

## FALSE PROSECUTION AND QUEST FOR (IN) JUSTICE: EXPLORING THE RESPONSE OF INDIAN CRIMINAL JUSTICE SYSTEM

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### Abstract

The false prosecution of innocent people is being acknowledged in an increasing number of countries around the world. The problem of false prosecution is now framed as a human rights issue. More attention is being given to whether criminal justice systems are providing sufficient measures for the effective review and rectification of false prosecution and whether national & international obligations in that regard are being met, such as, European Union, Malaysia, Russia, New Zealand, Singapore, Canada, United States and Srilanka have substantial new mechanisms in place to better identify and correct false prosecution but India has been slower to respond. In this research paper, I have examined the cases of false prosecution in India and point to legislations with justice systems to explain the necessity of false prosecution in India. Additionally, the study highlights how False Prosecution cases pose a problem to the justice system. The study also outlines a road map for false prosecutions.

**Keywords-:** False Prosecution, criminal justice system, unfair, Reimbursement.

### INTRODUCTION

One of the greatest tragedies in the criminal justice system is the false prosecution of a person for a crime he or she did not commit. False prosecution can have immeasurable consequences for falsely prosecuted person, original crime victims, and families<sup>1</sup>, it also destroy the life of the person who is falsely prosecuted<sup>2</sup>. The power of our criminal justice system depends on its accuracy and its ability to prosecute the guilty and to exonerate the innocent. But we know that false prosecution happen still. There are ample evidences to show how false prosecution started against innocent person for various reasons<sup>3</sup>. However, identifying and understanding the causes of false prosecution is critical so still the integrity of our justice system<sup>4</sup> shall be maintained. A false prosecution may be seen because, of, the person prosecuted is factually innocent of the charges & there were procedural errors that has violated the prosecuted person's rights<sup>5</sup>. According to the Publicly Available Data, a national litigation and public policy organization dedicated to false prosecution of individuals, where maximum people have been prosecuted on certain "contributing causes" where false prosecution has been seen<sup>6</sup> such as, Eyewitness misidentification, False confessions or admissions, Government misconduct, derisory defense, Informants (e.g., jailhouse snitches) & Invalidated or improper tools used. India has been one of the developing countries and maximum number of false prosecution cases has been seen

<sup>1</sup> S. Irazola, E. Williamson, J. Stricker, and E. Niedzwiecki, "Addressing the Impact of Wrongful Prosecutions on Crime Victims," NIJ Journal, 274 (October 2014).

<sup>2</sup> Report No. 277 of the Law Commissions of India ("Wrongful Prosecution (Miscarriage of Justice"): Legal Remedy").

<sup>3</sup> Framed, Damned, Acquitted: Dossiers of a 'Very' Special Cell, Vol 43, Issue 1, 2013 Jamia Teachers' Solidarity Association (JTSA).

<sup>4</sup> L. Scott, "It Never, Ever Ends': The Psychological Impact of Wrongful Prosecution, American University Criminal Law Brief, 5, no. 2 (2010): 10-22.

<sup>5</sup> Wrongly Convicted Walk Away With Scars," *USA Today*, October 13, 2004, at 1A.

<sup>6</sup> R. Goldin, "Causation v. Correlation, *SENSE about SCIENCE USA*, August 19, 2015.

and law has started playing a vital role for the protection of the false prosecution. In fact, the Indian jurisprudence started developing parallel to the English jurisprudence on this topic, and at times also went with the English legal concepts<sup>7</sup>. However, for false prosecution, factors as ‘causes’ of such prosecution may be seen through by studying the factors leading to rightful acquittals or dismissal of charges against an innocent defendant through “near misses” that were not present in cases, that led to the prosecution of an innocent person. After identifying a set of false prosecution and analyzing the cases by using various techniques, it has been seen that various “factors” that led to a false prosecution<sup>8</sup>, Younger defendant, and Criminal history, Weak prosecution case, Prosecution withheld evidence, Lying by a non-eyewitness, Unintentional witness misidentification, Misinterpreting forensic evidence at trial, Weak defense, Defendant offered a family witness & States with a “punitive” culture, through which the false prosecution is carried on.

