

## MISCARRIAGE: NOT OF CHILD, BUT OF JUSTICE!!

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### ABSTRACT

*Usually, the term miscarriage is used with the death of the child before birth but here it is in relation with the justice. This research paper deals with the miscarriage of justice occurred either due to the negligence of the judicial system or the police officer. The main aim of the author writing this paper is determine the need of the law on this matter to redress the problems and provide justice to the victims of this violence which they face during the police custody or judicial custody. Although there is no law on this point to redress the claims for the compensation of the wrongfully prosecuted persons but there had been many judicial pronouncements where the Supreme Court of India has granted the compensation to such persons which all are discussed in the research paper. It also mentions about the reports presented by the Law Commission of the India which considered the various aspects of the miscarriage of injustice and mainly talks about the 277<sup>th</sup> Report of Law Commission of India which specifically have mention about the payment of compensation to the victims of miscarriage of justice. The research paper also provides the recommendations which were given in the 277<sup>th</sup> Report of the Law Commission of India. The paper further also mentions the opinion of the author.*

Keywords: Miscarriage of Justice, police custody, judicial custody, violence, compensation, legislation.

“Justice denied anywhere, diminishes justice everywhere.”

- BY Martin Luther King Jr.

Generally people relates miscarriage with a child, who died before he or she came into this world but here miscarriage is being discussed with reference to the delivery of justice by the Indian Judicial System. In both the ways it is injustice with the lives of the person who suffers because of miscarriage whether it is an unborn child or wrongfully convicted person. Being a human every person has Right to Life guaranteed by the Constitution of India under the Article 21 which is also the fundamental right of every person but this miscarriage takes away this right from them, therefore, it is the violation of the fundamental right given under

Article 21. These fundamental rights cannot be violated either by the State or any individual and not even the Judiciary can take away these rights. Miscarriage leads the person to suffer a lot of mental, social and physical torture which is not good for one's health. As here we are discussing about the miscarriage of justice, so, for a human being, it can result to lose faith in the judicial system which is not a good thing any country's judicial system. In the ancient times, there was the King who uses to settle the matters of the people and people used to accept that decision happily as they had faith in the King. The same is the situation in the present times, the only thing which is changed is that there is a separate judicial system in the country which decides the matters between the people. People welcome the decisions of the Courts with the open hands as they have faith in the judicial system of the country but if there is miscarriage of justice and people are getting wrongfully convicted then they may start losing faith in the judiciary of India which can knock down the country's judicial system. History is evident that many a times the judiciary has convicted a wrong person or the person who was innocent and later realized that the it happened under some mistake. So this can be said that the lower level of judiciary is not working as efficiently as it should work while delivering justice in the favor of right person and convicting the wrong person. The need of the hour is to regulate the work of lower level of judiciary to avoid the miscarriage of justice as much as possible to restrain people from losing faith and maintain their belief in the judicial system of the country. Justice means fairness but while convicting a wrong person the judiciary is not being fair to that person which means the justice is not being delivered properly in the country.

## Introduction

The Merriam Webster dictionary miscarriage of justice as “an outcome in a judicial proceeding that is unjust: an error made in the court of law that result in an innocent person being punished or a guilty person being free<sup>1</sup>”. This means miscarriage of justice is punishing an innocent person or the person who is not the guilty of the offence in the issue and releasing the person who has actually done the alleged crime. The Courts either due to negligence or due to lack of evidence punishes the wrong persons who did not even committed the crime

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/miscarriage%20of%20justice#:~:text=Log%20In-Definition%20of%20miscarriage%20of%20justice,was%20a%20miscarriage%20of%20justice> (Last Visited on October 1, 2020)

and then when the proceedings are reinitiated they are proved innocent and got released from court without being awarded with the compensation. This leads to injustice with that innocent person as this action deprive him from enjoying his fundamental rights of freedom<sup>2</sup> or life and personal liberty<sup>3</sup> guaranteed by the Constitution of India. Miscarriage of Justice tends to free the guilty person which results in the increase of crimes in the society as criminals are roaming free in the society without any fear or getting punished for their deeds. According to Cambridge Dictionary the term ‘Miscarriage of justice’ means “a situation in which someone is punished by the court for the crime that they have not committed<sup>4</sup>”. People oppose for the death penalty in many cases due to the possibility of miscarriage of justice because if in re-examination of the case, that person is proved to be innocent then we can’t bring him back or give him life once he is hanged and this can leads to huge injustice with that person, his family and society. This can also lead the society to lose faith in the judicial system which has already started. Miscarriage of Justice can also be termed as the failure of the Court or the judicial system to arrive at the ends of the justice when they convict an innocent person for the crime which he has not even committed.

