

Compensation to the Wrongfully Prosecuted Person: Hitherto and Challenges for India

Authors: Ms. Megha Ojha* & Dr. Mayuri Pandya**

*UGC -Senior Research Fellow,
Research Scholar, University School Of Law, Gujarat University, Ahmedabad
** Associate Professor, Sir L.A. Shah College, Ellis Bridge, Ahmedabad

Abstract: Modern States are working as welfare states, therefore, an idea of compensation to the victims is realised. In traditional classification system, arrest and detention were described as a sovereign functions of the State, so there were no provisions for compensation but now under Article 21 Supreme Court has given dynamic approach to 'Right to life and Personal liberty' through various judgements. Supreme Court of India has started to award compensation in the cases of wrongful prosecution, undue detention and bodily harm. As per this new approach claim for compensation can be entertained by Indian Courts; hence under Article 32 and 226 victims can approach to the Supreme Court and High Court for constitutional remedies. However, so far in India, legislative framework or schemes to provide compensation or relief for restitution or for redressal of harms/damages which were/are caused to the victims due wrongful prosecution/detention are yet to be made. Even factors that are needed to take into consideration to determine amount of compensation have not been fixed so far. In this paper an attempt has been made to highlight various issues and challenges that related to compensation in Indian criminal justice system and suggestions are given by highlighting limitation of the remedies which are provided in India for compensating wrongfully prosecuted person.

Key Words: Right to Life, Wrongful prosecution/ detention, Compensation in Criminal Justice System.

Introduction

Compensation to the victim is recognised principle of law, and it is well understood that in case of wrongful prosecution only acquittal is not enough because wrongfully prosecuted person may get release from the jail but for him to retain back to prior life is quite impossible. Even after acquittal such person has to face an uphill battle in society. Therefore, for mental, physical and emotional torture and/or harassment, and for social

stigma and other expenses that were incurred due to wrongful prosecution/ detention fair compensation should be given to him.

Article 21 of the Indian Constitution provides that “*No person shall be deprived of his life or personal liberty except according to a procedure established by law.*” Article 21 secures protection of life and personal liberty in India. In spite of having such provisions, report (31 December, 2016) of National Crime Record Bureau (NCRB) reveals that India has highest Under trials prisons population, 67.93% of total prison’s population.¹ These Under trials prisoners in many instances get acquittal from the courts even after so many years of an imprisonment.

In India’s existing legal system due to ‘miscarriage of justice’ cases of wrongful prosecution are increasing. Moreover, because of lacking in criminal justice system, so far no statutory/ legislative framework or legal schemes are available that can provide some sort of relief or rehabilitation to a person who were wrongly prosecuted. Most specifically, even amount of compensation in case of wrongful prosecution has not even fixed so far. This being a reason issues regarding compensation to wrongfully prosecuted person remains complex and uncertain.

Wrongful Prosecution

Wrongful prosecution of a person can be understood by a situation where an innocent person has been wrongfully prosecuted or detained or convicted due to miscarriage of justice, and behind such detention/ prosecution or conviction professional misconduct of the police or public servant or any other prosecutorial misconduct was involved that became reason for such wrongful prosecution/detention of that person. Later such malicious intention/ fault/ negligence get proved when that person gets acquittal by order/ judgement of the court.

In the cases related to wrongful prosecution it was observed or recorded by courts that such person was wrongful prosecuted due to malicious or negligent act of the police and/or due to prosecutorial misconduct. In respect of procedural misconduct of the police

¹ See report of National Crime Record Bureau (NCRB) available at: <http://ncrb.gov.in/StatPublications/PSI/Prison2016/CHAPTER-3.pdf> at page 81 (last accessed on April 11, 2019)

or public servant following acts/omission can be include in the term of ‘Miscarriage of Justice’:

1. Framing or making false documents or evidences;
2. Destruction or suppression or destroy of exculpatory evidences;
3. Wrongful confinement;
4. Making of false charges or improper disclosure of information;
5. Coercing confessions;
6. Trial of a person against the law or disregard of procedural rules;
7. Violation of any law that has to be followed;
8. Fabrication or falsifying or planting of evidences;
9. Other abuse of process of law etc.