## HISTORICAL DEVELOPMENT

In the 18th and 19th century English Courts dwelled on the area of false prosecution amiably, and thus the jurisprudence developed to a great extent during this period. Primarily the trend and inclination of the courts was to stick to popular English rulings on the issue. However, towards the latter half of the 19th century this trend changed and an English jurisprudence evolved on its own value and balance<sup>9</sup>. Last seventy years ago, Blackstone explained the reason for such judicial antagonism for the false prosecution which had been a very great dissuasion to the public laws of the false prosecution; it had bearable ground of, false prosecution liable to be sued for the public law whenever their indictments miscarried<sup>10</sup>. As late as 1886 Baron Bramwell reiterated the old fashioned English law: ‘If ever there was a necessity for protecting persons it is an action of false prosecution a prosecutor is a very useful person to the community<sup>11</sup> it is the important feature of Twentieth Century in public law for the false prosecution action which has given its roots in a concern for the veracity to several courts<sup>12</sup>. At common law, the public law for false prosecution provided a cause of action against "private defendants for unjustified harm arising out of the misuse of government processes.<sup>13</sup>" In his treatise, false prosecution in the public law as "the putting in motion of any process of the law, and the carrying of it forward until it terminates in favor of the one prosecuted, falsely and without reasonable or probable cause, to his injury in respect either of personal security or of property<sup>14</sup>. The accomplishment for the false prosecution what is the most important remedy for a victim of one. He or she soon exposed to the lawyers, however, that in practice it was often not viable to sue for false prosecution. Over a long series of reported cases the judges showed a marked lack of enthusiasm, and discouraged such legal proceedings 'though this action will lie, yet it ought not to be favored, but

<sup>7</sup> Ch. 1 above, and D. Hay, 'Controlling the English Prosecutor', *Osgoode Hall Law Journal*, 21/2 (1983).

<sup>8</sup> J.B. Gould, J. Carrano, R. Leo, and J. Young, *Predicting Erroneous Prosecutions: A Social Science Approach to Miscarriages of Justice*, Final Technical Report, NCJ 241839 (Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2013).

<sup>9</sup> W. Page Keeton et al., *Prosser and Keeton on the Law of Torts*, 5th Ed., (1984) (providing overview of malicious prosecution in American Tort law and its extension to malicious civil claims); cf. Note, *Groundless Litigation and Malicious Prosecution Debate: A historical analysis*, 88 *Yale L.J.* 1218.

<sup>10</sup> Blackstone, *Commentaries*, iii, p.216 and Christian's notes (12th Ed.).

<sup>11</sup> *Abrath v North Eastern Railway Co.* (1886), 11 *aAp. Cas.* 247 at 252.

<sup>12</sup> The historical analysis of the tort of malicious prosecution is treated in fully detail in Note, *Groundless Litigation & the Malicious Prosecution Debate: A Historical Analysis*, 88 *YALE L.J.* 1218 (1979).

<sup>13</sup> *Wyatt v. Cole*, 504 US. 158 (1992) (citing 2c. Addison, *law of torts* (1876), Thomas. M. Cooley, *law of torts* (1879), Joel p. Bishop, *commentaries on non-contracr law* (1889).

<sup>14</sup> Joel. P. Bishop, *commentaries on non-contract law* 221, 89 (1889).

managed with great caution'<sup>15</sup>. From certain years, there has been a regular increase in the rate of false prosecution in the country. Today, large number of innocent people is in prisons because of bad criminal justice and its administration. The pre-eminent jurist William Blackstone once said: "Better that ten guilty persons escape than that one innocent suffers." India borrows a substantial part of the UK's legal system, but the 'ethos' of Blackstone's formulation seems to be violated<sup>16</sup>, Article 21 of the Constitution of India ("Constitution") confers, on every person, the fundamental rights of life and personal liberty. As per this Article, "No person shall be deprived of his life or personal liberty except according to procedure established by law.", While redefining the contour of Article 21 of Constitution it has been seen that the procedure envisaged under this Article must be "right, just and fair" and not "arbitrary, fanciful or oppressive"<sup>17</sup>. The justice system works on the principle of, "**Fiât jūstītiaruat cælum**"<sup>18</sup>. Despite this, instances of false prosecution of innocent persons are quite common<sup>19</sup>. In all such cases, individuals who are falsely prosecuted, implicated and incarcerated for several precious years of their lives, even on an honorable acquittal, have not much to gain. Besides being forced to live under social stigma, absence of statutory provisions or state mechanisms providing for rehabilitative, restorative and compensatory measures to such victims and their family members (who suffer equally), aggravates their agony<sup>20</sup>. Proceedings instituted in private law may include not only false prosecution and False arrest but also False bankruptcy and liquidation proceeding, False execution of process against any property, and False search<sup>21</sup> is also there. False prosecution is the False intention of unsuccessful criminal or bankruptcy or liquidation proceedings against another without practical or feasible cause<sup>22</sup>. Generally, it can be said that the false prosecution is defined as a judicial happening instituted by one person against another, from unlawful or rude motive, without any realistic and plausible cause to justify it<sup>23</sup>. In the case of **Darbhangi Thakur v. Mahabir Prasad**, it was held that unlike false prosecution, no action can be brought, as a general rule, in the case of civil proceedings even though the same are nasty and have been brought without any realistic cause<sup>24</sup>. In the case of **Genu Ganapati v. Bhalchand Jivraj**, it was held that following are the essentials to establish false abuse of private law:-

- Allegation must be proved beyond the doubts.
- The party must allege and prove that the other party has acted without reasonable and plausible clause and the entire proceedings against him have either terminated in his favor or shall be nullified.