### **Judicial views on miscarriage of justice**

The High Court of Delhi in the case of *Babloo Chauhan @ Dabloo v/s. State Govt. of NCT of Delhi*<sup>5</sup>, expressed grave concern about the cases related to miscarriage of justice and the state of mind of innocent persons who are being wrongfully prosecuted, incarcerated for crimes that they even did not committed. The expression “miscarriage of justice” is of wide amplitude. It has been defined as an error of justice meaning “errors in the interpretation, procedure, or execution of the law – typically, errors that violate due process, often resulting in the conviction of innocent people.”<sup>6</sup> Wharton’s Law Lexicon has defined “Miscarriage of Justice” as the failure of justice. In the case of *Bibhabati Devi v/s. Ramendra Narayan Roy*<sup>7</sup>, the Privy Council defined the contours of the term “miscarriage of justice” as “a departure from the rules that permeates all judicial procedure so as to make the resulting proceedings not in the proper sense of the word ‘judicial procedure’ at all”. The Court highlighted two

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<sup>2</sup> Article 19, Constitution of India

<sup>3</sup> Article 21, Constitution of India

<sup>4</sup> <https://dictionary.cambridge.org/dictionary/english/miscarriage-of-justice> (Last Visited on October 1, 2020)

<sup>5</sup> **247 (2018) DLT 31 (‘Babloo’)**

<sup>6</sup> Brian Frost, *Errors of Justice, Nature, Sources and Remedies* (Cambridge: Cambridge University Press, 2004)

<sup>3.</sup>

<sup>7</sup> AIR 1947 PC 19, (‘Bibhabati’)

scenarios: “one, where violation of law or procedure must be of such erroneous proposition of law that if that proposition were to be corrected, the finding could not stand; and the other, where the neglect is of such principle of law or procedure, whose application will have the same effect”<sup>8</sup>. The Court in the case of *Janata Dal v/s. H. S. Chowdhary & Ors*<sup>9</sup> said that “Over the years, the expression ‘miscarriage of justice’ has been looked into in a plethora of judicial pronouncements, including within its purview a multitude of violations and desecrations. Miscarriage of justice is what arises from misconception of law, irregularity of procedure, neglect of proper precaution leading to apparent harshness of treatment or some underserved hardship to individuals”. In *Ayodhya Dube & Ors. v/s. Ram Sumar Singh*<sup>10</sup>, the Supreme Court held that “lack of judicial approach, non-application of mind, non-consideration or improper consideration of material evidence inconsistencies with faulty reasoning such that amounts to perversity amounts to grave miscarriage of justice”. In the case of *K. Chinnaswamy Reddy v/s. State of Andhra Pradesh*<sup>11</sup>, the Supreme Court of India said that “A glaring defect in the procedure or a manifest error on a point of law is consequently a flagrant miscarriage of justice”. The Court held that “If a court’s approach in dealing with the evidence is found to be patently illegal, with findings recorded to be perverse, and the conclusions arrived thereto contrary to the evidence on record, it leads to miscarriage of justice”<sup>12</sup>. The Court in *Nageshwar Sh. Krishna Ghobe v/s. State of Maharashtra*<sup>13</sup> said that “Non-compliance of the principles of natural justice, may deprive the accused to explain a particular circumstance. Unjust failure to produce requisite evidence may cause prejudice to the accused, which may result in failure of justice. Prejudice is incapable of being interpreted in its generic sense. The expression failure of justice is an extremely pliable or facile expression, which can be made to fit into any situation of a case”. In *Allarakha K Mansuri v/s. State of Gujarat*<sup>14</sup>, the Supreme Court held that “in a case where

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<sup>8</sup> See also: *Srinivas Ram Kumar v/s. Mahabir Prasad & Ors.* (AIR 1951 SC 177) and *Union of India v/s. Ibrahim Uddin & Anr.* [(2012) 8 SCC 148].