Mainly in wrongful prosecution above mentioned actions of the police or public servants create cause/s for instituting judicial proceeding or any other proceeding against innocent person.

Recently in the case of **Babloo Chauhan**² Delhi High Court has showed concern about wrongful prosecution of innocent person, and asked the Law Commission of India to make a report on this issue. Law Commission has made proposal through its report no. 277 on title of ‘Wrongful Prosecution (Miscarriage of Justice): Legal Remedies.’ In this report Law Commission of India has suggested changes in India’s existing criminal justice system so that some sort of relief can be provided to a person who was wrongfully prosecuted.

In the case of **Nabi Narayanan**³ (Padam Shree awarded in the field of Science & Engineering-Space), the Supreme Court ordered the State of Kerala to pay Rs. 50 Lac as compensation to Nabi Narayanan because he was suffered due to miscarriage of justice, and was unnecessarily arrested and harassed by the police. In this case victim (Nabi Narayanan), who was/is a scientist by profession got some sort of relief when Supreme Court of India awarded for Rupees 50 lac as compensation for mental cruelty which was caused to him due to unnecessary arrest and harassment. However, in many cases where a person/s suffered due to ‘Miscarriage of Justice’ such relief can’t be provided because of

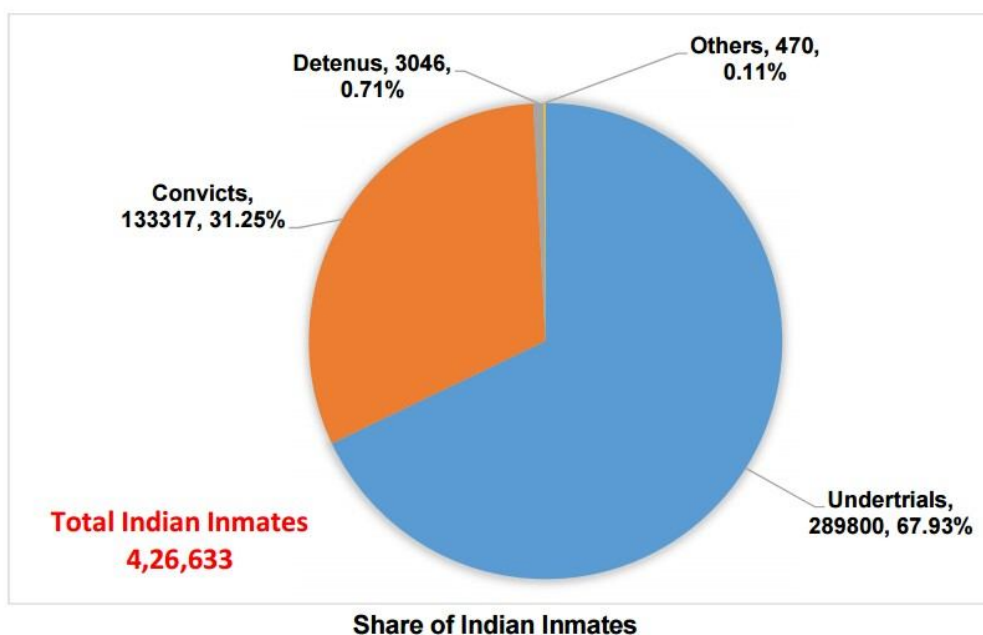
² Babloo Chauhan@Dabloo V. State Government of NCT of Delhi, 247 (2018) DLT 31 (last accessed on May 02, 2019)

³ See details available at: <https://www.thehindu.com/news/national/sc-appoints-panel-to-look-into-harrowing-torture-of-nambi-narayanan/article24943213.ece?homepag> (last accessed on May 13, 2019)

problem in accessing to criminal justice system in India. Problem in access to criminal justice can be consider as major problem in Indian’s exiting legal system. It can be understood that possibility of invoking constitutional and civil remedies by poor victim are less, because such remedies can be inefficacious or may be unaffordable and/or out of imagination or knowledge of the victim.