<sup>15</sup> Among other instances of this attitude, see Holt CJ in *Saville v. Roberts* (1698), 1 Ld Raymond 381; Jones v. Givon (1711), Gilb. 209; Lee CJ in *Rey110/ds v. Ke1111edy* (1748), 1 Wils. 232; Eyre B. in *S111to11 v. Joh11s1011e* (1786) JT erm R 505.

<sup>16</sup> Sir William Blackstone, commentaries on the laws of England in four books, online library of liberty 1753.

<sup>17</sup> *VeenaSethi v. State of Bihar*, AIR 1983 SC 339

<sup>18</sup> Legal Maxim meaning, "Let justice be done though the heavens fall."

<sup>19</sup> *DhanjishawRattanji v. Bombay Municipality*, AIR 1945 Bom. 320.

<sup>20</sup> *Babloo Chauhan @ Dabloo v. State Government of NCT of Delhi*, 247 (2018) DLT 31.

<sup>21</sup> B.M. Gandhi, *Law of Torts* 165 (Eastern Book Company, Lucknow, 3rd ed., 2006).

<sup>22</sup> Report No. 277 of the Law Commissions of India ("Wrongful Prosecution (Miscarriage of Justice"): Legal Remedy").

<sup>23</sup> *Ratanlal&Dhirajlal*, the *Law of Torts* 334 (Wadhwa & Company, Nagpur, 25th ed., 2006).

<sup>24</sup> AIR 1917 Pat. 460.

- The party must also prove that such private law proceedings have interfered with his liberty or property or that such private law proceedings have affected or likely to affect his status<sup>25</sup>.

The question relating to want of practical and apparent cause in a private law for false prosecution should be decided on all facts before the Court the party is required to establish that the other party prosecuted him without practical and apparent cause<sup>26</sup>, In the case of *Antarajami Sharma v. Padma Bewa*,<sup>27</sup> it has been said that law is settled that in a case of loss for false prosecution, so here onus of proof of absence of practical and apparent clause seen on the party going to court but judicial mind shall be applied. The existence of practical and apparent cause is of no avail if the prosecutrix has ignored it. The release of a prosecution or acquittal of the accused does not create any presumption of the absence of practical and apparent cause. If a man prefers an accusation containing several faults, whereof for some there is, and for others there is not, practical and apparent cause, then his liability for false prosecution is complete, because some person has some lacuna which is natural<sup>28</sup>. Such false prosecution proceedings allow us to follow the use of the law by a wider variety of people than in more serious proceedings. We can therefore more effortlessly follow the disjunction between legal terms of legality and social terms of legitimacy, and also there is two categories to attach between them, the loss given to those who are able to afford lawyers and exploit social eminence to define what is legal, but also the power of law sometimes gave poorer person to define it as illegal what richer person considered wholly legal<sup>29</sup>. It can be said that the false proceedings are that proceedings which are initiated with untruth intention. The elements (i.e. prosecution by the defendant, absence of practical and apparent cause, defense has acted falsely, termination of private legal proceedings in the favor of the plaintiff and plaintiff suffered damage as a result of the prosecution) which are necessary to the plaintiff to prove in a private legal suit for loss, where false prosecution must be fulfilled. However, on the basis the facts and circumstances, the Court should decide whether the private suit is filed false or not. The false Prosecution infringes fundamental rights of the person and then the person can invoke writ jurisdiction under article 32 or 226 and then obtain the writ for the grant of loss, who suffered bodily, mental and social harm. Public law remedy does not preclude the right of loss which is available under the private law<sup>30</sup>. In *Maneka Gandhi* judgment, where the Supreme Court gave a vibrant interpretation to Article 21, a new direction to the concept of personal liberty. One of the important offshoots of the foregoing was that the courts started to consider loss in cases of false prosecution<sup>31</sup>. In the case of *Khatri & Ors. v. State of Bihar & Ors.*, (the Bhagalpur Blinding case), was one of the earlier cases where the question was raised as to whether a person who has been falsely prosecuted in his life then his personal liberty creates an violation of Article 21 and how the loss is to be given. In this case, it was alleged that the police had blinded certain prisoners and that the State was liable to pay compensation to them<sup>32</sup>. In *Rudal Shah v. State of Bihar*, where the Supreme Court, exercising its writ jurisdiction, passed an order of compensation for the violation of Articles 21 and 22 of the Constitution. In this case the petitioner was unlawfully detained in prison for 14 years after the

<sup>25</sup> AIR 1981 Bom. 170.