<sup>9</sup> AIR 1993 SC 892, (‘Janata Dal’); see also: *T. N. Dhakkal v. James Basnett & Anr.* [(2001) 10 SCC 419].

<sup>10</sup> AIR 1981 SC 1415, (‘Ayodhya’)

<sup>11</sup> AIR 1962 SC 1788, (‘K. Chinnaswamy’)

<sup>12</sup> AIR 2013 SC 3368, (‘State Of Punjab’); See also: *Abrar v/s. State of Uttar Pradesh*, (AIR 2011 SC 354); *Rukia Begum v/s. State of Karnataka* (AIR 2011 SC 1585) and *State of Madhya Pradesh v/s. Dal Singh & Ors.* (AIR 2013 SC 2059).

<sup>13</sup> AIR 1973 SC 165, (‘Nageshwar’); See also: *Shamnsaheb M. Multtani v/s. State of Karnataka* (AIR 2001 SC 921); *State v/s. T. Venkatesh Murthy* (AIR 2004 SC 5117); *Prakash Singh Badal v/s. State of Punjab* (AIR 2007 SC 1274); *Rattiram v/s. State of Madhya Pradesh* (AIR 2012 SC 1485); *Bhimanna v/s. State of Karnataka* (AIR 2012 SC 3026) and *Darbara Singh v/s. State of Punjab* (AIR 2013 SC 840).

<sup>14</sup> AIR 2002 SC 1051, (‘Allarakha’); See Also: *State of Rajasthan v. Shera Ram* (AIR 2012 SC 1).

the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the appellate court to re-appreciate the evidence in appeal for the purposes of ascertaining as to whether the accused has committed any offence or not". The Court said that "Miscarriage of justice arises from a faulty and erroneous appreciation of evidence." in the case of *State of Uttar Pradesh v/s. Nawab Singh*<sup>15</sup>. In *Ramesh Harijan v/s. State of Uttar Pradesh*<sup>16</sup>, the Court overturned an acquittal order and noted that "undue importance to 'insignificant, discrepancies and inconsistencies' by the trial court observing that such a course tantamount to miscarriage of justice – and preventing the same is of paramount importance".

These Judicial Decisions discuss a broader view of the term "Miscarriage of Justice". These were the cases in which the convicted was not guilty of the offence and the police or prosecution did some form of misconduct in investigating or prosecuting the person. In the aforementioned cases the Court very well explained the meaning of the expression "Miscarriage of Justice" in its wider sense with the help of different aspects and views. Miscarriage of justice can also be referred as wrongful prosecution which means a prosecution done in an unfair or disputed trial. Wrongful prosecution is prosecuting a person under an unfair trial or without following the principle of natural justice or without giving the person a fair chance to represent his side of claim. This is evident to note that there had been many cases of Miscarriage of Justice or Wrongful Prosecution in the past history and even presently also occurring where the Courts have punished the wrong person who has not committed the alleged offence. This is the result of inefficiency and negligence either or the Court or Police or the Prosecuting which examining the whole case. This has affected the lives of many people, who were wrongfully prosecuted and convicted, both financially and socially and they do not have any source to get re-establish to live a normal life.

Article 21 provides the fundamental right to life and personal liberty guaranteed by the Constitution of India which is vested with every citizen and non-citizen of the country. And the contravention of the fundamental rights due to police and prosecution's misconduct bring into play the states' liability to reinstate that person into the earlier state as he was before the proceedings initiated against him. Even the Constitution of India which guarantees these

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<sup>15</sup> AIR 2004 SC 1511, ('State of Uttar Pradesh'); *State of Uttar Pradesh v/s. Premi* (AIR 2003 SC 1750) and *Bangalore City Cooperative Housing Society Ltd. v/s. State of Karnataka & Ors.* (AIR 2012 SC 1395).

