

International Journal Research Publication Analysis

Page: 01-11

WRONGFUL PROSECUTION AND COMPENSATION IN INDIA: A CRITICAL ANALYSIS OF THE EXISTING LEGAL FRAMEWORK AND THE NEED FOR REFORM

*Mehul Patel

India.

Article Received: 13 August 2026

*Corresponding Author: Mehul Patel

Article Revised: 03 September 2026

India.

Published on: 23 September 2026

DOI: <https://doi-doi.org/101555/ijrpa.8525>

ABSTRACT

The criminal justice system is designed to protect society from crime while safeguarding the rights and liberty of individuals accused of offences. However, when an innocent person is wrongfully prosecuted, arrested, detained or convicted, the criminal justice system itself can become a source of serious injustice. Wrongful prosecution can result in loss of liberty, financial hardship, damage to reputation, psychological trauma, disruption of employment and social exclusion. Despite these serious consequences, India does not presently have a comprehensive statutory framework specifically governing compensation and rehabilitation for victims of wrongful prosecution.

The Indian legal system provides fragmented remedies through constitutional courts, tort law, provisions relating to compensation under criminal procedure, and judicially developed public-law remedies. Article 21 of the Constitution has been particularly important in enabling constitutional courts to award monetary compensation for serious violations of life and personal liberty. Decisions such as *Rudul Sah v. State of Bihar*, *Nilabati Behera v. State of Orissa*, *Bhim Singh v. State of J&K* and *D.K. Basu v. State of West Bengal* demonstrate the development of compensation as a constitutional remedy. At the same time, the tort of malicious prosecution provides a private-law remedy subject to proof of prosecution, absence of reasonable and probable cause, malice and favourable termination.

The Law Commission of India, in its 277th Report titled “**Wrongful Prosecution (Miscarriage of Justice): Legal Remedies**”, identified the inadequacies of the existing framework and recommended a dedicated statutory mechanism for compensation, including monetary and non-monetary relief. Although the Bharatiya Nagarik Suraksha Sanhita, 2023

has introduced or retained certain provisions concerning compensation for groundless accusations and arrests, it has not enacted the comprehensive regime recommended by the Law Commission. This paper critically examines the existing remedies, identifies their limitations and proposes a structured statutory framework for compensation and rehabilitation of victims of wrongful prosecution.

KEYWORDS: Wrongful Prosecution, Miscarriage of Justice, Compensation, Article 21, Malicious Prosecution, Personal Liberty, Criminal Justice, Constitutional Remedies, BNSS, Law Commission of India.

1. INTRODUCTION

The criminal justice system represents one of the most important functions of the State. The State investigates offences, prosecutes alleged offenders and imposes punishment upon persons found guilty according to law. Because criminal proceedings directly affect personal liberty and reputation, the State has a corresponding obligation to ensure fairness, legality and due process.

The presumption of innocence is a fundamental principle of criminal justice. An accused person is not required to prove his innocence; rather, the prosecution bears the burden of establishing guilt according to law.

However, criminal proceedings do not always produce correct outcomes. An innocent person may be falsely implicated, arrested without adequate grounds, subjected to a prolonged trial, imprisoned and ultimately acquitted. In more serious cases, an innocent person may even be convicted before the conviction is subsequently overturned.

The consequences of such wrongful prosecution may extend far beyond the courtroom. The victim may lose employment, income, education, family relationships and social standing.

Psychological and reputational harm may continue even after acquittal.

The problem becomes particularly serious where wrongful prosecution results from abuse of police power, fabricated evidence, deliberate concealment of material facts or malicious exercise of prosecutorial authority.

2. STATEMENT OF THE PROBLEM

A person who is wrongfully prosecuted may suffer serious harm even where the criminal case ultimately ends in acquittal.

The central legal problem is that **acquittal does not automatically provide compensation.**

A person may therefore have to pursue different remedies under constitutional law, tort law or criminal procedure, each having different requirements.

This creates several difficulties:

1. There is no comprehensive statutory definition of wrongful prosecution.
2. There is no uniform procedure for claiming compensation.
3. Compensation depends substantially upon judicial discretion.
4. Mere acquittal does not automatically establish malicious prosecution.
5. Constitutional compensation is generally exceptional rather than an ordinary substitute for civil damages.
6. There is no uniform formula for assessing financial, reputational and psychological harm.
7. Rehabilitation measures are not comprehensively guaranteed.