<sup>26</sup> Niaz Mohammad Khan v. Deane, (1948) ILR 2 Cal 310.

<sup>27</sup> AIR 2007 Ori. 107.

<sup>28</sup> Ratanlal & Dhirajlal, the Law of Torts 331 (Wadhwa & Company, Nagpur, 25<sup>th</sup> ed., 2006).

<sup>29</sup> Hay, Douglas. C, "Prosecution and Power: False Prosecution in the English Courts, 1750- 1850."

<sup>30</sup> Maneka Gandhi v. Union of India AIR 1978 SC 597.

<sup>31</sup> AIR 1978 SC 597.

<sup>32</sup> AIR 1981 SC 928

order of acquittal. The court observed that One of the telling ways in which the violation of such right can reasonably be vetoed and due compliance with the mandate of Article 21 secured, is to give a fine or compulsory payment by the violators in the payment of monetary compensation. Administrative resistance to change the flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt<sup>33</sup>. "The interest in freedom from unjustifiable litigation is protected by actions for false prosecution<sup>34</sup>." An action for false prosecution was reserved for traditional court prosecutions only<sup>35</sup>. During the last gone centuries, courts were very concerned with false prosecution because the price of losing civil law proceedings was so strong<sup>36</sup>. However, the public law evolved during the sixteenth and seventeenth centuries out of the ancient writ of conspiracy into an action on the case maintainable against a false prosecution<sup>37</sup>. In earlier times, various public statutes were enacted to assist individuals who had been falsely prosecuted or prosecuted for a crime or wrong<sup>38</sup>. The long debate over whether false prosecution gives rise to a loss in public law will continue until the apex Court addresses the issue again and resolves the many unsettled questions in false prosecution. The issues has to be resolved, whether false prosecution is actionable for the remedy, which should foreclose the substantive due process. As applied to this particular problem, it can be said there can be various forms of action at common law which disclose no consistent policy in interest of protection for false prosecution. Although there are different sources, which appears that the courts have formed each of them with a view to the limitations of the others so that all the body of rules are to be seen as orderly and scientific for false prosecution in their relation to each other and to the function which they perform in public law. Merely giving information to a magistrate is not a false prosecution, because the magistrate, even where information is lay, Magistrate may refuse to issue a warrant or summons, and, if so, the prosecution has not started ever, but person who makes a blunt statement of facts to a magistrate without formulating any charge is not responsible for the consequences of any step which the magistrate may thereupon take in the exercise of his official discretion<sup>39</sup>. " But if an actual charge be made the prosecutor is answerable and cannot plead mistake or indiscretion of the magistrate, where the defendant definitely formulates or makes a specific charge of a criminal offence against the plaintiff to a magistrate, or other judicial officer, and the magistrate issues a warrant or summons, the defendant has instituted a criminal prosecution<sup>40</sup>. If a person institutes criminal proceedings in good faith and with reasonable cause, and subsequently discovers that the accused is innocent and that the charge was unfounded and nevertheless continues maintaining the prosecution, an action for false prosecution is maintainable against such person<sup>41</sup>. The criminal proceedings must have terminated in favor of the party maintaining the subsequent action for false prosecution. If this were not a crucial factor almost every case would have to be tried again on the

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<sup>33</sup> AIR 1983 SC 1086

<sup>34</sup> W. Page Keeton, Prosser And Keeton On The Law Of Torts, 119 at 870 (5th ed. 1984).

<sup>35</sup> Melvin v. Pence, 130 F.2d 423 (1942).

<sup>36</sup> Percy Henry Winfield, The History Of Conspiracy And Abuse Of Legal Procedure (Cambridge, 1921) (discussing abuse of legal procedure in Anglo-Saxon times). "The Laws of Edgar provide that he who shall accuse another falsely, so that he either in money or property be worse, shall, on disproof of the charge by the accused, be liable in his tongue, unless he make loss with his 'fulfilment.'" Id. at 4.

<sup>37</sup> Martin L. Newell False Prosecution 4 (1892). An "action upon the case" was an action brought to recover damages for an injury for which the ancient forms of the common law failed to provide a remedy.

<sup>38</sup> Savile v. Roberts, 1 Ld.Raym. 374, 91 Eng. Rep. 1147 (K.B. 1698).

<sup>39</sup> Johnson v. Emerson (1871) . L. R. 6 Ea. 329.

<sup>40</sup> Panfiit v. Sardar (1908), 24 T. L. R. 884.