<sup>16</sup> AIR 2012 SC 979, ('Ramesh')

Fundamental Rights and which the Law of the Land, considered as the basis for framing of law, is silent about awarding compensation to such wrongfully prosecuted person who doesn't even committed the offence. Also, the other remedies available in the present legal system don't have any mention about compensating the person for the miscarriage of justice which resulted in the wrongful prosecution being complex and uncertain. Although its State's liability to re-establish the person into the earlier state but still there are neither any laws nor any policies with this regard in the country. The state has not framed any legislation for compensating the wrongfully prosecuted person yet which is needed the most. The decisions in *Khatri v/s. State of Bihar*<sup>17</sup>; *Veena Sethi v/s. State of Bihar*<sup>18</sup>; *Rudal Sah v/s. State of Bihar*<sup>19</sup>; *Bhim Singh v/s. State of Jammu and Kashmir*<sup>20</sup> and *Sant Bir v/s. State of Bihar*<sup>21</sup>, are instances where the Supreme Court has held that "Compensation can be awarded by constitutional courts for violation of fundamental right under Article 21 of the Constitution of India". These cases have included matters of compensation awarded to those who were wrongly incarcerated. But all these matters are episodic and this not the same situation or every wrongly prosecuted person. Such compensations are not easily available to all similarly situated persons. The Court said that "There is an urgent need, therefore, for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration... Specific to the question of compensating those wrongfully incarcerated, the questions as regards the situations and conditions upon which such relief would be available, in what form and at what stage are also matters requiring deliberation... The Court, accordingly, requests the Law Commission of India to undertake a comprehensive examination of the issue and make its recommendation thereon to the Government of India."

## **Law Commission of India's reports<sup>22</sup>**

Since many years, Law Commission is mentioning the point of imposing liability of the State and recommending the Parliament to frame law regarding this matter. In the 1<sup>st</sup> report of Law Commission on "Liability of State in Tort" in 1956 the basic question was related to the

<sup>17</sup> (1981) 1 SCC 627, ('Khatri')

<sup>18</sup> AIR 1983 SC 339, ('Veena')

<sup>19</sup> AIR 1983 SC 1086, ('Rudal')

<sup>20</sup> (1985) 4 SCC 677 1: 247 (2018) DLT 31, ('Bhim')

<sup>21</sup> AIR 1982 SC 1470, ('Sant Bir')

<sup>22</sup> <http://lawcommissionofindia.nic.in/reports/Report277.pdf> (Last Visited on October 20, 2020)

claims of the citizens based on Tort against the Union or State Government and if so then what will be the extent of the liability of the State. For this question the Law Commission recommended to enact a law defining the tortious liability of the State and to which extent the state could be held liable for its tortuous wrongs. The law should be made certain and definite for effective implementation. The Commission recommended that this issue requires “undoubtedly, a nice balancing consideration so as not to unduly restrict the sphere of activities of the State and at the same time to afford sufficient protection to the citizen”. In the 78<sup>th</sup> Report on “Congestion of under – trial prisoners in Jails” (1979), the Commission raised the issue of numbers of prisoners who are under trial in the jails and need for legal reforms required to deal with this issue. The Commission said that initially the prisons were meant to lodge the convicts and not for the persons under trial and recommended that two classes of inmates should be housed independently and there should be a separate institution for the incarceration of under trial prisoners. The Law Commission of India in its 113<sup>rd</sup> Report (1985) dealt with the issue of injuries in Police Custody. It mentioned one more issue related to this matter that on whom the burden of proof will be in prosecution of the police officers in case there is a charge of them of an alleged offence for causing bodily injuries to a person in the police custody. It gave the recommendation to insert the Section 114B in the Indian Evidence Act, 1872 to provide that in the aforesaid case of prosecution of a police officer, if there is any evidence that the injury to the person was caused during the period when he was in the police custody then the Court may presume that the injury has been caused by the police officer having the custody of the injured person during that period. This makes that the burden of proof will be on the police officers, charged with the alleged offence, to prove that those injuries were not caused in the police custody. The Commission also said that while considering such presumption, the Court should also have regards of all the relevant circumstances that could have occur at the time and then only such presumption should be made. Another report submitted by the Commission was 152<sup>nd</sup> report (1994) regarding the custodial crimes, the issue of arrest and abuse of the person in custody by the police officers. In this report it recommended to reiterate the insertion of section 114B in the Indian Evidence Act, 1872 and suggested amendment of Criminal Code of Procedure, 1973 by adding Section 41 (1A) for recording the reasons of arrest and section 50A to inform the nominated person about the arrest. In its 154<sup>th</sup> Report (1996), the Commission under took a detailed examination of the Criminal Procedure Code, 1973 “so as to remove the germane

