ON

WRONGFUL INCARCERATION
DEFAULT IN PAYMENT OF FINE
SUSPENSION OF SENTENCE

A REPORT BY AMICUS CURIAE
BEFORE **THE HIGH COURT OF DELHI**

PROF. (DR.) G.S. BAJPAI

CENTRE FOR CRIMINOLOGY & VICTIMOLOGY
K.L. ARORA CHAIR IN CRIMINAL LAW
&
REGISTRAR,
NATIONAL LAW UNIVERSITY DELHI

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Published by
National Law University, Delhi
Sector-14, Dwarka, New Delhi-110078
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ACKNOWLEDGMENTS

The research work for these findings was done by a team of students lead by Gali Arudhra Rao (BA/LLB 3rd year) in collaboration with the sincere efforts of Mukul Verma and Manas Manu (BA/LLB 2nd year) under the able supervision and guidance of Prof. G.S. Bajpai, Registrar National Law University, Delhi and supported by Mr. Mukul Raizada and Mr. Neeraj Tiwari, Assistant Professor National Law University Delhi. A mention must be given to Neil Shroff (BA/LLB 3rd year) for his contributions in design and formatting.

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LIST OF ABBREVIATIONS

AIR	All India Reporter
ALR	American Law Reports
CBI	Central Bureau of Investigation
Co	Company
CrLJ	Criminal Law Journal
CSLI	Cell Site Location Information
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
Edn	Edition
EU	European Union
GLR	Gujarat Law Review
HC	High Court
IT	Information Technology
Karn	Karnataka
L.Ed	Lawyers' Edition
Mad	Madras
Meth	Methamphetamine
Para	Paragraph
PUCL	Public Union for Civil Liberties
Raj	Rajasthan
S.	Section
S.Ct	Supreme Court
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
SLP	Special Leave Petition
UN	United Nations
v.	Versus
Vol	Volume

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IN THE HIGH COURT OF DELHI
AT NEW DELHI

Criminal Appellate Jurisdiction
No. CRL. A. 157/2013

IN THE MATTER OF:

BABLOO CHAUHAN @ DABLOO .... Appellant

Through: None.

Versus

STATE GOVT. OF NCT OF DELHI …. Respondent

Through: Mr. Rajat Katyal, APP for State.

A Report by Amicus Curiae

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A REPORT OF AMICUS CURIAE

The Amicus Curiae in the present case thankfully acknowledge the present assignment given by the Hon'ble High Court of Delhi in the matter of *Babloo Chauhan, (Appellant) v. State of Govt. of NCT of Delhi* (Respondent) dated 8.3.2017 *vide* order dated 15.09.2016 by HMJ Gita Mittal and HMJ P.S. Teji. The Amicus has carefully gone through the legal issue involve in the present matter and set out these issues in the following manner:

I. A background on the substantive law and procedure relating to the 'Default in payments of fine'

II. What is the existing law on 'Suspension of Sentence' as given under the scheme of Section 389 of the Criminal procedure Code, 1973?

III. What are the possible legal remedies for victims of wrongful incarceration and mallicious prosecution in india?

The Amicus has dealt with all these three issues separately to ascertain the law and its interpretation along with relevant case law pertaining to these issues from page 1 to 30. This account offers the best practices around the globe especially with regard to legal issue - 3. Subsequently, a gist of important recommendations have also been made from page XI.

LEGAL ISSUE I

A background on the substantive law and procedures governing cases of 'default in payment of fine'

GUIDELINES TO DETERMINE FINE AND QUANTUM OF SENTENCE IN CASE OF DEFAULT

In a discussion on Default in payment of fine, a misconception that ought to be made clear is that the imprisonment ordered, is not a sentence but merely a penalty imposed on account of non-payment of fine. The significance being that the fine has little to do with the substantive aspect of the crime, but is more of a penalty for violating a court order, akin to civil contempt of court. The former has to be necessarily undergone, whereas the latter can be avoided by simply paying the fine.

Section 63[1] of the IPC lays no particular limit on the amount of fine that can be levied against an accused, but merely provides that, it shall not be *'excessive'*. The phrasing of the section *ipso facto* leaves a larger burden on the courts to determine fine as the area remains subjective. In one of the earliest cases before the Allahabad High court of *Emperor v. Mendi Ali*[2], it was pronounced that

> *"I cannot think it is proper, in the case of a poor peasant, to add to a very long term of substantive imprisonment for a fine which there is no reasonable prospect……*
>
> *it becomes all the more undesirable to impose such a fine where the term of imprisonment to be undergone in default will bring the aggregate sentence of imprisonment to more than the maximum term of imprisonment sanctioned by the particular section under which he is convicted"*[3]

The main operative of the judgment was that of a *reasonable prospect.* Therefore, the court ruled that the judge is burdened to necessarily look into the the economic whereabouts of the accused before imposing any fine under section 63.

In ***Palaniappa Gounder v. State of Tamil Nadu***[4], the Supreme Court while reversing the High Courts judgment had noted that a fine cannot be calculated on the basis of the compensation that the relatives of the deceased ought to receive, but necessarily on the pecuniary position of the accused and the nature and magnitude of the offence.

1. Section 63, Indian Penal Code, 1860.
2. *Emperor v. Mendi Ali,* 1941 SCC 29.
3. *Emperor v. Mendi Ali*, 1941 SCC 29, para 3.
4. *Palaniappa Gounder v. State of Tamil Nadu*, 1977 SCC (2) 634.

If the offence be one which is punishable with imprisonment as well as fine, the term of imprisonment in default of payment **will not exceed one-fourth of the longest term of imprisonment** fixed by the Code for the offence. If the offence be one which by the Code is punishable only with fine, the term of imprisonment for default of payment will in no case exceed seven days. The above mentioned proposition is laid down in the reading of Section 65 IPC as well as Section 30 of the CrPC.

There are no special guidelines which are to be followed by the courts while awarding fine, but certain principles regarding imposing of fine have been provided in s 63 to s 70 of the IPC. Section 63 of the IPC lays down that if there is no clear mentioning of the quantum of fine to be imposed then it can go on to *become unlimited but should be reasonable*. In *Mendi Ali's* case[5] the Allahabad High Court itself cancelled the fine imposition levied on the accused asserting that he was just a poor peasant and that imprisonment to be awarded in default of the fine is also unreasonable as it would exceed the punishment from the maximum limit permissible. This brought to the fore the idea of economic condition of the accused while determining the quantum of fine. In *Palaniapa Goundan v. State of Tamil Nadu*[6] the Supreme Court laid down that the *sentence of fine must not be unduly excessive.* If the fine imposed will be excessive then the object of realizing it would never be successful.

The Madhya Pradesh High Court in *Shakir v. The State of Madhya Pradesh*[7] has said that while awarding the sentence of fine one should always consider the principles elaborated in s 63 to s 70 of the IPC and that **it should not be excessive but rational to the pecuniary position of the accused.** The court noted that *pecuniary circumstances of the offender* as to the character and *magnitude of the offence* must be taken care of while awarding the sentence of fine. A single amount of fine cannot be fixed for any particular offence due to the difference in class and economic status of various accused.

The Supreme Court in its judgment of *Shahejadkhan Mahebubkhan Pathan v. State of Gujarat*[8] had laid down all the necessary guidelines that are enunciated in s 63 to s 70 of the IPC for governing the imposition of fine. It said *that nature of offence, circumstances in which it was committed, the position of the offender* and *other relevant considerations* such as *pecuniary circumstances of the accused person as to character,* and *magnitude of the offence* must be kept in view before sentencing fine.

(A) Statutory Interpretations: Introduction to section 63 to section 70 of the Indian Penal Code.

The principles regarding the imposition of fines and imprisonment in its default are laid down in the sections 63 to 70 in the IPC. Sections 63 speaks that when there is no specific mention of the amount of fine to be levied on then the court can go on to impose fine that may extend to unlimited level, but should not be excessive. Many a times the Supreme Court and various HCs at different pint of time have laid different principles to be followed while imposing fine. This helped in solving the problem of vague language

5. *Emperor v. Mendi Ali,* 1941 SCC 29.
6. *Palaniapa goundan v. State of Tamil Nadu*, AIR 1977 SCC (2) 634.
7. *Shakir v. The State of Madhya Pradesh* Cr.A. No.717/2011.
8. *Shahejadkhan Mahebubkhan Pathan v. State of Gujarat*, (2013) 1 SCC 570.

of the section. For instance in *Adamji Umar Dalal v. State of Bombay*[9] the Supreme Court said that

> *"In imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused persons to the character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases."*

In the same case the court also said that while imposing fine and default imprisonment it should also **be kept in view that whether the accused was a first time offender or a habitual one.** Section 64 talks about the case about imprisonment in case of non-payment of fine. This the legislature intended to work as an inducement to pay up the fine. It says that the same court can pronounce an imprisonment sentence which will run in *excess to the sentence for the substantial crime committed by him*.

This view was clarified in *State v. Krishna Pillai Madhavan Pillai*[10] where the court had ruled that the two sentences can never run concurrently and the fine can also be charged even after any such sentence or even after the death of the person. Serving the imprisonment does not discharge the offender of his duty to pay fine. Moreover, it should also be remembered that the sentence of imprisonment awarded in default of fine is a penalty rather than being a sentence which has to be undergone compulsorily.

Section 65 provides a safeguard to the accused in case of imprisonment in default of fine. It says that in case of a default to pay off the fine, a person may be sentenced to serve imprisonment, which cannot be more than one-fourth of the maximum term of imprisonment provided for the major offence for which he is being punished. Sentence for default of fine if exceeds the maximum sentence provided for that particular substantive offence will be declared illegal.[11] Moreover if a person has been convicted for more than one offence then the quantum of one-fourth sentence has to be measured in relation to the punishment fixed for all offences. Section 66 states that the description of the imprisonment that the person may suffer in case of default to pay off the fine, depends on the type of imprisonment provided for the substantive offence.