<sup>41</sup> Faneourt v. Heaven, 141 O. W. R. 230 ; 18 O. L. R. 492 ; Carruthers v. Beisiegel (1908), 1 Alta. L. R. 890 ; W. L. R. 255 ; Weston v. Beeman (1857), 27 L. J. Ex. 57.

merits, and the session court would be in effect, acting as a court of appeal from the session court<sup>42</sup>. The essence of the party taking action is that he was falsely prosecuted and party must therefore go for the termination of the false prosecution in the favor of the party. The party cannot do as long as that prosecution is pending. “It is a rule of law that no one shall be allowed to allege of a still defending suit that it is unjust<sup>43</sup>.” The fact that a false person had no opportunity of appealing is immaterial. So long as the prosecution stands no action for false prosecution will lie even if he could absolutely prove his innocence<sup>44</sup>. Like other key, criminal justice system participants, Crown counsel should become familiar with the factors that have been widely recognized as contributing factors in false prosecution cases, and keep abreast of the relevant jurisprudence and the best practices that have been associated with their prevention. In addition, training in relation to the prevention of false prosecution should be provided to public prosecutors<sup>45</sup>. Indeed, the education of criminal justice system participants has been identified as a key aspect of the prevention of false prosecution<sup>46</sup>. When a particular file raised the concerns, public counsel should consult experts, and superiors<sup>47</sup>. In its consideration of the analysis of false prosecution, it has described the present experience and various issues have been taken. The review of false prosecution will always be an exceptional event, no matter what reforms are put into place; an effective means of carrying out this task will strengthen the effectiveness of fairness of the criminal justice system.

## FALSE PROSECUTION & INTERNATIONAL LAW

It is a general principle of international law that for any false prosecution creates violation of an obligation under international law give rise to an obligation to make reimbursement<sup>48</sup>. The aim of reimbursement is to eliminate, as far as possible, the consequences of the illegal act and to restore the situation that would have existed if it has not been committed. Reimbursement can take various forms, including restitution, compensation or satisfaction. These remedies can be applied either singly or in combination in response to a particular violation<sup>49</sup>. There is increasing acceptance that individuals do have a right to reimbursement for violations of international law of which they are victims for false prosecution<sup>50</sup>. This is particularly well established with regard to human rights law. Not only do many of the specialized human rights tribunals have the right to award “just satisfaction” or “fair

<sup>42</sup> *Castrigue v. Behrens* (1860), 30 L. J. Q. B.163 at 168 ;*Bynoe v. Bank of England*, [1902] 1 K. B. 467.

<sup>43</sup> *Gilding v. EVre* (1861), 10 C. B. N. S. at p. 604. Cf. *Huffer v. Alien* (1866) L. R. 2 Ex. 15

<sup>44</sup> *Basehe v. Mathews* (1867), L. R. 2 C. P. 684.

<sup>45</sup> *Strickland v Washington*, 466 US 668 (1984).

<sup>46</sup> *R v Mohan*, [1994] 2 SCR 9.

<sup>47</sup> *R v Trochym*, [2007] 1 SCR 239.

<sup>48</sup> Permanent Court of International Justice, *Factory at Chorzow (Claim for Indemnity) case*, (*Germany v. Poland*), (Merits), PCIJ (ser. A) No. 17, 1928, p. 29. See also Article 1 of the Articles on the Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission in 2001: “Every internationally wrongful act of a State entails the international responsibility of that State.” UN Doc. A/CN.4/L.602/Rev.1, 26 July 2001 (hereinafter “ILC Articles on State Responsibility”).

<sup>49</sup> Articles 31 to 34 ILC Articles on State Responsibility, op. cit. (note 1). See also the 2000 draft of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, UN Doc. E/CN.4/2000/62, 18 January 2001, (hereinafter “draft Basic Principles and Guidelines”). These draft principles, elaborated by two independent experts pursuant to a request by the Commission on Human Rights, have not yet been finalized or adopted.

<sup>50</sup> Article 16 of the 1951 Treaty of Peace between the Allied Powers and Japan, San Francisco, op. cit.(note 8). The same approach was adopted in the Yoshido-Stikker Accord of 1956 between Japan and the Netherlands in respect of the former’s occupation of Dutch East India.