The result is a gap between **recognition of the injustice** and **availability of an effective remedy**.

3. HYPOTHESIS

The existing Indian legal framework provides fragmented remedies to victims of wrongful prosecution but does not adequately guarantee timely compensation and rehabilitation; therefore, a dedicated statutory framework based upon clear eligibility criteria, independent adjudication and uniform principles of compensation is necessary.

4. MEANING OF WRONGFUL PROSECUTION

There is an important distinction between **wrongful prosecution, malicious prosecution, wrongful arrest, wrongful conviction** and **miscarriage of justice**.

Wrongful prosecution broadly refers to the unjustified initiation or continuation of criminal proceedings against a person who should not have been subjected to such proceedings.

The Law Commission of India treated wrongful prosecution as a broader problem encompassing situations in which an innocent person suffers because of unjust criminal proceedings, including wrongful incarceration and conviction. Its Report No. 277 specifically examined existing remedies and proposed a dedicated legal framework.

An important point is that **every acquittal does not necessarily constitute wrongful prosecution**.

A person may be acquitted because the prosecution failed to establish guilt beyond reasonable doubt. That does not necessarily mean that the prosecution was malicious or that the police

acted improperly.

Therefore, compensation for wrongful prosecution requires a more careful standard than simply asking whether the accused was acquitted.

5. ARTICLE 22 AND PROTECTION AGAINST ARBITRARY ARREST

Article 22 provides procedural safeguards concerning arrest and detention.

Among other protections, an arrested person must be informed of the grounds of arrest and must be produced before a magistrate within the constitutionally prescribed period, subject to recognised exceptions.

These safeguards are critical because wrongful prosecution frequently begins with an unlawful or unjustified arrest.

Violation of arrest safeguards can therefore create an independent constitutional basis for judicial intervention.

6. PUBLIC-LAW COMPENSATION

One of the most significant developments in Indian constitutional law has been the recognition that courts can award monetary compensation for serious violations of fundamental rights.

Traditionally, compensation was primarily associated with private-law proceedings.

The Supreme Court gradually developed a **public-law remedy**, particularly for illegal detention and custodial violations.

The Law Commission expressly recognised this development in its Report No. 277.

7. NILABATIBEHERA v. STATE OF ORISSA

Nilabati Behera v. State of Orissa, (1993) 2 SCC 746

This case concerned custodial death.

The Supreme Court recognised compensation as a public-law remedy for violation of fundamental rights.

The Court distinguished such constitutional compensation from ordinary damages in a private civil action.

The principle is important because it confirms that where fundamental rights are violated by State action, constitutional courts are not necessarily restricted to merely issuing declaratory relief.

8. D.K. BASU v. STATE OF WEST BENGAL

***D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416**

The Supreme Court dealt extensively with custodial violence and illegal detention.

The Court issued safeguards governing arrest and detention and recognised the serious constitutional consequences of custodial abuse.

The decision reinforced the proposition that the State may be required to compensate victims where its officials violate fundamental rights.

Although *D.K. Basu* primarily concerns custodial violence and arrest safeguards rather than every form of wrongful prosecution, its constitutional principles are highly relevant to cases in which wrongful prosecution involves unlawful State action.

9. COMPENSATION UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

The criminal procedure framework has changed significantly with the enactment of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**.

The BNSS contains several provisions relevant to compensation.

9.1 Section 273 – Compensation for accusation without reasonable cause

Section 273 provides a mechanism concerning compensation where an accusation has been made without reasonable ground.

The provision permits a Magistrate, in appropriate circumstances, to order the complainant or informant to compensate the accused.

This is significant because it recognises the harm caused by baseless accusations.

10. SECTION 399 – COMPENSATION TO PERSONS GROUNDLESSLY ARRESTED

The BNSS also contains **Section 399, “Compensation to persons groundlessly arrested.”**

This provision is relevant where a person has been subjected to arrest without sufficient justification.