Moreover, in India Under trials prisoner’s population is also increasing, and in such condition there is great possibility that due to delay in justice delivery system more prisoners would become victim of such situation. Below data are showing details of prison’s population according to National Crime Record Bureau (NCRB) of India.

Share of Convicts, Under trials, Detenues and other inmates (as on 31st December, 2016)



Source: Report of NCRB (Dec 31, 2016)⁴

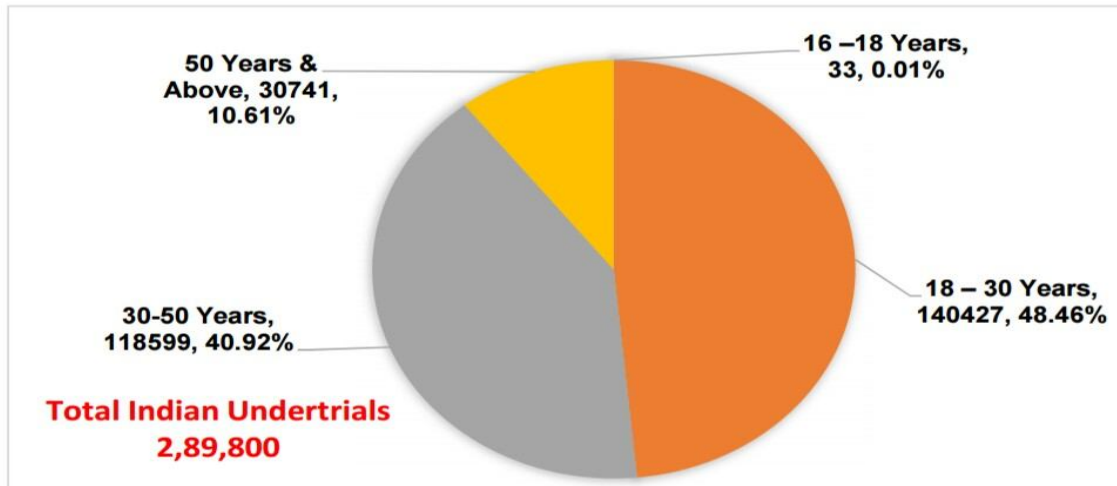
As per report of National Crime Record Bureau (as on December 31, 2016) total 4, 26, 633 Indian nationals inmates consisting of 4, 09, 053 males and 17, 580 females were confined in various jails at the end of the year 2016.⁵ Out of these (Convicted, Under trials and Detenues) 4, 26, 633 Indian national prisoners 1, 33, 317 were convicts, 2, 89,

⁴ See report available at: <http://ncrb.gov.in/StatPublications/PSI/Prison2016/PrisonStat2016.htm> (last accessed on April 10, 2019)