compensation” for false prosecution<sup>51</sup>, but a number of human rights treaties also expressly requires States to establish a remedy for violations before national courts<sup>52</sup>. Moreover, this concept is born out of adversarial system of law. However, the very ideology of adversarial system is not very conducive for effective implementation of law. Law cannot merely be a referee between the prosecution and defense for effectively implementing this concept. It needs some investigation and fact finding, to pinpoint actual cases and damages out of false prosecutions. Thus inquisitorial legal systems are more conducive for a better implementation of the concept into the main stream legislations of the country. This also supports the observation of the researcher that the civil law countries have implemented the concept in a better way, since civil law countries often follow inquisitorial form of legal system. Human rights treaties which includes Article 14(6) of the International Covenant on Civil and Political Rights (ICCPR), Article 3 of the Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms for false prosecution, and Article 10 of the American Convention on Human Rights) explicitly protect the right to compensation for False prosecution or miscarriage of justice. The African Charter on Human and Peoples’ here Rights is silent on the false prosecution. The Human Rights Committee, the European Court of Human Rights, the African Commission on Human and Peoples’ Rights and the Inter-American Commission on Human Rights have developed rich jurisprudence on the ambit of the right to compensation for false prosecution or miscarriage of justice. States have adopted different approaches to give effect to their obligation under Article 14(6) of the ICCPR<sup>53</sup>.

### **FALSE PROSECUTION IN DOMESTIC JURISDICTION OF OTHER COUNTRIES**

Even though the legal systems of these countries are different, and not comparable as a whole to the Indian legal system, the sum and substance and the intention behind the laws laid down can show us a valuable path towards implementation such laws in India. Therefore, a brief study of the same would be very enlightening. It can be expressly seen that both common law and civil law countries have adopted the concept of false prosecution in their main stream legislations. Since the concept in itself has originated in common law, the incorporation of the same in common law countries has been since quite a few decades. On the other hand, civil law countries have adopted the concept a bit later in time. However, it is the opinion of the researcher that the adaption of the concept into the civil law countries is much more effective than the common law countries. There are two basic reasons for this opinion. Firstly, the fact that the concept was first adopted in common law countries also implies that they still have an age old way of implementing the concept. Thus they do not satisfy the present needs of the victims of false prosecution. On the other hand, the civil law countries have taken a more modern and practical approach in implementing false prosecution in more practical and effective manner to solve the losses of the victim of false prosecution. There are numerous other countries which have adopted

<sup>51</sup> Article 2(3) of the International Covenant on Civil and Political Rights and more specifically Articles 9(5) and 14(6), which expressly provide that anyone unlawfully arrested, detained or convicted shall have an enforceable right to compensation, Article 14 of the Convention against Torture and Article 6 of the Convention on the Elimination of Racial Discrimination

<sup>52</sup> “Article 3 of the Convention (IV) respecting the Laws and Customs of War on Land, signed at The Hague, 18 October 1907”, Expert Opinion by Professor Eric David, “The direct effect of Article 3 of the Fourth Hague Convention of 18th October 1907 respecting the Laws and Customs of War on Land” and Expert Opinion by Professor Christopher Greenwood, “Rights to compensation of former prisoners of war and civilian internees under Article 3 of the Hague Convention No. IV, 1907”, all in H. Fujita, I. Suzuki and K. Nagano (eds.), War and the Rights of Individuals: Renaissance of Individual Compensation, Nippon Hyoron-sha, Tokyo, 1999.

<sup>53</sup> Mujuzi, J. D. (2019). The Right to Compensation for Wrongful Prosecution/Miscarriage of Justice in International Law, *International Human Rights Law Review*, 8(2), 215-244.

the false prosecution in some form or the other. Developed and developing countries alike have taken recourse to codifying the false prosecution in a bid to safeguard the interests and rights of the innocent from being unjustly harassed with false prosecution. Countries like China<sup>54</sup>, Germany<sup>55</sup>, France<sup>56</sup>, Republic of Croatia<sup>57</sup>, Srilanka<sup>58</sup>, Malaysia<sup>59</sup>, Bangladesh<sup>60</sup>, Qatar<sup>61</sup>, Oman<sup>62</sup>, Brunei<sup>63</sup>, Bulgaria<sup>64</sup>, Russia<sup>65</sup>, Sweden<sup>66</sup>, have incorporated the false either by way of providing damages as a relief to the victims, or by providing penal provisions for the perpetrator or both. Needless to say, this is being followed in majority countries of the world, as false prosecution is seen as fruitful safeguard of the reputation of the people.

### United States of America

The United States of America has been quite liberal in its usage and codification for the false prosecution. Historically, and even today it has not limited the scope of the tort to criminal proceedings alone. Also, it has time and again codified the false prosecution in legislation. There seems to be no specific reason why an action should not lie for the institution of unfounded and false prosecution proceedings before a court, or some administrative or domestic tribunal. The adverse decision of such a body may cause serious damage to the reputation or livelihood of the person accused<sup>67</sup>. This essentially express present day principles of elucidate the claims regarding false prosecution. Broad spectrum is applied to the principles of the false prosecution which give maximum benefit or profit to the victim, which in return also acts as an essential deterrent for false prosecution<sup>68</sup>.

