb blast case), where the accused have been denied compensation, has left many of us confused. The court being the custodian of rights and liberties of the vulnerable, specially those who are the victims of wrongful conviction, raised the question on courts responsibility irrespective of provisions and precedents. This role of the court has been pronounced by Justice Bhagwati in the landmark judgement of Khatri *v. State of Bihar*\(^{461}\)

There should be some necessary steps that should be followed and adhered the kind of crime committed, the time and situation in which the offence was done, the societal standard of the person may be monetarily and his character aspect.

Overcharging and undercharging of the accused. Requirement of a public prosecution service in India on the lines of United Kingdom. Prosecutor are a link between the system and the society. Ethical duties of the prosecutor must be in mind and be adhered to. There working should be made more accountable and transparent.

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

**6.2.1 The Sentence Remains Subsequently Confinement**

The individuals who have served many years in jail for wrongful conviction have faced may sufferings of jail life and the loss of liberty. This terrifying thought doesn’t end upon freedom they were dispossessed for years of people and families and the capacity to craft oneself efficiently. With no shelter, capital, transport, well-being, insurance or service and a bad character which is seldom cleared notwithstanding

\(^{460}\) CRIMINAL APPEAL NO. 1592 OF 2012

\(^{461}\) ADAMBHAI SUELEMANBHAI AJMERI V. STATE OF GUJRAT, (2014) 7 SCC 716
blamelessness. As a democratic Nation it is our duty to reinstate the life of wrongfully convicted

To conclude the prospects of this thesis, the study that is framed rolls around the below result and find.

6.2.2 The Need to Provide Assistance to The Wrongfully Convicted

The struggle of returning back in the society is very difficult for these wrongfully convicted persons and not providing compensation to them is worsening their condition. State should have the responsibility to set this right by providing them compensation in the given ways:

• Compensation – a minimum total can be calculated at least on the basis of minimum wages

• Provision of Immediate Services can be:
  ❖ Funds for daily necessities, transport, food
  ❖ Provision for affordable housing;
  ❖ Measures to take for providing counselling services and medical assistance;
  ❖ Helping with getting education
  ❖ Improving skills to get a good job
  ❖ Legal aid to enjoy their rights as a citizen, regain custody of children and deleting criminal records.  

UN 1985 declaration is the magna carta for the rights of the wrongfully convicted victims and abuse of power. Victims should be treated with compassion and dignity.

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They have right to be informed of their rights in pursuance of their remedies. Their views must be cared and the court should be informed about it. There should be least inconvenience caused to the victim and their families while protecting their rights. The expression victims should also include their family, dependents not only the victim. Similar rational is stated in UN resolution.

Codes of criminal procedure and our constitution in India provides for accused and aggrieved parties to be represented by a lawyer. On the face of it, these provisions appears salutary. However, there are many interesting issues which are raised by many academics regarding these provisions. Can a lawyer appearing for a victim cross examine a witness? Could that lawyer make submissions on the matter of sentence? What would a court do if a lawyer for the victim contradicts a prosecution witness? These are some of the outstanding issues we should consider. We see great strides being taken by the introduction of new laws to deal with terrorism, crimes against women, children and sexual offenses in the context of these groups. However, we have no provision to date for representations by victims at hearings for bail, plea bargaining and withdrawal of cases by the prosecution. What then can we do to improve the environment for victims? Can we take steps against officers who harass, threaten injure or intimidate victims?

It is recommended that in the matters relating to the imprisonment for the default of payment of fine the statutory provisions specially section 63 Cr. P.C. should be invoked mandatorily. He court can refer to the factors drawn by Supreme Court and High Courts which are relevant in deciding the quantum of sentences in case of default in the payment of fine. Non-vague meaning should be given to the provisions regarding termination of fine. Fine on an accused should be terminated if he has completed his default sentence. The court resort to section 421(1) of CrPC to issue warrant to collect fine. The proviso says that the court can extract fine even when the person has completed his default imprisonment, except when - if the court considers it necessary, or has special reasons to do it and lastly of the fine has been imposed under s 357. To prevent the victimisation of the accused the court should give certain specific meaning by giving special meaning. Court should follow the principle laid down by the Supreme Court in which court stipulates that the fine should be imposed
on the basis of economic situation of the accused not on the basis of the loss to the victim. The fine is a penalty not a sentence. The sentence for ‘default in payment’ should be distinct for distinct facts and classes of offences. Fine should not be imposed if the person is not economically sound or capable of paying fine. Because it will not serve the social purpose as observed by the Supreme Court in *Shakir v State of Madhya Pradesh*. S 357 CrPC says that the section doesn’t account for the economic whereabouts of the accused but the court can award the compensation. In such a situation state should pay the compensation to the victim thus preventing victimisation of the accused. If the language of the section 357(3) would be followed thus forcing a death penalty convict to pay compensation, this will not serve the purpose, as in the denial victim would be left non-rehabilitated.

It is the normal principle that during the pendency of appeal the sentence should be suspended. However, relevant exceptions must be adhered to as enunciated in the interpretation of the section 389 Cr.P.C. and related case laws on the subject.

As there is no general principle guiding this exercise in all the situation, the operations of section 389 must be on the merit of the case. The discretion given to the court in the operation of section 389 Cr.P.C. can be invoked by recording the reasons in the event of staying the sentence.

This section can be invoked by taking special care involving the commission of serious offences and habitual offenders with past criminal records. Where the matter relates to commission of heinous crimes, the court is empowered to issue “conditional release”.

The court should not grant bail on the sole ground that it is not able to hear criminal appeal in future and if court grant bail than the application should be considered on merits and is also equally important to give reason there of.

Section 389 is not available to the accused on the presumption of innocence but the court would presume against to be guilty for the offence, unless the court fines at the time of suspension of the sentence for the valid reasons. The valid reasons are as follows:
1. Manner in which the crime is committed.

2. Nature of acquisition may be against the accused.

3. Desirability of releasing the accused on bail.


There should be differentiation between fixed sentences from that of life imprisonment and death, this will enable lower court to make more sound decisions under section 389(3) more reasonably and un-vague.

In identifying the victim of wrongful incarceration the Jurisdictional Magistrate/ Chief judicial Magistrates/ Sessions Judges shall hold sitting once in a week in each jail/prison for the purpose of effective implementation of Section 436-A of the code of criminal procedure, 1973. The state government should depute IPS officers who will periodically look into the status of under-trail. The above judicial officers identify the prisoners who have completed half period of the maximum period Or maximum period of imprisonment provided for the said offence under the law. After complying with the Procedure prescribed under section 436-A, pass an appropriate order there in the jail itself for release of under trail prisoners. Such judicial officer shall submit its report to the Registrar General of High Court to expedite the process of prisoners suffering from long term incarceration. There is no legal provisions for the victim of wrongful incarceration at present. Though, going by the international instruments, there is a strong need to establish a comprehensive assistance scheme to the victim of wrongful incarceration.

The court should also ascertain that the suspension of commission to be a reasoned order and if the unreasoned order is passed by the appellate court, the court should set aside the order. Are we not ,17 years into the new millennium continuing to practice archaic law? Where is that inter-generational trust that we will hand down a better legal system to our future generations? For example, isn’t it time that we re-evaluate our principles of punishment in the context of addressing the plight of victims of wrongful conviction where for example the victim of wrongful conviction are called upon to sustain this trauma through life after spending a term of imprisonment at the cost of the state and then exonerated?