problems leading to consequential delay in disposal of criminal cases”. It made recommendations to do amendments in the Code, 1973; the Police Acts and others. It also recommended for separating the investigating police force from the law and ordering the enforcement police force to enhance the proficiency of the investigating police force. This could increase the efficiency of the investigations and reduce the possibility of the unfair and superfluous prosecutions of persons. Again the in 185<sup>th</sup> Report (2003) and 273<sup>rd</sup> Report (2017), the Law Commission recommended to insert the Section 114B in the Indian Evidence Act, 1872 regarding the presumption for the injuries inflicted to a person in police custody as recommended in the aforementioned reports.

### **The 277<sup>th</sup> report of the Law Commission of India<sup>23</sup>**

The latest report of Law Commission is the 277<sup>th</sup> Report (2018) in which it undertook a research and consulted to various persons like police officers, advocates, judicial officers and many others on the issue of miscarriage of justice which results in wrongful prosecution, incarceration and/ or Conviction. The report mentioned the data of National Crime Records Bureau (NCRB) given in its report called “the Prison Statistics India” (PSI-2015) which says that out of the total prisoners of the country, 67.2% prisoners were under trial, substantially higher than the convict Population (32.0%). The NCRB report also says that 25.1% of the total under trial prisoners has spent more than a year in the prisons<sup>24</sup>. Such large numbers of under trials and delay and waiting for the proceedings makes it graver miscarriage of justice when the person is wrongfully accused and prosecuted for the offence which he hasn’t even committed. The Supreme Court of India while taking note of this situation, in the case of *Thana Singh v/s. Central Bureau of Narcotics*<sup>25</sup> observed: “The laxity with which we throw citizens into prison reflects our lack of appreciation for the tribulations of incarceration; the callousness with which we leave them there reflects our lack of deference for humanity. It also reflects our imprudence when our prisons are bursting at their seams. For the prisoner himself, imprisonment for the purposes of trial is as ignoble as imprisonment on conviction for an offence since the damning finger and opprobrious eyes of society draw no difference

<sup>23</sup> <http://lawcommissionofindia.nic.in/reports/Report277.pdf> (Last Visited on October 20, 2020 )

<sup>24</sup> <https://www.drishtias.com/daily-updates/daily-news-analysis/law-commissions-report-on-wrongful-prosecution> (Last Visited on October 20, 2020 )

<sup>25</sup> 2(2013) 2 SCC 590, (‘Thana’); see also: Hussainara Khatoun & Ors. v/s. Home Secretary, State of Bihar, Patna, (AIR 1979 SC 1369) and Supreme Court Legal Aid Committee Representing Undertrial Prisoners v/s. Union of India and Ors. [(1994) 6 SCC 731].

between the two.” The report mentions about the three types of remedy namely Public law Remedy, Private Law Remedy and Criminal Law Remedy. In case of miscarriage of justice on account of wrongful prosecution or conviction there is violation of the Fundamental rights guaranteed by the Constitution of India under Article 21 which provide right to life and personal liberty and Article 22 which provides protection against arbitrary arrests and illegal detention. The Public Law remedy for this violation is given under the Article 32 and 226 of the Indian Constitutions which invokes the writ jurisdiction of Supreme Court and High Court respectively and also includes the grant of compensation to the victim who has suffered detention and bodily injuries by the employees of the State. The case of *Khatri & Ors. v/s. State of Bihar & Ors. (the Bhagalpur Blinding case)*<sup>26</sup> was the one of the earlier cases where the question was raised related to “providing the compensation to a person who has been deprived of his right to life and personal liberty under the Article 21 of the Constitution of India and what could be the amount such relief. Although the Supreme Court did not give a definitive answer to the question of the State’s pecuniary liability to pay compensation to such person who has been deprived of his right to life and personal liberty but did order the state to meet up the expenditure of housing the blinded victims in the blind home in Delhi”. The first precedent setting case in this regard was *Rudal Sah v/s. State of Bihar*<sup>27</sup>, in which the Supreme Court of India provided compensation to the petitioner, who was unlawfully convicted for 14 years even after the order of acquittal, for the violation of Article 21 and 22 of the Indian Constitution and observed that:

“One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. This remedy is independent of the rights available under the private law in an action based on tort, or that under criminal law i.e. via criminal proceedings against the wrongdoer.”

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<sup>26</sup> AIR 1981 SC 928, ('Khatri')

<sup>27</sup> AIR 1983 SC 1086, ('Rudal')

In *Boma Chara Oraon case*<sup>28</sup>, the Supreme Court of India declared that “anyone deprived illegally of his life or personal liberty can approach the Supreme Court and seek compensation for violation of his fundamental right under Article 21”. Subsequently, an array of cases were decided by the Supreme Court of India in which it awarded compensation to the persons for the violation of their fundamental rights guaranteed under the Articles 21 and 22 of the Constitution of India. The Supreme Court in the case of *Bhim Singh, MLA v/s. State of J & K & Ors*<sup>29</sup> opined that “the mischief, malice or invasion of an illegal arrest and imprisonment cannot just be washed away or wished away by setting free the person so arrested or imprisoned” and awarded Rs. 50,000/- as compensation for illegal detention but did not delve into the logic or mechanism that how this “suitable monetary compensation” was ascertained or should be ascertained in analogous matters. Not the question comes that in case of state’s liability who will pay the compensation, on this point the Supreme Court in *SAHELLI, A Women's Resources center & Ors. v. Commissioner of Police Delhi & Ors.*<sup>30</sup>, “upheld the principle of the vicarious liability of the State i.e. the State to responsible for the tortious acts of its employees; and, ordered the Delhi Administration to pay the compensation for police atrocities which lead to the death of a 9 year-old child; further noting that the Delhi Administration has the option to recover the amount paid from the officers found responsible”<sup>31</sup>. In *People's Union for Civil Liberties v. Union of India & Ors.*<sup>32</sup>, the Supreme Court held that “the State cannot deprive a citizen of his life and liberty except according to the procedure established by law, and cannot claim immunity on the ground that the said deprivation of life occurred while the officers of the State were exercising the sovereign power of the State. The claim for compensation is based on the principle of strict liability to which the defense of sovereign immunity is not available”. The scope of remedy, to be provided under the violation of Article 21, once again came under review in *Sube Singh v. State of Haryana*<sup>33</sup>, which laid down that “compensation is not to be awarded in all cases. This case limited the award of compensation to cases where: (i) the violation of Article 21 is

<sup>28</sup> B. C. Oraon v/s. State of Bihar, cited in M. P. Jain, Indian Constitutional Law Volume 1 (LexisNexis, Gurgaon, India Updated 6th Edition, 2013) 1618; see also: Devki Nandan v/s. State of Bihar (AIR 1983 SC 1134)

<sup>29</sup> (1985) 4 SCC 677, ('Bhim')

<sup>30</sup> AIR 1990 SC 513, ('SAHELLI')

<sup>31</sup> See also Peoples' Union for Democratic Rights through its Secretary & Anr. v. Delhi Police Headquarters & Anr., (1989) 4 SCC 730; Joginder Kaur v/s. State of Punjab, (1969) 71 PLR 85.