### New Zealand

New Zealand has codified the means discharging successful of innocent defendant. The possible remedies in New Zealand for all those people who are prosecuted for offences which they have not committed are an award of costs for false prosecution<sup>69</sup>. New Zealand has codified the means of vindicating a successful of innocent defendant. The possible remedies in New Zealand for those who are prosecuted for offences they did not commit are an award of costs under the Costs in Criminal Cases Act, 1967, tort remedies of false prosecution, false imprisonment or misfeasance in public office, and remedies under the New Zealand Bill of Rights Act, 1990<sup>70</sup>.

### Canada

<sup>54</sup> Article 102, People's Republic of China Civil Procedure Law, 2012.

<sup>55</sup> Section 164, Criminal Code, 1860.

<sup>56</sup> Article 91, Code of Criminal Procedure, 2000.

<sup>57</sup> Article 129, Code of Criminal Procedure, 1898.

<sup>58</sup> Section 208, Penal Code, 1885.

<sup>59</sup> Section 211, Penal Code, 2015.

<sup>60</sup> Section 250, Code of Criminal Procedure, 1898.

<sup>61</sup> Article 22, Criminal Procedure Code, 2004.

<sup>62</sup> Article 24, The Penal Procedure Law.

<sup>63</sup> Section 211, The Penal Code, 1860.

<sup>64</sup> Article 286, Criminal Procedure Code, 1898.

<sup>65</sup> Article 306, The Criminal Code of the Russian Federation, 1996.

<sup>66</sup> Section 6, The Swedish Penal Code, 1962.

<sup>67</sup> U.S. Const. amend. IV, V, VI. 36 1983.

<sup>68</sup> 42 U.S.C. Section (2006).

<sup>69</sup> The New Zealand Bill of Rights Act, 1990.

<sup>70</sup> The Law Commission, A discussion paper on Compensation for Wrongful Prosecution Or Prosecution, Available at <http://www.nzlii.org/nz/other/nzlc/pp/PP31/PP31.pdf> Last Seen on 26/3/2017.



The Federal system in Canada contains express statutory provisions to deal with the issue of false proceedings, as can be seen hereunder. The Federal Courts Act, 1985<sup>71</sup> expressly prevents the institution of vexatious proceedings by a person in certain circumstances in Section 40 of the Act<sup>71</sup>.

### **Singapore**

Singapore has explicitly recognized the menace of false prosecution and the damage it does to the person's reputation, health and over all welfare. It has remedies in both criminal as well as in civil law. In case of the former, the same is codified in the Singapore Criminal Procedure Code<sup>72</sup>.

### **European Union**

Few member countries of the European Union have also taken considerable steps in implementing the concept of false prosecution in their main stream legislations in some way or the other. Significant among them are Germany<sup>73</sup>, France, Hungary, Sweden and Croatia.

### **Srilanka**

Srilanka Penal Code has a brief mention through one provision to counter false prosecution. This is dealt with under Section 208 of the Penal Code of 1885, and is defined as 'False charge of offence made with intent to injure'<sup>74</sup>.

### **Malaysia**

The Penal Code OF MALASIA 1936 dedicates Chapter XI to 'false evidence and Offences against Public Justice'. In the said chapter, one provision deals with making false prosecution charges with false intention. This particular provision is covered by Section 211 of the said code<sup>75</sup>.

### **Russia**

The Criminal Code of the Russian Federation, 1996 talks about Crimes against Public Justice under Chapter 31. In this Chapter, there is a dedicated provision under Article 306 which deals with false prosecution<sup>76</sup>.

## **ROADMAP FOR INDIA IN FUTURE PERSPECTIVE OF FALSE PROSECUTION**

The struggle of returning back in the society is very difficult for these falsely prosecuted persons and not providing compensation to them is worsening their condition. State should have the responsibility to set this right by providing them compensation where minimum total can be calculated at least on the basis of minimum wages-

1. Funds for daily necessities, transport, food.
2. Provision of Immediate Services shall be there.

<sup>71</sup> Federal Courts Act (R.S.C., 1985, c. F-7).

<sup>72</sup> Section 359(3), Code of Criminal Procedure, 2010.

<sup>73</sup> Section 164, German Criminal Code, Available at <https://www.lewik.org/term/15646/maliciousaccusationsection-164-german-criminal-code>.

<sup>74</sup> Section 208, Penal Code of 1885.

<sup>75</sup> Section 211, Penal Code of 1936.

<sup>76</sup> Article 22, Criminal Procedure Code, 2004.