Again, however, wrongful prosecution may involve much more than arrest. A person may:

- Never be arrested but face a years-long prosecution;
- Lose employment;
- Suffer reputational damage;
- Incur substantial legal expenses;
- Experience psychological trauma; or

- Be convicted before being exonerated on appeal.

Consequently, provisions dealing with groundless arrest do not fully solve the broader problem.

11. DIFFICULTY OF PROVING MALICE

Police misconduct may be difficult to prove because relevant evidence is often in the possession of the State.

An innocent accused may know that the prosecution was unjustified but may not have access to:

- Police records;
- Internal communications;
- Investigative notes;
- Evidence-selection decisions;
- Witness statements; or
- Information concerning the investigator's state of mind.

12. ECONOMIC CONSEQUENCES OF WRONGFUL PROSECUTION

Wrongful prosecution may cause significant financial loss. Possible losses include:

- Loss of employment;
- Loss of business;
- Legal expenses;
- Loss of professional opportunities;
- Travel expenses;
- Loss of income during incarceration;
- Damage to business reputation;
- Educational disruption; and
- Family financial hardship.

A compensation framework should therefore consider both **actual financial loss** and **non-pecuniary injury**.

13. PSYCHOLOGICAL AND SOCIAL HARM

Financial compensation alone may not adequately repair the harm. Wrongful prosecution can produce:

- Anxiety;
- Social stigma;
- Damage to family relationships;
- Loss of community standing;
- Professional exclusion;
- Psychological distress; and
- Long-term reputational harm.

This is an important feature of the recommended model because justice should involve **rehabilitation as well as monetary payment**.

14. STATE LIABILITY

The State has a special responsibility because policing and prosecution are core governmental functions.

If State officials misuse their powers, the victim should not be forced to bear the entire burden of correcting the wrong.

The constitutional jurisprudence beginning with *Rudul Sah* demonstrates that the State can be required to provide monetary relief where fundamental rights have been seriously violated.

At the same time, the State should retain the ability to recover compensation from officials whose intentional or grossly negligent conduct caused the wrongful prosecution.

The Law Commission specifically contemplated that where the State pays compensation because of the wrongful acts of its officials, appropriate indemnification and proceedings against responsible officials could follow.

15. PRESENT LEGAL POSITION: CRITICAL EVALUATION

India's present legal position can be described as **fragmented but constitutionally evolving**.

There are several available routes:

1. Constitutional remedy

Articles 32 and 226 may provide relief where fundamental rights have been violated.

2. Tort remedy

A victim may pursue an action for malicious prosecution where the required elements can be established.

3. Criminal-procedure compensation

The BNSS contains provisions concerning compensation for groundless accusations and arrests.

4. Other civil remedies

Depending upon the circumstances, claims concerning defamation, negligence or other civil wrongs may arise.

Despite these remedies, there remains no comprehensive, dedicated statutory framework covering the full range of harms arising from wrongful prosecution.

The Government itself acknowledged in a 2021 parliamentary answer that no separate national data on the number of wrongfully prosecuted persons was maintained by the National Crime Records Bureau. The Government also noted that Law Commission Report No. 277 had been forwarded to States and Union Territories for their views.

This absence of comprehensive data itself demonstrates the difficulty of assessing the scale of the problem.

16. RECENT JUDICIAL APPROACH

A significant contemporary point is that courts continue to distinguish **mere acquittal** from **actionable wrongful prosecution**.

In *Johnson v. State of Kerala* (2026), the Kerala High Court emphasised that mere acquittal cannot, by itself, justify constitutional compensation for malicious prosecution. The Court reiterated that malicious-prosecution claims ordinarily require proof of favourable termination, malice and absence of reasonable and probable cause. It also distinguished extraordinary constitutional compensation for patent violations from ordinary private-law claims requiring evidence.

This recent approach reinforces the need for legislative clarity.

If the law simply provided compensation for every acquittal, the system could become unworkable.

If the law requires proof of malice in every case, many genuinely wronged individuals may remain uncompensated.

A balanced statutory test is therefore necessary.

17. PROPOSED MODEL FOR REFORM

A future Indian **Wrongful Prosecution Compensation Act** could contain the following elements.