For instance, if a section provides for only fine as a punishment then the imprisonment in its default has to be a simple not rigorous. Section 67 of the IPC deals with those offences which only provide for fine as a punishment. It lays down the limit on the term of imprisonment to be awarded in case of default of fine. If the fine does not exceed ₹50 then the imprisonment can be of two months at maximum, if the fine does not exceed ₹100 then the maximum sentence can be of four months, and of the fine exceeds ₹100 then the imprisonment cannot be more than six months. Moreover, the application of this section goes beyond the IPC to cover the offences under special and local laws too. This position was cleared by the Orissa High Court in the case of *Kishanlal Sindhi v. Executive Officer, Notified Area Council, Padampur*[12]. Section 68 is also an accused friendly section grading imprisonment as inferior to the fine. Meaning thereby that if a person pays off his fine then his imprisonment will terminate at that very point of time. Section 69 also carries the principle, but it says that the portion of the imprisonment

9. *Adamji Umar Dalal v. State of Bombay*, AIR 1952 SC 14.
10. *State v. Krishna Pillai Madhavan Pillai*, 1953 Cri LJ 1265.
11. *Ram Jas v. State of Uttar Pradesh,* AIR 1974 SC 1811.
12. *Kishanlal Sindhi v. Executive Officer, Notified Area Council, Padampur*, 1980 CriLJ 365.

reduces in the same proportion as the portion of the fine paid by the person. Section 70 provides for a limitation period to realise the fine, which is 6 years and if the imprisonment extends beyond six years then before the completion of such term. Moreover the death of the person does not discharge him of his liability. In *Harnam Singh v. State of Himachal Pradesh* the Supreme Court ruled that

> *"An appeal from a sentence of fine is accepted from the all-pervasive rule of abatement of criminal appeals for the reason that the fine constitutes a liability on the estate of the deceased and the legal representatives on whom the estate devolves are entitled to ward off that liability."*

The unpaid fine is ranked as government debt *pari passu* with the other debts of the deceased offender. Though the fine can be recovered from his property, which property is to be used for this purpose depends on the personal law of the person.

(B) Section 30 of the Code of Criminal Procedure and Magisterial Powers

All the sections discussed above deal with the powers of the courts of session judge or the High Court judge to levy fine and then provide for an imprisonment in default of fine. But section 30 of the Code of Criminal Procedure deals with the powers of the magistrate in regards to awarding fine and sentencing imprisonment in case of default of its payment. The provision is divided into three major parts. First part lays down the limits on the powers of the magistrate, which are taken from the section 29 of the CrPC.

This provision provides for the maximum level of imprisonment, and fine that magistrates of different classes can award. Section 30 checks that a magistrate does not surpass those powers to award imprisonment to the accused. Then the section once again in its accused friendly manner reiterates section 65 of the Indian Penal Code, saying that the maximum level of imprisonment in case of default of fine cannot be more than one-fourth of the substantive sentence. Then it once again tries to differentiate between the substantive sentence and fine default sentence and lays down that these cannot run concurrently. Imprisonment may be awarded even when the statue under which the offence is committed only provides for fine and not imprisonment. This position was cleared by the Supreme Court in *Bashiruddin Ashraf v. State of Bihar***.**[13]

The major contention that arises with regards to section 30 of the CrPC is in relation with the powers of the magistrate. Section 65 provides that the default imprisonment cannot be more than one-fourth of the maximum sentence provided for that offence. Means if an offence provides for a sentence of two years then default sentence in that case would be six months. But that does not apply to the magistrate. And here is where section 30 CrPC differs from section 65 of IPC. The powers of the magistrate are already limited by the section 30. Magistrate's power of sentencing is governed by section 29 of CrPC.

Magistrate does not always possess the powers of awarding the maximum sentence, and thus the default sentence i.e. one-fourth of the substantive sentence awarded will also be less, as compared to the default sentence given by a session court. Because a session court has the power to impose the maximum sentence but a magistrate does not. The quantum of one-fourth is case of s 65 has to be measured from the maximum punishment prescribed in the section, while in case of s 30 it has to be measured from the powers of

13. *Bashiruddin Ashraf v. State of Bihar*, AIR 1957 SC 645.

the magistrate conferred under s 29 of CrPC. A magistrate therefore cannot exceed his powers under s 29 to award imprisonment by resorting to s 65 IPC. This harmonious construction to these two sections was given by the Supreme Court in the case of *Chhajulal v. State of Rajasthan***.**[14]

VARIATION IN CASES OF LIFE IMPRISONMENT AND DEATH SENTENCE

Currently the Indian Penal Code provides for no barrier of imposing a fine in cases where the accused is sentenced to either a life imprisonment or death penalty. On the contrary, Section 302 of the IPC provides that in addition to the two sentences, the perpetrator shall also be liable to pay fine. The power of the court to impose a fine in these cases is undisputed. However, the instances where it must be exercised is contentious. On the same issue in *Palaniappa Gounder v. State of Tamil Nadu*[15] the Supreme Court *said:*

> *"Though there is power to combine a sentence of death or life imprisonment with a sentence of fine that power is to be sparingly exercised because the sentence of death is an extreme penalty to impose and adding to that grave penalty a sentence of fine is hardly calculated to serve any social purpose."*[16]

The court opined that heavy fines in cases of LI and DP serve no social purpose, therefore it must be only *exceptional cases* where the court uses said power. In *Gounder*, the court has relied on *Adamji Umar Dalal v. State of Bombay* where Justice Mahajan had laid down the parameters of imposing fine. The same have been restated in the recent judgments of *Shahejadkhan Mahebubkhan Pathan v. State of Gujarat*[17]*,* and *Shanti Lal v. State of MP*. The parameters being, *firstly,* the pecuniary circumstances of the accused and other relavent information, *secondly* the character and the magnitude of the offence and *lastly* the nature of the sentence already imposed.

(A) Social Purpose Test (Is there really any social purpose of having fine imposition on these two type of prisoners?)

Though there are no statutory guidelines keeping these two kind of accused at a different footing, but the rationale of imposing fine on these two classes of prisoners have several times been brought into question. In *Shakir v. State of Madhya Pradesh*[18] the Supreme Court had said that *adding a sentence of fine to the grave penalty of death does not serve any social purpose.* Speaking rationally, it looks reasonable, as it really serves no purpose of imposing a fine, once a person is sentenced to death. Similarly in the case of *State v. Pandurang Tatyasaheb Shinde*[19] the Bombay High Court mentioned

> *"It is difficult to appreciate why the learned Sessions Judge in a case where he sentenced the accused for an offence of murder should have imposed a sentence of fine."*

14. *Chhajulal v. State of Rajasthan***,** AIR 1972 SC 1809.
15. *Palaniappa Gounder v. State of Tamil Nadu*, 1977 AIR 1323.
16. *Palaniappa Gounder v. State of Tamil Nadu*, 1977 AIR 1323, para 9.
17. *Shahejadkhan Mahebubkhan Pathan v. State of Gujarat,* 2012 SCC 840.
18. Cr.A. No.717/2011.
19. *State v. Pandurang Tatyasaheb Shinde*, AIR 1956 Bom 711.

Though it said that the imposition of the fine cannot be said to be an infirmity in the judgement. In *Palaniapa Goundan v. State of Tamil Nadu*[20] also the Supreme Court reiterated the same reasoning that giving sentence of fine along with sentence of death does not serve any social purpose. It said that "*before imposing the sentence of fine, particularly a heavy fine, along with the sentence of death or life imprisonment, one must pause to consider whether the sentence of fine is at all called for and if so, what is a proper or adequate fine to impose in the circumstances of the case."*

It can be felt that in all such cases the courts have tried to focus on the issue of unreasonableness of the imposition of fine with the sentence of death and sometimes even for life imprisonment. In *Adamji Umar Dalal v. The State of Bombay*[21] also the Supreme Court mentioned that *where a substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases.* Though the court did not mentioned what could be those exceptional circumstances. The guidelines and the principles laid down in the case of *Shahejadkhan Mahebubkhan Pathan v. State of Gujarat*[22] should be adhered to by the Courts while levying the fine.

(B) Possibility of having variation of fine in cases of death penalty and life imprisonment.

Currently there is no provision in the IPC that makes any differentiation of fine and default punishment in the cases of life imprisonment and death penalty. For example section 302 IPC says that whoever commits murder will be awarded either death penalty or life imprisonment and along these two there is also a provision for fine. And similarly section 376D of gang rape provides for life imprisonment as its maximum punishment along with fine.

ON COMPLETION OF JAIL TIME IN CASES OF DEFAULT OF PAYMENT, WILL THE FINE STILL BE LIABLE TO BE PAID?

Compensation to the victim at all times is paid from the fine that is levied on the accused. The proviso to Section 421(1) provides that a fine shall seize to exist if the accused has undergone the contemplated imprisonment in default of it. However, there is an exception to this proviso. Section 357 of the Criminal Procedure code is a special provision for compensation that the relatives of the victim are entitled to, from the perpetrator. The proviso in 421 makes sure that in spite of the person having served the sentence is not relived of his/her liability to pay, if such fine is to be paid as compensation under section 357.

(A) Rationale of having section 357 in the CrPC.

Till now it has been seen that the court can neglect the termination of fine even after completion of the default trial citing special reasons to do so. But apart from these special reasons section 421(1) also provides for exceptional cases in which the compensation is awarded under section 357 of the CrPC. Section 357(1) provides for a victim friendly aspect of our criminal justice system. It says that the court while imposing a fine may on

20. *Palaniapa Goundan v. State of Tamil Nadu*, AIR 1977 SC 1323.
21. *Adamji Umar Dalal v. The State of Bombay*, AIR 1952 SC 14
22. *Shahejadkhan Mahebubkhan Pathan v. State of Gujarat*, (2013) 1 SCC 570.

its own discretion order a certain part of that fine to be used given to the victim as a compensation. 357(3) of this section says that that while awarding a sentence if fine is not a part of it, then also the court has the power to provide for compensation for the victim which has to be paid by the accused. *The object of the section therefore, is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence.*[23]

This section has been provided for a social purpose which should not be ignored while applying this action. One more thing should also be remembered about this section and that is *fine and compensation are different and the limit on the powers of the magistrate as provided under section 29 of the CrPC, will only operate if the fine is being awarded but of any compensation is being awarded under section 357(3) of CrPC, then no limit operates.*[24] The courts have always fostered the liberal use of this section. In *K. Bhaskaran v. Sankaran Vaidhyan Balan and Another*[25] the Supreme Court had said that *no limit is mentioned in the sub-section 3 of s. 357 and therefore, a magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a court of magistrate of first class in respect of a cheque which covers an amount exceeding Rs. 5,000 the Court has power to award compensation to be paid to the complainant.*

The compensation in such cases has to be provided to the family and the dependants of the victims. In **Rachhpal Singh *v.* State of Punjab**[26] the Supreme Court said *that while considering the compensation awarded by the courts below held that the compensation in question should commensurate with the capacity of the accused to pay as also other facts and circumstances of that case like the gravity of the offence, the needs of the victim's family etc.*

CAN A DEFAULT SENTENCE BE MADE TO RUN CONCURRENTLY/SIMULTANEOUSLY WITH THE MAIN SENTENCE?