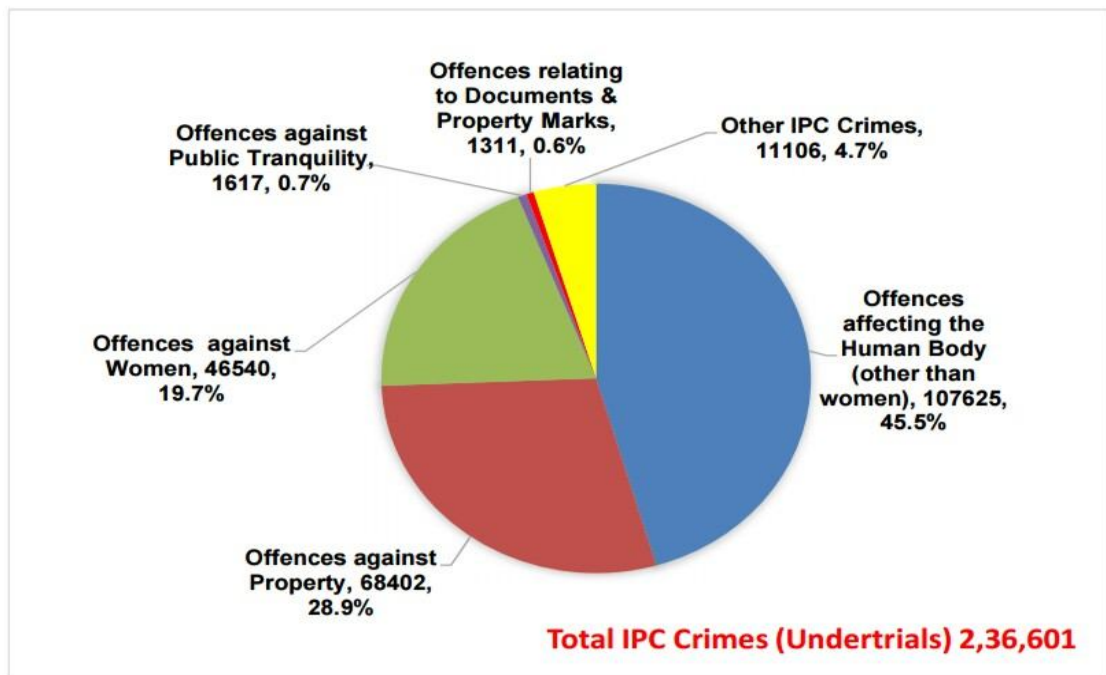
⁵ See Chapter 3 of the National Crime Record Bureau (NCRB) report 2016 at page 1; Available at: <http://ncrb.gov.in/StatPublications/PSI/Prison2016/CHAPTER-3.pdf> (last accessed on April 07, 2019)

800 were Under trials and 3,046 were Detenues⁶ and out of 2, 89, 800 Under trials prisoners, total 2, 77, 983 were male and 11, 817 were female.

Age wise share of Under trials Prisoners (as on 31st December, 2016)



Age-wise Share of Indian Inmates (Undertrials) as on 31st December, 2016



Types of IPC Crimes – Undertrials

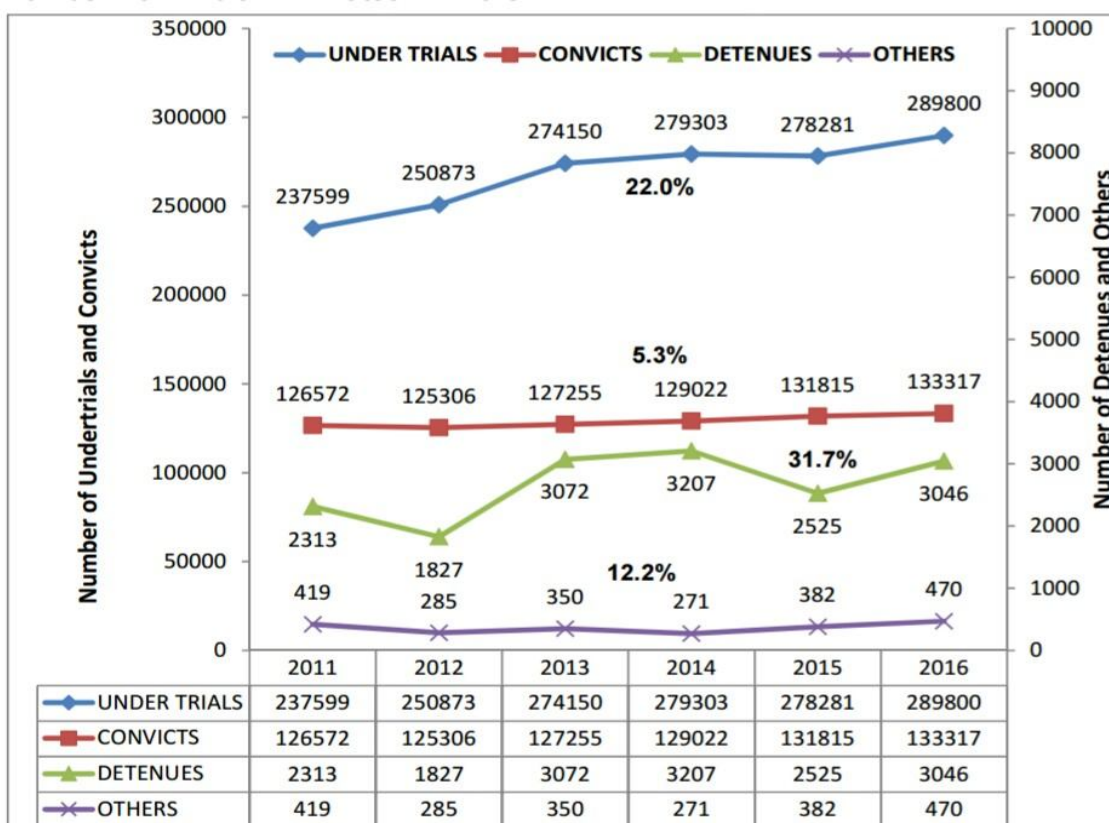
Source: Report of NCRB Dec 31, 2016'