17.1 Statutory definition

“Wrongful prosecution” should be clearly defined.

The definition should include prosecution resulting from:

- Absence of reasonable cause;
- Fabrication of evidence;
- Deliberate suppression of material evidence;
- Malicious prosecution;
- Grossly negligent investigation;
- Wrongful conviction subsequently overturned; and
- Other substantial miscarriage of justice recognised by the competent court.

17.2 Accountability of officials

Where wrongful prosecution resulted from intentional or grossly negligent misconduct, disciplinary proceedings should be initiated.

Where legally appropriate, the State should be able to recover compensation from responsible officials.

17.3 Legal aid

Victims should have access to legal assistance because they may already have suffered severe financial hardship.

18. RECOMMENDATIONS

Based upon the foregoing analysis, the following reforms are recommended:

Recommendation 1: Enact dedicated legislation

Parliament should enact a specific statute governing wrongful prosecution and compensation.

Recommendation 2: Establish uniform eligibility criteria

The law should distinguish ordinary acquittals from genuine miscarriage-of-justice cases.

Recommendation 3: Create specialised courts

Special Courts should determine compensation claims efficiently.

Recommendation 4: Provide interim relief

Victims should not have to wait for years for all compensation.

Recommendation 5: Recognise non-monetary harm

Mental health, reputation and employment consequences should be expressly considered.

Recommendation 6: Establish State accountability

The State should bear responsibility for serious wrongful prosecution caused by its agencies.

Recommendation 7: Introduce official accountability

Officials responsible for deliberate or grossly negligent misconduct should face appropriate disciplinary or legal consequences.

Recommendation 8: Maintain national data

A national database should record cases involving wrongful arrest, prosecution and conviction.

Recommendation 9: Preserve investigative records

Relevant police and prosecution records should be preserved so that wrongful-prosecution claims can be effectively investigated.

19. CONCLUSION

The criminal justice system derives its legitimacy from its commitment to justice, fairness and protection of individual liberty. When an innocent person is wrongfully prosecuted, the damage is not limited to the individual. It undermines public confidence in the rule of law and the legitimacy of State institutions.

India has developed important constitutional safeguards and judicial remedies. Beginning with *Rudul Sah*, the Supreme Court has recognised that monetary compensation can be an appropriate public-law remedy for serious violations of fundamental rights. Later decisions, including *Bhim Singh*, *Nilabati Behera* and *D.K. Basu*, strengthened this constitutional approach.

The BNSS, 2023 also contains provisions concerning compensation for accusation without reasonable cause and persons groundlessly arrested.

The central principle should be simple:

When the State unjustifiably subjects an innocent person to the coercive power of criminal law, the burden of that injustice should not fall entirely upon the victim.

A dedicated statutory compensation and rehabilitation framework would therefore strengthen Article 21, improve accountability within the criminal justice system and reaffirm the principle that **the rule of law protects the innocent not merely from conviction, but also from unjustified State prosecution.**

BIBLIOGRAPHY

A. Constitutional and Statutory Materials

1. Constitution of India, 1950.
2. Bharatiya Nagarik Suraksha Sanhita, 2023.
3. Bharatiya Nyaya Sanhita, 2023.
4. Indian Evidence Act, 1872 / Bharatiya Sakshya Adhiniyam, 2023, as applicable to the relevant proceedings.

B. Law Commission Reports

5. Law Commission of India, **Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies** (2018).

C. Cases

6. *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.
7. *Bhim Singh, MLA v. State of Jammu & Kashmir*, (1985) 4 SCC 677.
8. *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.
9. *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.
10. *Sube Singh v. State of Haryana*, (2006) 3 SCC 178.
11. *Babloo Chauhan @ Dabloo v. State Government of NCT of Delhi*, 247 (2018) DLT 31.
12. *Babita Gupta & Anr. v. Kusum Gupta & Ors.*, 2025.
13. *Johnson v. State of Kerala*, 2026.

D. Government and Institutional Sources

14. Law Commission of India, Report No. 277, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*.
15. Ministry of Law and Justice, Government of India, Parliamentary response concerning wrongful prosecution and Law Commission Report No. 277.
16. India Code, Bharatiya Nagarik Suraksha Sanhita, 2023.