The Supreme Court has made it clear that imprisonment in cases of default in payment of fine is not a sentence but merely a penalty. The former has to be necessarily undergone unless it is revised, whereas the latter can be avoided by simply paying the fine. Section 31 and 427 of the criminal procedure code provides that, the court in cases of multiple offences in the same trial is empowered to allow for the different sentences to run concurrently.

Therefore, the question that arose before the Madras High Court in *Donatus Tony Ikwanusi v. The Investigating Officer*[27] was whether the two above mentioned provisions also apply to the penalty of imprisonment in default of payment and can thereby be allowed to run concurrently to the main sentence?

The Division Bench answered this proposition **in the negative**. It was of the opinion that section 31 and 427 CrPC provides for ***only*** substantive sentences to run concurrently, therefore the assumption that the same applies to penalties for default in payment of fine

23. *Sarwan Simgh & Ors Etc v. State Of Punjab*, AIR 1978 SC 1525.
24. *Maganlal Jain vs Abhijeet Kumar Dash,* 2004 CRLJ 2415.
25. *K. Bhaskaran v. Sankaran Vaidhyan Balan and Another*, AIR 1999 SC 3762.
26. *Rachhpal Singh v. State of Punjab,* AIR 2002 SC 2710.
27. *Donatus Tony Ikwanusi vs The Investigating Officer*, 2013 SCC OnLine Mad 353.

would be contrary to how the legislature intended for the law to be. The bench also mentioned **Rule 242 of the Prison Manual**, where it is explicitly stated that imprisonment imposed in default of payment of fine amount, cannot run concurrently. Though, it is true that rules cannot prevail over provisions under Criminal statutes, there is no provision under the Code empowering the Court to order for default sentences to run concurrently, therefore the rule prevails.

WHEN CAN THE FINE BE TERMINATED?

Section 68 and 69 of the IPC provides for the termination of fine. Fine imposed can only be terminated when it is paid and the liability is waived off. In *State v. Krishna Pillai Madhavan Pillai*[28] it was made clear that the default imprisonment does not discharge the person of his liability to pay the fine. It is only awarded as a penalty resulting from either default to pay the fine or refusal of the person to pay back the fine. *Even his death will not discharge him from the liability and any property which would, after his death be legally liable for his debts.* The CrPC provides for the termination of fine in certain cases. Section 421(1)(b) deals with this aspect of the fine as a punishment. It says that if a court is awarding a default sentence then it can also at the same point of time go on to issue a warrant to the collector to realize the amount as arrears of the land revenue of movable and immovable property of the accused. But it also states that if the o*ffender has serve whole of his default imprisonment then no warrant can be issued against him, until the court has certain specific reasons to do so, or the order of payment of fine has been made under section 357 of the CrPC.*

In *Putta Chamaiah v. State*[29] the Karnataka High Court ruled that fine is an essential element of the punishment process, because our system has to rehabilitate those who have been victim of the crime. That's why in this case the HC despite awarding life imprisonment, went on to levy a fine of ₹25,000 on the accused. And failure to do so, a default imprisonment of four years was provided. The court said that the amount of the fine will be used as a compensation to the victim's (deceased) wife. And that's why *the accused cannot be permitted to avoid paying the fine by undergoing further imprisonment.* Consequently the Court passed an order that was in *consonance with ensuring that the fine imposed is recovered and that it goes to the party who has got to be compensated thereby.* So the court ordered the trial court to issue a notice to the collector to collect the fine as arrears of the land revenue. Thus in this verdict the collection of fine was more important than just sending the accused for default imprisonment, and thus even the completion of his imprisonment was not considered as a factor to terminate the fine.

In *Emperor v. Digambar Kashinath Bhavarthi* the Bombay High Court rejected the application of the accused to withdraw the warrant of collection of fine despite of the fact that the accused had completed his imprisonment including the default sentence.[30] The court recognised that spirit of the section 421(1) is *that in general an offender ought not to be required both to pay the fine and to serve the sentence in default*. But despite this the court cited certain special reasons as mentioned in the section and rejected the application. Thus in both the above cases it can be observed that the High Courts neglected to terminate the fine despite the completion of default sentence.

28. *State v. Krishna Pillai Madhavan Pillai,* 1953 Cri LJ 1265.
29. *Putta Chamaiah v. State*, 1999 CrLJ 4356.
30. *Emperor v. Digambar Kashinath Bhavarthi*, (1935) 37 BOMLR 99.

LEGAL ISSUE 2

What is the existing law relating to Suspension of Sentence Pending Appeal as under the scheme of Section 389 Criminal Procedure Code?

Relevant Sections:

- Section 389 Criminal Procedure Code
- Section 421 Criminal Procedure Code
- Section 424 Criminal Procedure Code

Relevant Special Laws

- Prevention of Corruption Act, 1988
- Prevention of Terrorism Act, 2002
- Protection of Children from Sexual Offences Act, 2012
- Narcotics Drugs and Psychotropic Substances Act, 1985

INTRODUCTION TO THE LAW ON SUSPENSION OF SENTENCE

"Suspension of sentence" as defined by Section 389 of the Criminal Procedure Code (CrPC), means: keeping the sentence in abeyance while the accused can dispute the findings of the convicting court, before a higher court; or keeping the sentence aside while the case is pending in appeal. The provision has been viewed as one which furthers life and personal liberty because of the rising cases before the Indian courts where individuals are found to have already completed the entirety of their sentence and subsequently come to know of their innocence and acquittal by the appellate courts. The Supreme Court has labelled such occurrences as the *gravest travesties of justice* and has thereby pronounced several judgments laying down the need for the application of this section in a wider sense.

A series of judicial decisions, namely ***Kashmira Singh v. State of Punjab***[31], ***Bhagwan Rama Shinde Gosai v. State of Gujrat***[32] have elaborated upon how the discretion conferred ought to be exercised, in accordance with the crime committed and sentence passed. It is also observed that the Supreme Court has had a conflicting opinion the discretion in granting bail by the appellate Court is to be exercised judicially, the

31. *Kashmira Singh v. State of Punjab*, 1977 4 SCC 291.
32. *Bhagwan Rama Shinde Gosai v. State of Gujrat*, 1999 4 SCC 421.

appellate Court should inter alia consider whether prima facie ground is disclosed for substantial doubt about the conviction; and also whether there is any likelihood of unreasonable delay in the disposal of the appeal.

There is a distinction between bail and suspension of sentence. An order passed under Section 389 **does not in any way affect the status of the conviction.** The conviction stands until the appellate court either upholds it or reverses it. The mere granting of bail in and by itself does not amount to suspension of sentence. Complete suspension is to be only granted in exceptional circumstances, where a special cause exists and not invariably whenever the accused is awarded bail.

(A) Difference between Section 389(1) and (3)

Within Section 389, sub sections (1) and (2) governs the situation when bail is sought before the appellate court upon the filing of the appeal, thereby preventing the situation where he is incarcerated and subsequently found not guilty. Whereas sub section (3) is the power of the convicting court itself to grant the accused bail, thereby enabling him to challenge the findings before a higher court. Major differences in the operation of the sub section are as follows:

1. Section 389 (1) applies to an appeal already pending whereas Sub-section (3) becomes operational upon the convicted party expressing his/her intention to challenge the findings of the convicting/trial court before the trial court itself.
2. Sub-section (1) tells "suspension" first and then talks of "release on bail" or "own bond" BUT Sub-section (3) tells "release on bail" first and then "suspension" is then the "automatic" effect.
3. Sub-section (1) does not prescribe that the accused must be on bail BUT Sub-section (3) can be used only if the accused is on bail on the day of judgment.
4. Sub-section (1) gives option to release the convict on "bail" or "his own bond" BUT Trial Court vide Sub-section (3) does not have power to release the convict on "his own bond". However trial Court can also release accused on his own bond if the accused is poor etc.
5. In Sub-section (1) suspension is the cause and bail is effect and vide Sub-section (3) bail is cause and suspension is effect.

(B) Salient Features of Section 389(3)

1. The convict shall not be released on bail "as of right" but he will have to satisfy that he is "eligible" to be released on bail;
2. **Only** the convicting Court is empowered to confer bail under sub (3),
3. The trial court is well within its powers to refuse bail for **"special reasons"**, thereby making the power discretionary,
4. The order by the court must necessarily be of a **substantive conviction**,

5. Sentence of imprisonment must **NOT** exceed three years,

6. The intention of presenting an appeal before the appellate Court must be made clear,

The other major feature which is not a part of the section, but has been derived by the Supreme Court in *Mayuram Subramanian Srinivasan v. C.B.I*[33], that the rejection of bail under sub section (3) can be independently challenged before a higher Court.

SECTION 389 IN CASES OF FIXED SENTENCES AND LIFE IMPRISONMENT

(A) Fixed Sentences

Fixed sentences are different from that of life imprisonment. As far as the former is concerned, the apex court in *Bhagwan Rama Shinde Gosai v. State of Gujarat*[34], this Court has opined that in cases where the sentence happens to be of fixed period, and an appeal has been conferred against under such sentence, the appellate court must liberally use its discretion unless there are exceptional circumstances. The Court has observed in para 3:

> *"When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time".*

(B) Life Imprisonment

The practice that had been maintained by the high courts was that the discretion under Section 389 would sparingly be invoked in cases of serious sentences like life Imprisonment and death sentence. The question as to, whether such practice was to be done away with, came up in the landmark judgment on the issue in *Kashmira Singh v. State of Punjab*[35]. Every practice of the Court must find its ultimate justification in the interest of justice. The reason this practice was seen to be unconscionable was that, it could not possibly account for situations where the conviction itself was unjust. Can the Court ever compensate the accused for this wrongful incarceration which is found to be unjustified by the appellate court? Would this not frustrate the entire point of conferring an appeal, if by the time the appeal comes up before the court, the accused has already completed the sentence as if he/she been guilty all along.

Therefore, the honorable Supreme Court of India laid down that **it is for the court to gauge at the stage of admission** itself as to whether the appeal had the potential to be disposed off within a **reasonable period of time.** If the said proposition were to be answered in the negative, necessarily the accused deserved the benefit of Section 389(1). The court further laid down that, if either of the appellate courts (Supreme Court and

33. *Mayuram Subramanian Srinivas v. Central Bureau of Investigation*, 2006 5 SCC 752.
34. *Bhagwan Rama Shinde Gosai v. State of Gujrat*, (1999) 4 SCC 421.
35. *Kashmira Singh v. State of Punjab*, 1977 4 SCC 291.

High Court) admit the appeal, it means that there is sufficient merit in the case and therefore ***ipso facto*** the section would apply and sentence must be suspended, unless **there are cogent grounds for acting otherwise**.