⁶ *Id* at p. 1

⁷ See Chapter 5 of the report of National Crime Record Bureau (NCRB) at page 8; Available at: <http://ncrb.gov.in/StatPublications/PSI/Prison2016/CHAPTER-5.pdf> (last accessed on April 05, 2019)

Reports of National Crime Record Bureau (NCRB) reveals that population of Undertrials prisoner’s is continuously increasing, and even these Undertrial prisoner’s are higher in number than the convicted prisoners. Below mentioned National Crime Record Bureau data are showing that how population of Undertrials prisoner’s are increasing in India

Trend in Number of Different Types of Indian Inmates



Note: Figures as on 31st December of the respective year

Trend in Number of Different Types of Indian Inmates during 2011-2016

Source: Report of NCRB (Dec 31, 2016)⁸

According to the report of National Crime Record Bureau (NCRB), population of Undertrials prisoners was increased, more than 10,000 within a year (2015-2016). An International study has noted that India has 16 highest Undertrials prison’s population out of 217 countries.⁹ It is clear from above details that numbers of Undertrials are increasing in India. Continuous increase in population of Undertrials prisoners show defects in India’s criminal justice system.

⁸ See report available at: <http://ncrb.gov.in/StatPublications/PSI/Prison2016/PrisonStat2016.htm> (last accessed on April 08, 2019)

⁹ See page 13 of report of Law Commission of India, Report No. 277; Available at: <http://lawcommissionofindia.nic.in/reports/Report277.pdf> (last accessed on April 07, 2019)

Therefore, with respect to the issues of Undertrials maximum time period of detention/incarceration is required to be taken into consideration because with increased population of Undertrials prisoners suppose in future they get acquittal form the court on later stage then matters/cases regarding wrongful prosecution may increase in near future; and till that date if any legislative framework get framed in India or any scheme for compensation for wrongfully prosecuted person get introduce/ implement in India then such schemes may create great problem because it can give heavy monetary burden on government. So improvements in existing criminal justice system have greater importance because without this nothing can be achieved.

Delay in justice delivery process is actually denial of justice because it is violation of fundamental right which is provided under Article 21 of Indian Constitution. In case of **Sheela Barse vs. Union of India**¹⁰ Supreme Court has held that “*right to speedy trial is a fundamental right implicit in Article 21 of the Constitution*” Therefore, delay in disposal of criminal matters which are pending before various Indian courts; and due to that population of Undertrials prisoners are increasing, therefore, this increased population of Undertrials prisoners is serious/big problem.

Person/s that involved or aware about administration of criminal justice can easily understand that how such increased population of Undertrials can be highlight worldwide as a failure of justice delivery system. In such situation state can be made liable for delay in justice, and then remedies have to be provided to those who have been wrongly prosecuted. However, before drafting any scheme for compensation to wrongfully prosecuted person, it is required to understand that only compensation cannot provide solution in such situation.