3. Provision for affordable housing;
4. Measures to take for providing counseling services and medical assistance;
5. Helping with getting education
6. Improving skills to get a good job.
7. Legal aid to enjoy their rights as a citizen, regain custody of children and deleting criminal records<sup>77</sup>.

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<sup>78</sup>. These are some mapping on the grounds of practices from across the world and on the experience of working with those falsely prosecuted or false person:

- Financial support for basic requirements like food, transportation subsistence funds<sup>79</sup>.
- 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<sup>80</sup>.
- Help in fixing low-cost housing<sup>81</sup>.
- Provision of psychological, medical/dental care, and/or counseling services<sup>82</sup>.
- Assistance in education<sup>83</sup>.
- Development of workforce skills<sup>84</sup>.
- Formal acceptance to remove criminal records, gain public benefits, and reclaim guardianship of children<sup>85</sup>.
- Apart from this, many alternatives like business opportunities, government jobs, to further education must also be considered as an option<sup>86</sup>.

When not guilty people are behind bars, the real criminals are still on the street committing crimes. Then, a state should take obligatory steps to deal with the issue. Some of them are mentioned below:-

1. Humanizing the quality of legal representation for the poor to civilizing the reliability of evidences in our courtrooms,
2. Eye- witness's identification procedure should also be changed. Sometimes there may be a possibility that there is eye-witness which misconceive it.
3. The identification should be considered only where there is no collateral approach.
4. The witness should be properly recorded and scrutinized by appropriate authority.
5. The interrogation procedure should be conducted only in camera or recorded properly so as to reduce false prosecution.

<sup>77</sup> H.L.A. Hart called the realists' notion that judges are not bound by rules a "great exaggeration".

<sup>78</sup> Adambhai Suelemanbhai Ajmeri v. State Of Gujrat, (2014) 7 SCC 716.

<sup>79</sup> B.C. Chaturvediv. Union of India, AIR 1996 SC 484.

<sup>80</sup> Ramanuj Pandey v. The State of M.P. & Ors., (2009) 7 SCC 248.

<sup>81</sup> B.R. Kapur v. State of Tamil Nadu & Ors., AIR 2001 SC 3435.

<sup>82</sup> Vidya Charan Shukla v. Purshottam Lal Kaushik, AIR 1981 SC 547.

<sup>83</sup> Sebastian M. Hongray v. Union of India, AIR 1984 SC 1026.

<sup>84</sup> State of Andhra Pradesh v. Challa Ramkrishna Reddy, (2000) 5 SCC 712.

<sup>85</sup> Mrs. Sudha Rasheed v. Union of India, 1995 (1) SCALE 77.

<sup>86</sup> Dhaman Joy Sharma v. State of Haryana, AIR 1995 SC.

6. Forensic Science Commission should be setup to ensure reliable science is being used in our crime labs and courtrooms.
7. An advisory panel should be set up to investigate the causes of, and ways to prevent false prosecution.
8. The panel should consist of representatives from various sectors of the criminal justice system to work collaboratively on recommendations to prevent false prosecution.

## CONCLUSION

The concept of false Prosecution originated in English. There, earlier, it was recognized only as a common law act. However with time it got statutory mention. Slowly the concept and law regarding false prosecution started developing in every developed country of the world. The most interesting aspect is that, more developed the country, then more protection has been given to the citizen, and thus in developed countries there are elaborate laws on false prosecution. India being a champion of personal liberties and rights, however surprisingly lacks largely in formulating and implementing effective laws on false prosecution. Therefore, a state plays important role in overcoming the issue. The Judicial reforms based on 227<sup>th</sup> report of law commission of the Indian are the need of the present time. Moreover, Indian should take references from the foreign countries which have made laws to compensate the victim. State should mainly focus to establish a legislative process which accords a transparent, uniform, efficacious, affordable and timely remedy for the loss and harm inflicted on the victims on account of false prosecution. False prosecution is a grave problem in any nation. False prosecution is not solely a misfortune for those directly involved. They undermine the public's faith in the trustworthiness of justice in our state, and they pose grave public safety issues. Sometimes, Innocent people confess for heap reasons, among them duress, ignorance of the law, and intoxication. Juveniles and people with mental disabilities are considered vulnerable populations at an increased risk for falsely prosecuted. It also happens that there are forces that compel innocent accused to plead guilty. Therefore, a state should take steps to overcome the problem of false prosecution. False prosecution is the false institution of unsuccessful criminal or bankruptcy or liquidation proceedings against another without reasonable or probable cause. State has to balance the competing principles, of freedom that every person should have in bringing criminals to justice and the need for restraining false prosecution against innocent persons. False prosecution is an abuse of the process of the court by falsely setting the law in motion on a criminal charge. It is an effort to disturb the proper functioning of the judicial machinery, so it has to be stopped.