(C) Comparing Judgments: Kashmira Singh and Sunil Kumar Sinha

However, the Supreme Court in one of its later pronouncements, namely ***Sunil Kumar Sinha*** has observed that the inability of the higher court to address the appeal in a reasonable period of time **cannot** be by itself the only ground to suspend the sentence. The two judgment are not per se contradictory, whereas they are complimentary, as the court has said that a reasonable time within which the appeal can be disposed off must be a consideration **in addition to other facts and circumstances of the case.** The two judgments must be read together while the appellate court dispenses its powers under the said section.

In *Sunil Kumar Sinha,* the court has only furthered what it had said in Kashmira Singh and said that the cases in appeal where the accused is not out on bail must be further prioritized so as to prevent any wrongful incarceration. The two judgments ought to be read in consonance with one another to ensure that the order of suspension under Section 389 balances the rights of an accused as well as societal justice.

LEADING CASE LAW ON HOW THE DISCRETION HAS BEEN EXERCISED ACROSS VARIOUS KINDS OF OFFENCES, WHICH INCLUDES TERRORISM, CORRUPTION AND NORMAL PENAL OFFENCES

The Supreme Court in *State of Tamil Nadu v. A. Jaganathan*[36] held that bail conferred under **was not matter of right as it would have been under Section 436, 437 CrPC.** The provision is a discretion that cannot be applied to every trifling matters as that would result in suspension of sentence in most of the cases, which would defeat the object of the provision.

(A) Emphasis on Intangibles like Moral Conduct

The apex court also emphasized that the moral conduct of an individual must also be at the forefront of the considerations while Section 389 powers are used and cautioned against suspending sentence when the moral conduct of an individual is in question. While making **moral conduct a necessary criteria**, the court said:

> *'The High Court made an observation but did not consider at all the moral conduct of the respondents in as much as respondent Jaganathan who was the Police Inspector attached to Erode Police Station has been convicted under Sections 392, 218 and 466 I.P.C., while the other respondents who are also public servants have been convicted under the provision of Prevention of Corruption Act. In such a case the discretionary power to suspend the conviction either under Sections 389(1) or under Section 482 Cr.P.C. should not have been exercised.'*

(B) Intelligible Differentia: Kinds of Offences that allow for the operation of Section 389

36. *State of Tamil Nadu v. A. Jaganathan*, (1996) 5 SCC 329.

The issue of the need to make an intelligible differentia on the kinds of offences that warrant the application of section 389 and the offences that don't came up before the honorable Supreme Court of India in *Shiv Kumar v. State of NCT of Delhi*[37]*, which reffered to Vijay Kumar v. Narendra*[38] *[2002(9) SCC 364]* where the court opined

> *'The principle is well-settled that in considering the prayer for bail in a case involving serious offence like murder, punishable under Section 302 IPC, the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder, or any other offences mentioned in special laws.'*

In *Kishori Lal v. Rupa and others* [39] the Supreme Court corrected the wrong perception that had become prevalent that 389 powers can be widely excercised. It set aside the High Court use of discretionary powers by saying that such discretionary power should be used under **exceptional circumstances only.** The court was of the opinion that :

> *'The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial looses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed.'*

(C) Special Laws and Section 389 CrPC

The Supreme Court in *Man Singh v. Union of India,*[40] considered the amount of time accused had spent in prison after being convicted under Section 8/18 and Section 8/15 of Narcotic Drugs and Psychotropic Substances Act, 1985 before deciding to suspend the execution of the sentence of the accused. The accused had spent 7 years in prison and this factor proved instrumental in suspension of the execution of the sentence and the subsequent grant of bail by the Supreme Court. The chance of the appeal being heard in the future was also very bleak. Thus, the prospect of the accused being imprisonment for another few years forced the Supreme Court to grant him bail.

In *Suzanne Marine v. State of Rajasthan,*[41] the respondent was convicted of raping a British journalist in his guest house. Considering the gravity of the offence and its repercussions on the life of the woman, the Supreme Court reversed the High Court's order of granting bail to the respondent.

'She was emotionally, mentally and physically wrecked and became totally incapacitated to even think and act like a normal human being. We are certainly of the opinion that this was not a fit case where the sentence awarded should have been suspended and the accused released on bail. The High Court was, thus, totally unjustified in granting bail to the accused, or in suspending the sentence.'

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37. *Shiv Kumar v. State of NCT of Delhi*. [2008] INSC 2169.
38. *Vijay Kumar v. Narendra,* 2002 (9) SCC 364.
39. *Kishori Lal v. Rupa and other* (2004) 7 SCC 638.
40. *Man Singh v. Union of India*, (2004) 13 SCC 42.
41. *Suzanne Marine v. State of Rajasthan*, (2009) 4 SCC 376.

The High Court granted bail to a sitting M.L.A. convicted under Sections 146 and 326 read with Section 149. However when the case came to the Supreme Court as *Kanaka Rekha Naik v. Manoj Kumar,*[42]the apex court took a critical view of the offence. It discussed at length the incidents of rioting in which the respondent was involved and the collateral death of the husband of the appellant. Emphasizing the conviction by the trial court and the requirement for exemplary punishment the court noticed:

> *'Convict Manoj Ku. Pradhan is a responsible person of the locality and he is also a public representative. Commission of riot by him with others cannot be considered lightly. The crime committed by the convicts was not only against the individual victim but also the same was against the society at large. It is required under the law that punishment to be awarded for a crime must not be irrelevant but it should be conformed to and being consisted with the atrocity and brutality with which the crime has been perpetrated.'*

Recognizing the statutory right of an individual to appeal, the court said while Section 389 must be interpreted liberally in normal circumstances it must not be applied in exceptional circumstances. If sentence is not able to be suspended by the court under Section 389, every attempt should be made to decide the case on the merits so as to allow speedy disposal of cases. Even though suspension of sentence is a discretionary power vested in the courts, it is not a matter of course. The appellate court must specifically record the reasons for granting bail in writing.

In the present case, the High Court did not consider all the relevant facts before granting bail to the convict. It based its judgment on the fact that the convict was a sitting M.L.A. which was totally unacceptable. The High Court also did not give a single reason in support of convict's release on bail. The Supreme Court criticized the High Court's reasoning by saying:

> *'In our considered opinion, the High Court ought to have taken the serious nature of allegations, the findings recorded by the trial Court and the alleged involvement of the respondent in more than one case, for deciding as to whether it is a fit case for suspending the sentence awarded by the trial Court and his release on bail during the pendency of the appeal. The impugned order does not record any reason whatsoever except vague observation that nature of allegations have been taken into consideration.'*

In *Stanny Felix Pinto v. M/S Jangid Builders Pvt. Ltd,* [43]the Supreme Court upheld the suspension of sentence of the accused convicted under Section 138 of the Negotiable Instruments Act, 1881 subject to the condition that the convict shall pay a part of the fine within a certified period. The apex court, while dismissing the appeal, held that the High Court's order requiring the convict to pay a part of the fine was in the interest of justice and was appropriate considering that conviction of the appellant under the Negotiable Instruments Act, 1881.

> *'In this case the grievance of the appellant is that he is required by the High Court to remit a huge amount of rupees four lakhs as a condition to suspend the sentence. When considering the total amount of fine imposed by the trial court (twenty lakhs of rupees) there is nothing unjust or unconscionable in imposing such a condition.'*

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42. *Kanaka Rekha Naik v. Manoj Kumar*, (2011) 2 SCC (Cri) 475.
43. *Stanny Felix Pinto v. M/S Jangid Builders Pvt. Ltd.*, (2001) 2 SCC 416.

In the high profile case of *Sanjay Dutt v. State of Maharashtra,*[44]the accused was charged under various sections of Terrorist and Disruptive Activities (Prevention) Act (TADA) and Arms Act. He was subsequently found guilty of offences under Section 3 and Section 7 read with Section 25(1A) and 25(1B) of the Arms Act and was sentenced to 6 years rigorous punishment. The petitioner pleaded that the execution of sentence be suspended using the discretionary powers vested in the court under Section 389 of the Criminal Procedure Code.

It was argued that the petitioner was desirous of contesting election to the House of People from Lucknow Parliamentary Constituency and due to Section 8(3) of the Representation of People Act, 1951, he was precluded from fighting the election. Thus, it was prayed that his conviction should be suspended so as to enable him to fight the elections from the respective constituency.

The counsel for the petitioner, Mr. Harish Salve cited the case of *Navjot Singh Sidhu v. State of Punjab,*[45]where the Supreme Court suspended the conviction of Navjot Singh Sidhu by the High Court after he was acquitted by the trial court under Section 304(2) of the Indian Penal Code. He was an M.P. when he was convicted by the High Court but to conform to his moral standards, he resigned from his post. He could have avoided disqualification under Section 8(3) of the Representation of People Act for 3 months or until the decision of his appeal had he stuck to being the M.P. But he chose to resign from the membership of the Lok Sabha soon after he was being convicted by the High Court and decided to seek a fresh mandate. Considering the voluntary act of Navjot Singh Sidhu and the high moral standard he set in the society, the Supreme Court suspended the conviction by saying:

> *'It was not necessary for the appellant to have resigned from the membership of the Parliament as he could in law continue as M.P. by merely filing an appeal within a period of 3 months and had he adopted such a course he could have easily avoided incurring any disqualification at least till the decision of the appeal. However, he has chosen to adopt a moral path and has set high standards in public life by resigning from his seat and in seeking to get a fresh mandate from the people. In the event prayer made by the appellant is not granted he would suffer irreparable injury as he would not be able to contest for the seat which he held and has fallen vacant only on account of his voluntary resignation which he did on purely moral grounds. Having regard to the entire facts and circumstances mentioned above we are of the opinion that it a fit case where the order of conviction passed by the High Court deserves to be suspended'.*

However, the Supreme Court in Sanjay Dutt's case distinguished Navjot Singh Sidhu's case by saying that:

> *'The learned counsel appearing for the petitioner has placed reliance on the decision of this Court in Navjot Singh Sidhu's case. But in that case, the petitioner was a sitting MP and he could have continued as an MP even after his conviction and sentence in view of Section 8(4) of the Representation of People Act, 1951. The petitioner in Navjot Singh Sidhu's case resigned and expressed his desire to contest the election. In fact, that was a case where the trial court acquitted the petitioner and the High Court, in reversal, found the petitioner guilty. It was in those circumstances this Court granted stay of the order of conviction and sentence in that case.'*

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44. *Sanjay Dutt v. State of Maharashtra*, (2009) 5 SCC 787.
45. *Navjot Singh Sidhu v. State of Punjab*, (2007) 2 SCC 574.

Considering the serious offences Sanjay Dutt was convicted in and the lack of a justifiable reason to suspend his sentence and conviction, the appeal was dismissed.