Current Indian Scenario and Remedies for Wrongfully Prosecuted Person:

In words of **Martin Luther King Jr.**¹¹ “*Injustice anywhere is a threat to justice everywhere*”. It is understood that remedies to a person who was wrongly prosecuted due to miscarriage of justice may support him/her to retain back to his prior life or may

¹⁰ Sheela Barse vs. Union of India AIR 1986 SC 1773, 1986 SCR (3) 443;
Available at: <https://indiankanoon.org/doc/595461/> (last accessed on May 02, 2019)

¹¹ See: <http://www.brainyquote.com/quotes/keywords/justice.html> (last accessed on April 11, 2019)

support him/her to resituate in new life with dignity. Therefore, if compensatory justice is denied to those who were wrongly prosecuted, then it would amount to injustice.

In case of wrongful prosecution/detention or convictions, which were resulted due to miscarriage of Justice, then some legal and constitutional remedies are available in India through which a victim can invoke their right in current Indian legal system. These remedies can be divided into three categories:

1. Constitutional Remedies
2. Private Law Remedies
3. Criminal Law Remedy

(1) Constitutional Remedies

Under Constitutional Remedies on account of wrongful prosecution, incarceration or conviction, protection is available under Article 21 and 22 of the Indian Constitution that invoke writ jurisdiction of Supreme Court and High Court. These Public Law Remedies are victim centric by which pecuniary relief from the State, which includes grant of compensation that can be provided to a person who had been suffered due to miscarriage of justice.

In many cases the Supreme Court has given dynamic interpretation to Article 21. In the case of Khatri vs. State of Bihar,¹² Veena Sethi vs. State of Bihar¹³, Rudal Sah vs. State of Bihar¹⁴, Maneka Gandhi vs. Union of India¹⁵, Bhim Singh, MLA vs. State of J & K & ors.¹⁶, D. K Basu vs. State of West Bengal,¹⁷ State of Maharashtra vs. Ravi Kant Patil¹⁸, Nilabati Behera vs. State of Orissa¹⁹, State of Andhra Pradesh vs. Chilla Ramkrishna

¹² Khatri vs. State of Bihar (1981) 1 SCC 627; Available at: <https://indiankanoon.org/doc/1122133/> (last accessed on April 21, 2019)

¹³ Veena Sethi vs. State of Bihar AIR 1983 SC 339; Available at: <https://indiankanoon.org/doc/1928844/> (last accessed on April 11, 2019)

¹⁴ Rudal Sah vs. State of Bihar AIR 1983 SC 1086; Available at: <https://indiankanoon.org/doc/810491/> (last accessed on April 23, 2019)

¹⁵ Maneka Gandhi vs. Union of India AIR 1978 SC 597; Available at: <https://indiankanoon.org/doc/1766147/> (last accessed on May 11, 2019)

¹⁶ Bhim Singh, MLA vs. State of J & K & ors. (1985) 4 SCC 677; Available at: <https://indiankanoon.org/doc/1227505/> (last accessed on April 11, 2019)

¹⁷ D.K. Basu vs. State of West Bengal AIR 1997 SC 610; Available at: <https://indiankanoon.org/doc/501198/> (last accessed on April 13, 2019)

¹⁸ State of Maharashtra vs. Ravi Kant Patil AIR 1991 SC 810; Available at: <https://indiankanoon.org/doc/1543073/> (last accessed on May 02, 2019)

¹⁹ Nilabati Behera vs. State of Orissa AIR 1993 SC 1960; Available at: <https://indiankanoon.org/doc/1628260/> (last accessed on May 13, 2019)

Reddy²⁰ Sant Bir vs. State of Bihar²¹ etc., are instances where the Supreme Court has held that “compensation can be awarded by constitutional courts for violation of fundamental right provided under Article 21 of the India Constitution.”

In many cases instances can be found where the compensation was awarded to a person who was wrongly prosecuted/incarcerated or convicted. However, such instances where fair compensation was awarded to wrongfully prosecuted person are rare and episodic. In India’s criminal justice system it’s not possible for every victim to get compensation fairly and easily in case of wrongful prosecution in absence of legislative framework or schemes. Moreover, compensation to the wrongfully prosecuted person is not available equally for all those who are in similarly situation.