<sup>32</sup> AIR 1997 SC 1203, ('People's'); see also: Nasiruddin v. State, 2001 Cri LJ 4925; Tasleema v. State (NCT of Delhi), 161 (2009) DLT 660

<sup>33</sup> (2006) 3 SCC 178, ('Sube')

patent and inconvertible; (ii) the violation is gross and of a magnitude to shock the conscience of the court; or (iii) the custodial torture alleged has resulted in death, or the custodial torture is supported by medical report or visible marks or scars or disability". In the famous case of *Adam bhai Sulemen bhai Ajmeri & Ors. v. State of Gujarat (the Akshardham Temple case)*<sup>34</sup>, the accused spent a period of more than a decade in prison; the Supreme Court acquitted them with a specific noting as to the Unreasonable conduct of the case from investigation to conviction to sentencing but did not awarded any compensation to the wrongfully convicted persons; although the court also noted that the police instead of booking the real perpetrators caught innocent people and subjected them to dreadful charges.

### **Recommendations of 277<sup>th</sup> report Law Commission of India<sup>35</sup>**

After discussing the various aspects related to wrongful conviction, the Law Commission provided recommendations in the report. Despite of the judicial pronouncement of the Supreme Court still the laws are silent on it; the Parliament has not framed any legislation for providing compensation to the wrongfully prosecuted person yet. Also in spite or decades of the jurisprudence of the reimbursement, there is not set legislative rule concerning the basis for determining the reward of damages or its amount thereof. The Commission recommended for enacting a special legal provision to redress the cases of miscarriage of justice which results in the wrongful conviction of a person. It also recommended for establishing a mechanism for adjudicating the claims for seeking compensation for the wrongful conviction. It means to establish special courts in each and every district to settle the claims for the compensation of the wrongful prosecution making the statutory obligation on the state to pay the compensation to those wrongfully convicted and corresponding statutory right for the wrongfully convicted person to claim the compensation for the violation of the Right to Life and Personal Liberty under Article 21 of the Constitution of India. The report also provided that the claims for seeking the compensation for the wrongful conviction can be brought by the victim, himself or herself; any person authorized by the wrongfully accused person or in case, the accused person died after the termination of the wrongful conviction then all or any of his or her legal hires can bring the claim for compensation the in the court. The special

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<sup>34</sup> (2014) 7 SCC 716, ('Adam Bhai'); see also: *State of Orissa v. Dulshwar Barik*, 2017 (I) OLR 824; *Gopal Ramdas Sheyte v. State of Maharashtra*, Judgment dated 5 May 2017 in Criminal Writ Petition No. 3960 of 2015.

<sup>35</sup> <http://lawcommissionofindia.nic.in/reports/Report277.pdf> (Last Visited on October 20, 2020 )

provisions should specify the factors which the Special Courts need to consider for determining the compensation including the amount of pecuniary compensation to be given to the wrongfully convicted person. The Commission provided in the report that the factors for determining the compensation should be financial as well as other factors which includes the gravity of the offence, harshness of the punishment, time period of conviction, loss or damage of health, mental and emotional harm, status of the victim in the society, loss of reputation in the society, loss of income or earnings, loss or damage to the property<sup>36</sup>. All these factors need to be considered to determine the compensation. The compensation can also be financial or non- financial like providing assistance in the form of services for counseling, mental health, vocational and employment skills etc<sup>37</sup>. Thus, these were the recommendations which the Law Commission made in its 277<sup>th</sup> report presented before the Parliament but till date there is no law on providing compensation to the wrongfully convicted persons.

## **Conclusion**

Government of India act a guardian for the citizens of this country and it is its duty to take care of the citizens and protect them and when due to any reason if any of the citizen got harmed because to the act of the Government itself then the harm or injury must be cured by the Government itself. If the Fundamental Rights of the citizens are being violated by the action of the government then the government should redress the claim and provide the compensation for the same, as it is the duty of the Government to do so. Here also, the government should fulfill its obligation by enacting a law to govern the wrongful conviction and provide compensation under same legislation to do justice with the person by correcting its own mistakes.

WORDS SPEAK

<sup>36</sup> <http://lawcommissionofindia.nic.in/reports/Report277.pdf> (Last Visited on October 20, 2020 )

<sup>37</sup> <https://www.drishtiiias.com/daily-updates/daily-news-analysis/law-commissions-report-on-wrongful-prosecution> (Last Visited on October 20, 2020)