In *Santhanapandi v. State of Inspector of Police,*[46] where the High Court of Madras while dealing with Section 389 of the Criminal Procedure Code summarized its application:

> *'The prime object of the Code is to see that no innocent be punished. This Court is always to see the prima facie case and to get satisfied its conscience while considering the bail matters. No hard and fast rule can be framed to suspend the sentence imposed, instantly. If some yardstick is fixed, it will amount to, interfering with the judicial discretion of the Hon'ble Judge concerned. In other words, it will amount to directing them to pass orders mechanically, which is not certainly, the object sought to be achieved'.*

46. *Santhanapandi v. State of Inspector of Police*, 1999 (1) CTC 49.

LEGAL ISSUE 3

What are the possible legal remedies for victims of wrongful incarceration, malicious prosecution? A Case Study Advocating for a Uniform Law on compensating victims of such injustice

Questions considered in the findings

1. Identification of the problem of unlawful Incarceration. Differentiate it from abuse of power by distinguishing:
    A. Wrongful Incarceration in Terror Cases
    B. Wrongful Incarceration in Indian Penal Code Offences
2. Is there a bias in these cases against minorities?
3. The Mechanism followed by various countries such as USA to deal with rehabilitation of such accused once they are acquitted.
4. Official acknowledgment of the wrongdoing of the state?
5. Instances when SC and various HCs have awarded compensation to the victims of wrongful Incarceration in India
6. Problem faced by the victims of wrongful Incarceration. *Social Stigma* *financial hardships.*
7. Recognition of rights of those victims so that they can be provided with a good life after they are acquitted. A mechanism to blend them with the society and remove the social Stigma.

    Relevant Sections:

    - Section 169 Criminal Procedure Code
    - Section 436A Criminal Procedure Code

INTRODUCTION TO THE HEINOUS INJUSTICE OF WRONGFUL INCARCERATION

The judgment in *Adambhai Suelemanbhai Ajmeri v. State of Gujrat*[47] (akshardham bomb blast case), where the accused despite having been acquitted and loosing personal liberty,

47. *Adambhai Suelemanbhai Ajmeri v. State of Gujrat*, (2014) 7 SCC 716.

being socially isolated were denied compensation, has left many of us confused about the role of the courts. The question that ought to be addressed is that, is the court abdicated of its responsibility of being the custodian of rights and liberties of the most vulnerable, specially those who have been victims of wrongful convictions, irrespective of precedent or provisions? This role of the court comes from what Justice Bhagwati had once pronounce in the landmark judgment of *Khatri v. State of Bihar*[48]

> *"Why should the Court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty?"*

Dalip Singh v. State of (Govt. of NCT of Delhi)[49]

> *"Serious constitutional and human right violations have been observed by this court in the present case. None of the accused before this court who all come from very poor families, have any previous criminal record. They have suffered detention and trial for an offence they have never committed. In the words of the Hon'ble Supreme Court if civilization is not to perish in this country as it has perished in some others to well known to suffer mention, it is necessary to educate ourselves into accepting that respect for rights of individuals is a true bastion of democracy and therefore, it is necessary for the State to repair the damage done by its officers to the rights of its citizens. (Referring to Rudul Shah)*[50]

The data available in the public domain about wrongful convictions in India has been inadequate. it is the duty of the Court to use such opportunities, in pursuit of rendering complete justice, to signal to State organs that life and personal liberty cannot be abused on whimsical grounds. Providing relief to victims of wrongful convictions is the first step. Compensatory jurisprudence for violation of personal liberty is not new in India and emerged when the Supreme Court, by invoking the right to constitutional remedies under Article 32 in *Rudal Shah v. State of Bihar*, awarded compensation to a victim of the erring and arbitrary State.

Further the right to compensation for wrongful convictions is provided under Article 14(6) of the International Covenant on Civil and Political Rights as well as under Article 10 of the American Convention on Human Rights and Article 3 of the European Convention on Human Rights. In exploring these provisions the Court should also examine conditions required for smooth transitions of persons back into society like housing, transportation, education, skill development and health care in addition to adequate monetary compensation for the years lost. There must also be an official acknowledgment of wrongdoing by the State as recommended by the Innocence Project – this would facilitate the long battle against social stigma.

THE JUDICIAL TREND OF AWARDING COMPENSATION

(A) Wrongful Incarceration

The Supreme Court has more or less always had a uniform opinion that personal liberty shall always be accorded a higher status than sovereign immunity. The

48. *Khatri v. State of Bihar*, 1981 SCC (1) 627.
49. *Dalip Singh v. State of (Govt. of NCT of Delhi)*.
50. *Rudul Sah v. State of Bihar*, AIR 1983 SC 1086

pronouncement in *Bhim Singh v. State of Jammu and Kashmir*[51], the court for the first time held **illegal detention in police custody** was one of the gravest stains on the rights envisaged under Arts. 21 and 22(2)[52]. The court exercised it powers and awarded compensation under Art. 32(2), directed the State to pay Rs. 50,000/- as compensation violation of a constitutional right. However, there have been a fair share of instances where the Supreme Court has resisted in recognizing that principle of compensation for deprived freedom and liberty, the akshardham case being one of those cases.

An absolutely unconscionable wrong was brought to the notice of the court by Free Legal Aid Committee, Hazaribagh administrative lapses of the Authorities was exposed. *Veena Sethi v. State of Bihar*[53] a case had come up before the Supreme Court where prisoners were detained for **a period ranging from 19 years to 37 years**. Arrests had been made and some of the accused had been declared insane at the time, which is in itself a ground for release. While they had been declared insane, no action for their release had been taken by the authorities. It had been held that these prisoners were entitled to being compensated by the State for their illegal detention in contravention of Art. 21 of the constitution.

UNITED STATES: A BENCHMARK FOR THE LAW ON COMPENSATING TO THE WRONGFULLY CONVICTED

The United States has been a benchmark as far as the law on compensating victims of wrongful Incarceration is concerned. Since it's the sovereign States within the US who are empowered to legislate on the issue, as of 2017 there are 32 states including District of Columbia (DC), which have laws that provide monetary or non-monetary compensation to people wrongfully incarcerated (exonerees). In most of these states, exonerees must receive reintegration services, such as counseling, healthcare, employment training, and educational aid. (Montana provides only educational aid.) Also, many states provide compensation for reasonable attorney's fees and litigation costs. This report summarizes the monetary compensation provisions that establish how award amounts are determined and paid out. In the states with exoneree compensation laws, the statutorily prescribed method for determining the amount of an award generally falls into one of three broad categories.

(A) Mechanism of Awarding Compensation in US State Laws

Under these laws, the amount of the award is:

a. indexed to a median, average, or per capita income (three states, including Connecticut);

51. *Bhim Singh v. State of Jammu and Kashmir*, (1985) 4 SCC 677.
52. *Sant Bir v. State of Bihar*, AIR 1982 SC 1470 at 1472. Court remarked that it is shocking to the conscience that a perfectly sane person should have been incarcerated within the walls of a prison for all most 16 years without any justification in law whatsoever. The question of compensation for his illegal detention in contravention of Art. 21 remains yet open.
53. *Veena Sethi v. State of* Bihar, AIR 1983 SC 339.

b. set at the discretion of a certifying entity (e.g., claims commissioner, judge, or board), with or without limits (DC and 14 states, including New York and Massachusetts); or

c. a specified dollar amount per year or per day of incarceration (14 states, including Texas and California). Some state laws also specify the payout method (e.g., lump sum or instalment payments) and the duration of the payout (e.g., 10-year annuity or until paid in full or death).

Determining Monetary Compensation Amount Amount Indexed to Median, Average, or Per Capita Income Three states, Connecticut, Utah, and Virginia have laws that fall under this category. Connecticut. Connecticut law requires the claims commissioner to award a claimant, for each year of incarceration, an amount equal to or up to twice the median household income for the state, as determined by the U. S. Department of Housing and Urban Development, adjusted for inflation using the consumer price index (CPI) for urban consumers. Under the law, this amount is prorated for any partial year the claimant served in incarceration.

I. The commissioner has the discretion to decrease or increase the award amount by 25% based on an assessment of relevant factors, including any of the following evidence that the claimant presents at the hearing:

a. his or her age, income, vocational training, and level of education at the time of conviction;

b. loss of familial relationships;

c. damage to reputation;

d. the severity of the crime for which he or she was convicted and whether he or she was under a death sentence;

e. Whether he or she was required to register as a sex offender and the length of time registered; and

f. other damages arising from or related to the arrest, prosecution, conviction, and incarceration. The legislature must review a compensation award if the claimant requests a review or the award exceeds $20,000.

(B) Set Maximum Adjusted for Inflation Based on Years Served.

In the State of Illinois, the specified maximum award amount, which is adjusted annually for any increase in the CPI, is based on the number of years a person served wrongfully, as follows: 1. Up to five years - $85,350 2. Between five and 14 years - $170,000 3. More than 14 years - $199,150 (705 Ill. Comp. Stat. 505/8) Set Range (Set Minimum and Maximum). In Vermont, the court has the discretion to set monetary damage that ranges from a minimum of $30,000 to a maximum of $60,000 for each year of wrongful incarceration, plus lost wages (Vt. Stat. Ann. tit. 13 § 5574). Specified Dollar Amount per Year or Per Day of Incarceration As shown in Table 1, 11 states specify in statute the amount that must be awarded for each year of wrongful incarceration. Colorado, Texas,

and Washington also have additional amounts for periods served on death row, on parole, or as a registered sex offender. Florida, Louisiana, Mississippi, and North Carolina set aggregate maximums. Hawaii allows an additional amount in extraordinary circumstances. These laws generally provide for a prorated amount for partial years served.

IS SUPREME COURT JURISPRUDENCE IN ADEQUATE? IS THERE A NEED FOR A FORMAL LAW PROTECTING THE INTERESTS OF THE WRONGFULLY CONVICTED?

In *Mangal Singh v. Kishan Singh*, while emphasizing on speedy trial, the Hon'ble Supreme Court observed that,

> *"Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides of the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore, no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence".*

When police registers a case, the State assumes the responsibility of conducting an investigation. Having assumed the responsibility of investigating the truth or veracity of the allegations, which the police receive, the State cannot act, nor can its Investigating agency act, without a sense of impartiality. It is not merely a trial, which has to be impartial. No less important it is that the investigation, too, is impartial. Fairness of trial will carry with it the fairness of investigation and fairness of investigation will carry with it the impartiality in investigation, besides the investigation being efficient, un-biased, not aimed at helping either the prosecution or the defence. In short, an investigation must not suffer from any ulterior motive or hidden agenda to either help a person or harm a person. This is the principle, which Article 21 of the Constitution of India, read with Article 14 thereof, enshrines, when we say that our Constitution guarantees fair trial.