It should be made clear that through various judgements of Indian Courts, on later stage, the defence of sovereign immunity was not accepted especially where fundamental rights of a person that have been provided under Article 21 were violated by public servants. Therefore, infringement of fundamental right by police and/or other prosecutorial misconduct can invoke state liability in India, and for that a victim can demand compensation. However, so far standards or fair amount of compensation that should be applied in case of ‘Miscarriage of Justice’ are still remained uncertain in India.

(2) Private Law Remedies

In democratic country like India, rights and interest of citizens are protected and preserved under existing legal system. Therefore, under Article 32 and 226 damages can be claimed by a person who was wrongly prosecuted due to breach of public duties of the State employees.

(3) Criminal Law Remedies

Under criminal law remedies for wrongful prosecution actions can be taken against police or a person who is wrongdoer. Indian Penal Code, 1860 (IPC) and Criminal Procedure Code, 1973 (CrPC) contain substantive and procedural lineament of the actions that can be taken against police personnel, public servants or wrongdoers.

²⁰ State of Andhra Pradesh vs. Chilla Ramkrishna Reddy (April 26, 2000) 5 SCC712;
Available at: <https://indiankanoon.org/doc/731194/> (last accessed on May 03, 2019)

²¹ Sant Bir v. State of Bihar AIR 1982 SC 1470; Available at: <https://indiankanoon.org/doc/1252778/> (last accessed on April 28, 2019)

Issues Regarding Compensation to the Wrongfully Prosecuted Person in India

Article 14(6) of the International Covenant on Civil and Political Rights (ICCPR) provides that “*When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*” According to this provision, it is mandatory for countries to have a legal / legislative framework for providing compensation in such situations, so that a person/s that was/were wrongfully prosecuted/ convicted can also get rehabilitation or relief after acquittal. India is also a party to this treaty but so far India has not adopted provisions of 14 (6) of ICCPR.

Many instances or cases that were reported by news reporters/media personal or other investigating agencies clearly shows that due to state action wrongful denial of right to life and right to liberty are rampant in India. Therefore, on the issue of compensation to the wrongfully prosecuted person the Law Commission of India has come up with a report (Report No. 277) on August 2018. Many suggestions are given in this report for improvement in criminal justice system. By implementing recommendation of Law commission report fair compensation can be given to those who have been wrongfully prosecuted / convicted. However, even in this report many issues are not even highlighted viz. suspension of sentence. Moreover, this report is lacking to give suggestions for making effective schemes for compensation and some other relevant information are also missing in this report viz. data of person/s those have/had got acquittal by the order/ judgement of the Court. Therefore, more research work on this issue is required so that effective compensation schemes can be frame to give relief or rehabilitation to a person who are/were suffered due to miscarriage of justice.

Conclusion

In India, so far no exclusive legislation or legal schemes are available to give compensation for wrongful prosecution/incarceration. Therefore, no similar relief or compensation can be given to all those who are/were in similar situation. In present scenario, it is imperative to decide conditions upon which some relief or fair

compensation amount can be given to the victim of such situations because by fixing compensation schemes some sort of clarity can be achieved in the whole procedure. Amendments in Indian criminal law are also required on this stage. It is well understood that introduction of guidelines and/or principles to decide compensation amount can also give some positive changes in criminal justice system. However, it is quite clear from above discussion that all situations or problems that are existed in criminal justice system can't be tackle by introducing compensation schemes or guidelines only.

Moreover, this thing can't be ignored that Indian criminal justice system need many improvements so that person may not suffer in future. It is also accepted that on some extent guiding principles can be framed that farther can be considered by the Indian courts while deciding amount of compensation for wrongfully prosecuted person. However, for framing such guidelines some aspects viz. seriousness of offence, severity of punishment, damage to health of the victim, harm to the property and reputation should be considered to give fair compensation to the victim of wrongful prosecution.