

## **Right to Compensation- Is it too much to ask for**

Advocate Raji Nathani

On 28th March 2023 a three-judge bench delivered an important judgment where four men convicted in 1989 murder case were acquitted but without any compensation for miscarriage of justice for about more than 12-14 years on the grounds that the evidence creates a very serious doubt on the entire prosecution story. It even apprehended that the case could be a fabricated one as the Police might be trying to cover a mishap on its part. (Pulen Phukan & Ors. Vs. State of Assam 2023 Latest Caselaw 264 SC)

Dating back on August 17, 2021, the Gwalior Bench of the Madhya Pradesh High Court granted monetary compensation for miscarriage of justice that resulted in over 11 years of wrongful imprisonment of 3 innocent persons. In February 2022, Allahabad High Court acquitted a murder convict 40 years after his conviction by a lower court. Though many courts have done it in the past, in some cases, courts did not order for payment of compensation as no legal framework exists for this the India.

There are constitutional protections available under Articles 14 and 21 of the Constitution for victims of wrongdoing and certain legislative provisions under Sections 357, 357(1), 357 (2), 357 (3), 357A, 358, 359, and 250 of the Code of Criminal Procedure, 1973 are also there governing the payment of restitution to victims of wrong doing.

The legal framework in India **does not have a law on the grant of compensation** (Right to Compensation- Against Wrongful

Prosecution, Incarcerations, and Convictions) to those maliciously prosecuted. However, Constitutional courts do exercise their powers sometimes to award monetary recompense.

The term 'Victim' is defined in Indian law under Section 2(wa) of the CrPC, 1973 as 'Any individual who has incurred any loss or injury as a result of the act or omission for which the accused person has been charged, and victim includes the accused Person's Guardian or Legal Successor.'

The term **Legal Heir** within the Definition of 'Victim' u/s 2 (wa) of CrPC has been further elaborated by the court in the case of **M/s Tata Steel Ltd. V. M/s Atma Tube Products**, 1 PLR 1 (Punjab & Haryana 2014 where the court opined that, The Victim Compensation Scheme was only applicable to those dependents of the victim, who have actually suffered a loss or sustained an injury and are in dire need of rehabilitation. Apart from aforementioned the term 'Legal heir' has no applicability of Victim Compensation Scheme.

The precedents such as following are the examples of Supreme Court's principle of payment of compensation to the victim of crime on the grounds that it is the duty of the welfare state to protect Citizen's Fundamental Rights and also humanitarianism and social welfare, duty to protect its subjects, equitable justice, and so on.

The most famous case is **Rudal Sah v State of Bihar**<sup>[1]</sup>, in which the Hon'ble Supreme Court ordered the state to pay Rs 35,000 in compensation to Rudal Sah, who was imprisoned for 14 years despite his acquittal on the grounds of insanity, and concluded that the State of Bihar had violated Article 21.

Another noteworthy case is **Bhim Singh v State of J&K**<sup>[2]</sup>, in which Bhim Singh, an MLA, was arrested to prevent him from attending the Legislative Assembly. The Hon'ble Court granted the state compensation of Rs 50,000.

The case of **Meja Singh v SHO Police Station Zira**<sup>[3]</sup> is another terrible case in which the High Court of Punjab and Haryana took up the cause of the victim and awarded Rs 25,000 in compensation for the petitioner's son's wrongful incarceration.

Not only Supreme Court, the victim's cause was also taken up by the High Court of Bombay in the case of **Ravikant Patil v DG Police, State of Maharashtra**<sup>[4]</sup>, where the petitioner was taken to court handcuffed in clear violation of the Hon'ble Supreme Court's decision in the case of **Prem Shanker Shukla v Delhi Administration**<sup>[5]</sup>.

The most notable case under this area is **Mrs. Cardino v Union of India**<sup>[6]</sup>, in which the accuse was arrested on the allegation of misappropriation of some plastic ware and hospital utensils worth Rs1500 but tormented like a hard-core criminal and thus died as a result of the abuse.

### **Why Compensation:**

- A person experiences extreme corporeal and mental discomfort while being imprisoned. It undermines Article 21 of the Constitution i.e Right to a dignified life.
- wrongful imprisonment leaves a deep psychological impact on the victim
- the incarcerated person suffers from damage to health, loss of income or earnings, loss of property due to costs of legal fees, and other consequential expenses resulting from the wrongful

prosecution. There is loss of family life and loss of opportunities and financial injury

- a person and his family face social boycott and harm to reputation in society owing to the stigma attached with imprisonment

It is a fact that acquittal at a later stage doesn't completely or partially restore the lost prestige. Its non possit Since chastity once violated cannot be restored.

## **Conclusion**

It was noted by the English jurist William Blackstone that '*It is better that ten guilty persons escape than that one innocent suffer*'. The principle has become a maxim in the modern jurisprudence. It highlights the importance of the protection of innocent people from wrongful legal actions. It is high time that a code for compensating victims of wrongful imprisonment is legislated in India.

## **End Notes:**

1. (1983) 4 SCC 141
2. AIR 1986 SC 494
3. 1991 ACJ 439
4. 1990 ACJ 1060
5. 1980 AIR 1535
6. 1990 ACJ 804