(A) Official Acknowledgments of the wrongdoing of public officials

Though, the court have been generous in awarding compensation, one thing that has more often than not been missing is the culpability of the individuals who were responsible for such incarcerations and prosecutions. Section 211[54] of the Indian Penal Code has very rarely been invoked against public officials who have wrongfully charged and prosecuted innocent civilians, a result of which has been a grave loss of their liberties and ability to lead a decent life free of stigma and isolation.

54. Section 211, Indian Penal Code, 1860.

RECOMMENDATIONS ON THE ISSUES

LEGAL ISSUE I

1. It is recommended that the mandate of the statutory provisions specially section 63 Cr.P.C. should be reasonably invoked in the matters relating to the default of payment of fine resulting into imprisonment.

2. The concerned court in such matters can refer to various High Court and Supreme Court judgements which have drawn the factors relevant in deciding the quantum of sentence in case of default of the payment of fine.

3. The guidelines and the principles laid down in the case of *Shahejadkhan Mahebubkhan Pathan v. State of Gujarat* should be adhered to by the Courts while levying the fine.

    i. The guidelines included that nature of offence, circumstances in which it was committed, the position of the offender and other relevant considerations such as pecuniary circumstances of the accused person as to character, and magnitude of the offence.

    ii. This would prevent arbitrary imposition of fine.

4. Provisions regarding termination of fine should be given a *non-vague* meaning. If an accused completes his default sentence then, his fine should be terminated. But the court takes the resort to proviso attached to section 421(1) of CrPC to issue a warrant to collect fine. The proviso says that the court can extract fine even when the person has completed his default imprisonment, except when - *if the court considers it necessary*, or *has special reasons to do it* and lastly of the *fine has been imposed under s 357*. The clause of necessity and special reasons should be given certain specific or non-vague meaning to prevent the victimisation of the accused.

5. Courts must adhere to the principle that has been laid down by the Supreme Court of India, which stipulates that the fine must be imposed not on the basis of the loss to the victim but the economic situation of the accused must be kept in view. This follows the principle that the fine is a penalty not a sentence.

6. The High Court should not lay down a rigid sentence for 'default in payment of fine' it ought to be distinct for distinct facts and class of offences.

If the person is not economically sound or capable of paying fine, then in cases of death penalty and life imprisonment, fine should not be imposed. Because it serves no social purpose as observed by the Supreme Court itself in *Shakir v. State of Madhya Pradesh*.

i. Section 357 CrPC says that court can order the accused to pay the compensation, but the section doesn't account for the economic whereabouts of the accused. In such a case the the court must harmoniously give meaning to the section that the state should pay the compensation to the victim, thus preventing victimisation of the accused.

ii. Forcing a death penalty convict to pay the compensation serves no purpose, as in the case of his denial to pay, the victim would be left non-rehabilitated, if the language of 357(3) would be followed.

LEGAL ISSUE II

1. The normal principle is that the sentence should be suspended during the pendency of appeal. However, relevant exceptions as have been enunciated in the interpretation of the section 389 Cr.P.C. and related case laws on the subject must be adhered to.

2. The operation of Section 389 must be on the merit of the case as there cannot be a general principle guiding this exercise in all situations.

3. The embedded discretion of the appellate court in the operation of section 389 Cr.P.C. can well be guided by the requirement of recording the reasons in the event of staying the sentence. This exercise must be invoked by the court.

4. There is a need to take special care in invoking this section involving the commission of serious offences and habitual offenders with past criminal records.

5. The Courts are also duty-bound to ascertain the plea of consequences of detention pending appeal by the person seeking stay of conviction.

6. The Courts are also empowered to issue "conditional release" where the matter relates to commission of heinous offence[55].

7. The Courts are also to ensure that the suspension of commission to be a reasoned order. If an unreasoned order was passed by the appellate Court while directing suspension/stay of conviction of accused, it would be set aside[56].

8. The Court is not able to hear criminal appeal in future, by itself would not be the sole ground to release the accused on bail and in case the Court grants

55. *P.P.Mohd. v. S.O. Kerala*, 2006 Cr.L.J. 1906 (1908) (Ker).
56. *Central Bureau of Investigation, New Delhi v. M.N. Sharma*,* AIR 2009 SC 1185.

bail it is necessary to consider the application for bail on its own merit and is also equally necessary for the Court to give reasons therefore[57].

9. The nature of the operation of section 389 implies that the presumption of innocent would not be available to the accused but the court would presume against to be guilty for the offence, unless the court for the valid reasons fines otherwise at the time of suspension of the sentence. The valid reasons may be as under:

    a. Nature of acquisition may against the accused

    b. Manner in which crime is alleged to be committed.

    c. Gravity of offence.

    d. Desirability of releasing the accused on bail.

   The suspension of sentence to be a rare exercise to be invoked in exceptional cases.

   Suspension of sentence in rare cases. – only in exceptional cases the benefit of suspension of sentence under Section 389 of the Code would be granted[58].

10. Though there are conflicting judgments of the Supreme Court of India, the decision tendered in *Kashmira Singh v. State of Punjab* clarifies the operation of section 389 CrPC. The Courts must implement this judgment, where they must gauge at the stage of admission as to the number of years it might take to tender a just verdict. In the case the time gauged is 3-5 years, suspension of sentence must be granted. However, the decision cannot be in the absence of relevant facts like graveness of the offence, sentence imposed by trial court and other relevant material.

    i. The relevant material includes whether the offence falls under a special law, whether the quantum of sentence awarded by the trial court is serious, moral conduct of the accused while he was in custody or even while on bail.

11. The court must strictly differentiate fixed sentences from that of life imprisonment and death, the differentiation will enable the lower courts to make decisions under section 389(3) more reasoned and un-vague.

12. Time already spent in jail must necessarily be an important condition while tendering a suspension of sentence.

LEGAL ISSUE III

1. Jurisdictional Magistrate /Chief judicial Magistrates/Sessions judge shall hold once in a week in each jail/prison for the purpose of effective implementation

57. *S.S. Shetye v. State of Mharashtra*, 2011 CrLJ 132 (133) (Bom) (DB); *Sunil Kumar Sinha v. State of Bihar*.* (2010) 3 SCC (Cri) **(relied on)**.
58. *Ari v. State of W.B.*, * AIR 2009 SC 1564.

of section 436-A of the code of Criminal procedure, 1973. This should be the first step, in at least identifying who might be a victim of wrongful incarceration

2. The Courts in their guidelines should ask the State Government to necessarily depute IPS officers who will periodically look into the status of all under-trial and wrongfully

3. In its sitting in jail, the above judicial officers shall identify the under trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and even inquire into the status of the appeals they have tendered. After complying with the procedure prescribed under section 436-A, pass an appropriate order in jail itself for release of such under trial prisoners who fulfil the requirement of section 436-A for their release immediately.

4. Such jurisdictional Magistrate/Chief judicial Magistrate/Sessions judge shall submit his report of each of such sitting to the Registrar General of the High court, which will prompt the higher judiciary to expedite the process of prisoners suffering long terms of incarceration.

5. The present legal framework does not provide for any measure of support and protection to the wrongfully prosecuted persons. Though, going by the international instruments and laws operating in various countries, there is a strong case to consider the establishment of a **comprehensive assistance scheme to the victims of wrongful prosecution and incarceration.**

6. The concerned States in the Union of India may be requested to formulate a **comprehensive assistance scheme to wrongfully prosecuted and incarceration person** in keeping the following components in view:

    a. Recognition of certain rights to be given to wrongfully prosecuted people.

    b. To envisage the measures of protection against the unfair deal by the criminal justice agencies and the society to the wrongfully prosecuted people.

    c. Determination of pecuniary and non-pecuniary measures including rehabilitation arrangements to wrongful prosecuted people for the loss of their time as prisoners and the consequences associated with it. This would also require the calculations of financial and non-financial aspects of their victimization.

    d. Appropriate orders may also be issued to the State Governments to identify and count the exact number of persons likely to be under wrongful prosecution and incarceration.

    e. The proper documentation of the nature and extent of exonerations resulting from wrongful prosecution may also be undertaken.

f. The best practices dealing with the support system including compensation scheme in various countries need to be carefully studied. It may be noted that any scheme to this category of people must be of unique and distinctive of what we already have under Section 357 of Cr.P.C. It is worth noting that the innocence project in the U.S., the Criminal Justice Act 1988 in the U.K. and the Law Commission in the New Zealand have come out with specific arrangements to compensate the wrongful prosecuted people. In the U.K. the schemes involve to decide quantum of compensation based on various financial and non-financial losses resulting from wrongful incarceration. In the U.S., a majority of the state have implemented the arrangements of compensation which include immediate and long term needs like subsistence, need of housing, medical education and legal services etc.

The U.S. arrangements is also there where such people are provided with "official acknowledgment of wrongful conviction" which helps them against any stigmatizing experiences by the administration or society.

g. The drafting of the compensation scheme of this nature would involve concerted efforts and a long term exercise. If approved in principle, the National Law University Delhi would please to undertake this task.

APPENDIX I—DHC JUDICIAL PRONOUNCEMENTS/ORDERS

REMINDER

D.B. (Appeal) Next Date of hearing: 05.09.2017

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 26469/Crl. Dated: 25/7/17

From:

The Registrar General,
High Court of Delhi,
New Delhi.

To,

Prof. G.S. Bajpai,
Registrar,
National Law University,
Sector 14, Dwarka, Delhi-110078.

Criminal Appeal No. 157/2013

Babloo Chauhan @ Dabloo **....Appellant/s**

Versus

State of Delhi **....Respondent/s**

Appeal U/s. 374 against the judgment/order dated 27.10.2009 & 04.11.2009 passed by Sh. V.K. Bansal, Special Judge: NDPS, Additional Sessions Judge, Rohini Courts, Delhi, in Sessions Case No. 115/08 arising out of FIR No. 95/08, Police Station: Binda Pur, Charge under Section: 302 IPC

Sir,

I am directed to forward herewith for immediate compliance/necessary action a copy of order/judgment dated **10.07.2017** passed by the Hon'ble Division Bench of this Court in the above noted case.

Necessary directions are contained in the enclosed copy of order.

Yours faithfully

Encl: Copy or order/judgment dated **03.03.2017**
02.05.2017 & 10.07.2017 with memo of parties.

Admin Officer, J/(Crl.)
for Registrar General

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL. APPEAL NO. 157 OF 2013

(Arising out Judgement and order dated 27.10.2009 and 04.11.2009 respectively passed by the court of Shri V.K. Bansal, Additional Session Judge, Rohini courts Delhi in. case FIR No. 95/08, P.S. Bindapur U/s. 302 of IPC)

IN RE:

BABLOO CHAUHAN @ DABLOO ….APPELLANT

VERSUS

STATE (GOVT OF N.C.T. OF DELHI) ….RESPONDENT

MEMO OF PARTIES

BABLOO CHAUHAN @ DABLOO
S/O SH. SHIIVDHARI CHAUHAN
R/O VILLAGE-AGHAPUR,
P.O. HAFIZPUR,
P.S. KOTWALI NAGAR,
DISTT. AZAMGARH (U.P.)

…APPELLANTS

VERSUS

STATE (GOVT OF N.C.T. OF DELHI) ….RESPONDENT

DELHI

DATED: 31/01/2013

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 157/2013

BABLOO CHAUHAN @ DABLOO .....Appellant

Through: None

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Rajat Katyal, APP

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R
10.07.2017

As per the office report, reminder has not been issued and a report has not been filed. Let a reminder be issued to Dr. G.S. Bajpai, in terms of the order dated 3.3.2017. A copy of the order dated 3.3.2017 and 2.5.2017 shall be annexed with the reminder.

List on 5.9.2017.

G.S.SISTANI, J

CHANDER SHEKHAR, J

JULY 10, 2017
tp

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 157/2013

BABLOO CHAUHAN @ DABLOO .....Appellant

Through: None

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Varun Goswami, APP for the State

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S. MEHTA

O R D E R
03.03.2017

By the order dated 15th September, 2016, this matter was directed to be listed on 15th November, 2016. However, the same was overlooked by the concerned dealing. Let this mistake be not repeated.

List the case on 2nd May, 2017 in terms of paras 8 and 9 of our order dated 15th September, 2016.

Copy of both these orders be furnished to Dr. G.S. Bajpai, learned Amicus Curiae with the request to submit a report on the issues raised in the order dated 15th September, 2016.

GITA MITTAL, J

I.S. MEHTA, J

MARCH 03, 2017/kr

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 157/2013

BABLOO CHAUHAN @ DABLOO .....Appellant

Through: None.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Rajat Katyal, APP for State.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

O R D E R
02.05.2017

Report has not been received from Dr. G.S. Bajpai. Let the order of 03.03.2017 be complied with. Reminder be issued to Dr. G.S. Bajpai. Relevant orders be provided as per the orders dated 03.03.2017 to Dr. G.S. Bajpai with a request to submit his report.

List on 10.07.2017.

G.S.SISTANI, J.

VINOD GOEL, J.

MAY 02, 2017
"sk"

REMINDER

D.B. (Appeal) Next Date of hearing: 10.07.2017

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 18414/Crl. Dated: 15/5/17

From:

The Registrar General,
High Court of Delhi,
New Delhi.

To,

Prof. G.S. Bajpai, Registrar,
National Law University,
Sector 14, Dwarka, Delhi-110078.

Criminal Appeal No.157/2013

Babloo Chauhan @ Dabloo **....Appellant/s**

Versus

State of Delhi **....Respondent/s**

Appeal U/s.374 against the judgment/order dated 27.10.2009 & 04.11.2009 passed by Sh. V.K. Bansal, Special Judge: NDPS, Additional Sessions Judge, Rohini Courts, Delhi, in Sessions Case No. 115/08 arising out of FIR No. 95/08, Police Station: Binda Pur Charge under Section: 302 IPC.

Sir,

In continuation of this Court's letter No. 9455/Crl. Dated 08.03.2017, I am directed to forward herewith for immediate compliance/necessary action a copy of order/judgment dated **15.09.2016, 03.03.2017 & 02.05.2017** passed by the Hon'ble Divison Bench of this Court in the above noted case.

Necessary directions are contained in the enclosed copy of order.

Yours faithfully

End: Copy or order/judgment dated **15.09.2016, 03.03.2017 & 02.05.2017** with memo of parties.

Admin Officer, J/(Crl.)
for Registrar General

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL. APPEAL NO. 157 OF 2013

(Arising out Judgement and order dated 27.10.2009 and 04.11.2009 respectively passed by the court of Shri V.K. Bansal, Additional Session Judge, Rohini courts Delhi in case FIR No. 95/08, P.S. Bindapur U/s. 302 of IPC)

IN RE:

BABLOO CHAUHAN @ DABLOO ..APPELLANT

VERSUS

STATE (GOVT OF N.C.T. OF DELHI) ..RESPONDENT

MEMO OF PARTIES

BABLOO CHAUHAN @ DABLOO
S/O SH. SHIIVDHARI CHAUHAN
R/O VILLAGE-AGHAPUR,
P.O. HAFIZPUR,
P.S. KOTWALI NAGAR,
DISTT. AZAMGARH (U.P.)

..APPELLANTS

VERSUS

STATE (GOVT OF N.C.T. OF DELHI) .. RESPONDENT

DELHI

DATED: 31/01/2013

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 157/2013

BABLOO CHAUHAN @ DABLOO .....Appellant

Through : Mr. Praveen Chauhan, Mr. Sanjay Chauhan, Mr. Naveen Kumar, Mr. Vijay Kumar, Ms. Jhanvi and Ms. Iti Gupta, Advs.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through : Mr. Varun Goswami, APP.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

O R D E R
15.09.2016

1. By a separate judgment dictated today, we have set aside the judgment dated 27th October, 2009 and order on sentence dated 4th November, 2009 in S.C. No. 115/08 arising out of FIR No. 95/08 registered by P.S. Bindapur. We have noted that apart from the sentence of imprisonment, the learned trial judge imposed a fine of ₹10,000/- upon the appellant. Simultaneously, the trial court directed that in case the appellant defaulted in payment of the fine, he would be required to undergo rigorous imprisonment for one year.

2. Several cases have been brought before us wherein in default of payment of fine, convicts have been sentenced to undergo rigorous imprisonment.

We are noting hereafter some of the appeals decided by the Division Bench presided by one of us *(Gita Mittal, J.)* which had been filed by the convicts convicted for commission of the offence of murder under Section 302 of the IPC and sentences imposed:

Criminal Appeal	*Date of Order on Sentence*	*Imprisonment awarded for commission of offence*	*Fine (₹)*	*Imprisonment in default of payment of fine*
Crl A. 516/2000	31.07.2000	For Life	25,000/-	Simple Imprisonment for Two Years
Crl A. 518/2000	31.07.2000	For Life	25,000/-	Simple Imprisonment for Two Years

Crl A. 352/2000	31.05.2000	For Life	5,000/-	Rigorous Imprisonment for Six Months
Crl A. 526/2000	10.06.2000	For Life	1,000/-	Rigorous Imprisonment for Three Months
Crl A. 385/2000	23.05.2000	For Life	1,000/-	Rigorous Imprisonment for Six Months
Crl A. 435/2000	23.05.2000	For Life	1,000/-	Rigorous Imprisonment for Six Months

3. We have found that so far as imprisonment in default is concerned, no reasoning has been assigned in any of the cases. There is no methodology adopted by the trial courts in this regard, perhaps under the impression that the convict has been sentenced to life imprisonment (life meaning remainder of natural life of the convict) and therefore, the default sentence is inconsequential. But this may not always be so, say for instance where a fixed tenure sentence is awarded to the convict for commission of an offence. In our view, there has to be some method and guideline for awarding default sentence.

4. No reasoning is assigned for the quantification of fine as well. In some cases, the guideline is to be found by the limits of statutory prescription but where there is no limit and prescription, no reasoning is offered by the trial courts.

5. We have also come across instances when the court has found that the convict has been wrongly implicated and is acquitted after long years of incarceration. As a result, the person suffers grave violation of his right to life under Article 21 of the Constitution of India. During the period of long incarceration, not only the immediate rights of the convict are affected but his family, property, livelihood, social relations and career prospects are completely devastated. To our mind, this is an important legal issue and needs to be examined.

6. These matters cannot therefore, end at simple acquittals and have to be examined from the perspective of appropriate compensation legally permissible to an accused person or his family.

7. Another aspect of criminal jurisdiction which is greatly troubling us is the completely restricted use of Section 389 CrPC; the importance of suspending the sentence of persons during the pendency of the appeal and the parameters on which such orders must be premised. This issue assumes importance as adjudication may take some time whilst the appellants may have an arguable case on merits and fair chance of acquittal, yet are denied suspension of sentence. As a result, they are released after years of incarceration.

8. Before parting with the present case, we deem it necessary to conduct an examination of these issues. Professor G.S. Bajpai, Registrar, National Law University, Delhi (an authority on criminal law) has recently co-authored the book titled "*Victim Justice – A*

Paradigm Shift in Criminal Justice System in India". Professor Bajpai would be conversant about the above aspects.

9. We therefore, appoint Prof. G.S. Bajpai, Registrar, National Law University, Delhi as *amicus curiae* in this matter to facilitate our consideration.

Let a copy of this order be furnished to him by the Registry, to enable him to submit a comprehensive report in this regard before the court within a period of eight weeks from today.

List on 15th November, 2016 at 2:15 pm for this limited purpose.

GITA MITTAL, J

P.S. TEJ, J

SEPTEMBER 15, 2016/aj

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRLA. 157/2013

BABLOO CHAUHAN @ DABLOO .....Appellant

Through : None

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through : Mr. Varun Goswami, APP for the State

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S. MEHTA

O R D E R
03.03.2017

By the order dated 15th September, 2016, this matter was directed to be listed on 15th November, 2016. However, the same was overlooked by the concerned dealing. Let this mistake be not repeated.

List the case on 2nd May, 2017 in terms of paras 8 and 9 of our order dated 15th September, 2016.

Copy of both these orders be furnished to Dr. G.S. Bajpai, learned Amicus Curiae with the request to submit a report on the issues raised in the order dated 15th September, 2016.

GITA MITTAL, J

I.S. MEHTA, J

MARCH 03, 2017/kr

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 157/2013

BABLOO CHAUHAN @ DABLOO .....Appellant

Through: None.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Rajat Katyal, APP for State.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

O R D E R
02.05.2017

Report has not been received from Dr. G.S. Bajpai. Let the order of 03.03.2017 be complied with. Reminder be issued to Dr. G.S. Bajpai. Relevant orders be provided as per the orders dated 03.03.2017 to Dr. G.S. Bajpai with a request to submit his report.

List on 10.07.2017.

G.S.SISTANI, J.

VINOD GOEL, J.

MAY 02, 2017
"sk"

MOST URGENT

D.B. (Appeal) Next Date of hearing: 02.05.2017

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 9455/Crl. Dated: 8/3/17

From:

The Registrar General,
High Court of Delhi,
New Delhi.

To,

Prof. G.S. Bajpai,
Registrar,
National Law University,
Sector 14, Dwarka, Delhi-110078.

Criminal Appeal No.157/2013

Babloo Chauhan @ Dabloo **....Appellant/s**

Versus

State of Delhi **....Respondent/s**

Appeal U/s. 374 against the judgment/order dated 27.10.2009 & 04.11.2009 passed by Sh. V.K. Bansal, Special Judge: NDPS, Additional Sessions Judge, Rohini Courts, Delhi, in Sessions Case No. 115/08 arising out of FIR No. 95/08, Police Station: Binda Pur Charge under Section: 302 IPC.

Sir,

I am directed to forward herewith for immediate compliance/necessary action a copy of order/judgment dated **15.09.2016 & 03.03.2017** passed by the Hon'ble Divison Bench of this Court in the above noted case.

Necessary directions are contained in the enclosed copy of order.

Yours faithfully

End: Copy or order/judgment dated **15.09.2016 & 03.03.2017** with memo of parties

Admin Officer, J/(Crl.)
for Registrar General

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL. APPEAL NO. 157 OF 2013

(Arising out Judgement and order dated 27.10.2009 and 04.11.2009 respectively passed by the court of Shri V.K. Bansal, Additional Session Judge, Rohini courts Delhi in case FIR No. 95/08, P.S. Bindapur U/s. 302 of IPC)

IN RE:

BABLOO CHAUHAN @ DABLOO ..APPELLANT

VERSUS

STATE (GOVT OF N.C.T. OF DELHI) ..RESPONDENT

MEMO OF PARTIES

BABLOO CHAUHAN @ DABLOO
S/O SH. SHIIVDHARI CHAUHAN
R/O VILLAGE-AGHAPUR,
P.O. HAFIZPUR,
P.S. KOTWALI NAGAR,
DISTT. AZAMGARH (U.P.)

..APPELLANTS

VERSUS

STATE (GOVT OF N.C.T. OF DELHI) ..RESPONDENT

DELHI
DATED: 31/01/2013

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 157/2013

BABLOO CHAUHAN @ DABLOO .....Appellant

Through: None

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Varun Goswami, APP for the State

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S. MEHTA

O R D E R
03.03.2017

By the order dated 15th September, 2016, this matter was directed to be listed on 15th November, 2016. However, the same was overlooked by the concerned dealing. Let this mistake be not repeated.

List the case on 2nd May, 2017 in terms of paras 8 and 9 of our order dated 15th September, 2016.

Copy of both these orders be furnished to Dr. G.S. Bajpai, learned Amicus Curiae with the request to submit a report on the issues raised in the order dated 15th September, 2016.

GITA MITTAL, J

I.S. MEHTA,J

MARCH 03, 2017/kr

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A.No. 157/2013

Date of decision : 15th September, 2016

BABLOO CHAUHAN @ DABLOO .....Appellant

Through : Mr. Praveen Chauhan, Mr. Sanjay Chauhan, Mr. Naveen Kumar, Mr. Vijay Kumar, Ms. Jhanvi and Ms. Iti Gupta, Advs.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through : Mr. Varun Goswami, APP.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S. TEJI

JUDGMENT (ORAL)

GITA MITTAL, J.

1. By way of the present appeal, the appellant has assailed his conviction by a judgment dated 27th of October 2009 for commission of an offence under Section 302 of the Indian Penal Code *(hereafter 'IPC')* with which he was charged. The appellant also assails the order on sentence dated 4th of November 2009 whereby the court sentenced the appellant to life imprisonment with fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment of one year.

2. It appears that on the morning of 9th of April 2008, at about 7:23 am, the wireless operator from the police control room informed the police station Bindapur that a murder had taken place at Sector-3, Phase-III, Dwarka on the Matiala Road near water tank. This information was logged as DD No. 13 A (Ex.PW20/A).

A copy of this report was handed over to SI Shodan Singh and Constable Surender who proceeded to the spot. Information was also given to the SHO.

3. At the spot, as per SI Shodan Singh (PW-14), the dead body of one Kayamuddin, aged about 26 years, with his neck cut was found. Injuries were noted on his nose and chest.

4. In the meantime, the SHO Inspector Ranjit Kumar (PW-20) also reached the spot. At a distance of about 6-7 feet of the dead body, the police found three quarters bottle of alcohol of the make *Bonnie,* out of which two were empty while there was a

small quantity of liquid in third bottle; two plastic tumblers of 250 millilitres each. These were seized vide a memo Ex.PW14/C.

Also at the same spot, the police found four empty polythene bags and some *chowmein* in a polythene which were seized vide memo Ex.PW14/B were also found there. The seizure memos were handwritten by the SHO Inspector Ranjit Kumar (PW-20) and were duly witnessed by SI Shodan Singh (PW-14).

5. At the same time, on the 9th of April 2008, Inspector Ranjit Kumar (PW-20) also seized earth control from the spot vide seizure memo Ex.PW14/D and blood stained soil from the spot where the deceased was found vide Ex.PW14/E. All these documents were witnessed by SI Shodan Singh (PW-14).

6. The crime team was also summoned to the spot. The Mobile Crime Team of the West District, *inter alia,* noted the name of the deceased as Kayamuddin, the place of the offence, the Modus Operandi of the Crime including the clothing worn by the deceased and the Exhibits, which may be seized by the IO. Photographs of the body were also taken. The report of the Crime Team dated 9th April, 2008, under the signatures of ASI Gulshan Kumar (PW8), Incharge of the Mobile Crime Team, West District is in evidence as Ex. PW 8/A.

7. Mohd. Saleem (PW-1), Kayamuddin's elder brother and a resident of that area also arrived at the spot. SI Shodan Singh recorded his statement (Ex.PWl/A) on which he endorsed the *rukka* and dispatched the same through Constable Surender for registration of the case.

8. At about 9:30 am, Police Station Bindapur registered FIR No.95/08 (Ex.PW15/A) under Sections 302/34 IPC. The police also logged DD No.16A at 9:30 am (Ex.PW15/B) regarding registration of the FIR.

9. After registration of the FIR, the investigation of the case was entrusted to SHO Ranjit Kumar (PW-20).

10. The autopsy on the body was conducted at the Department of Deen Dayal Upadhyaya Hospital on the 10th of April 2008 from 11:55 am to 12:40 pm. The report (Ex.PW10/A) found the following injuries on the body of the deceased :

> "1. Cut throat injury present anterior aspect of neck with widening with exposing oesophagus, trachea and large blood vessels of neck in cut state. The injury appeared to be spindle shape with size 13 cm x 5 cm into deep to trachea with a sharp margins with collection of sufficient amount of dark reddish blood clots in lumen of trachea.
>
> 2. Whole nose is compressed, disfigured crushed and lacerated with fractured of neck bone.
>
> 3. One lacerated wound of the size 3 cm x 2 cm at right angle of mouth.
>
> 4. One incised wound presented at right eye-brow size 2 cm x 1 cm.
>
> 5. Abraded contusion size 3 cm x 2 cm present over upper part of right shoulder.

6. A crossed shape incised wound (postmortem in nature) present over the upper part of chest measuring 10 x .5 cm, each part of the cross.

xxx xxx xxx"

Arrest of the accused

11. Mr. Praveen Chauhan, learned counsel for the appellant has drawn our attention to material gaps in the prosecution case. It is submitted that there is no linkage at all so far as commission of the offence to the arrest of the appellant is concerned.

12. The record of the case would show that after the 9th of April 2008, the prosecution case immediately shifts to the 15th of April 2008 when the evidence would show that the appellant was arrested in Azamgarh by SI Naveen Kumar (PW-11) who was accompanied by HC Ashok Kumar (PW-7) and Ct. Harphool. It is in evidence that these Delhi Police Personnel reached PS Kotwali Nagar in Azamgarh and learnt that the appellant was in judicial custody as a preventive measure due to the Lok Sabha Elections in the area. The appellant was arrested at around 1:00 pm at Azamgarh after he was released from jail; produced before the Chief Judicial Magistrate, Azamgarh and brought to Delhi on transit remand pursuant to the CJM's order dated 15th April, 2008.

Disclosures relied upon by the prosecution

13. So far as the main incriminating evidence against the appellant is concerned, the case of the prosecution rests primarily on two disclosure statements attributed to the appellant. The first disclosure statement features in the testimony of HC Ashok Kumar (PW-7) who stated that after apprehension, the appellant was interrogated by SI Naveen Kumar (PW-11) in Azamgarh itself and during the course of this interrogation, the appellant made a disclosure statement (Ex.PW7/A).

The appellant was arrested on 15th of April 2008 vide Ex.PW7/B after his personal search vide memo Ex.PW7/C.

The memos of search, arrest and disclosure were prepared by SI Naveen Kumar (PW-11) and witnessed by HC Ashok Kumar (PW-7).

14. It has been pointed out by Mr. Varun Goswami, learned APP for the State that in this disclosure statement, which is made at Azamgarh, the appellant made a reference to a knife which he could get recovered. However, it is not disputed that no recovery was effected pursuant to this disclosure.

15. The appellant was thereafter produced before the concerned Metropolitan Magistrate in Delhi on 16th of April 2008 at 9:30 pm when the police was granted three days police custody. It is during this period of police remand, that a second disclosure statement dated 17th April, 2008 (Ex.PW20/E) is attributed to the appellant wherein he is alleged to have disclosed that he could point out the place of occurrence and get a knife as well as the shirt which he was wearing at the time, recovered from the place of its concealment. This disclosure was scribed by the SHO and witnessed by SI Naveen Kumar (PW-11).

We find that in the first disclosure statement i.e. Ex.PW7/A, there is no mention of any of these facts.

16. The prosecution has relied upon the memo (Ex.PW13/A) which records that the appellant pointed out the spot and got recovered a blood stained knife from below dry grass in a cluster of eucalyptus *('safeda')* trees near the wall of the Netaji Subhash Institute. A sketch of the recovered knife (Ex.PW13/B) was prepared on 18th April, 2008. The knife was seized vide seizure memo dated 18th April, 2008 (Ex.PWl 3/C).

The prosecution also relies on recovery of a blood stained shirt, allegedly recovered on the pointing out of the appellant vide Ex.PW13/D.

These documents are in the handwriting of the investigating officer (PW-20) and witnessed by ASI Zile Singh (PW-13).

17. Mr. Chauhan, Id. counsel for the appellant emphasises that these recoveries were effected on the 18th of April 2008 during his period of police remand.

18. After completion of the investigation, the police filed a chargesheet under Section 173 of the Code of Criminal Procedure *(hereafter 'CrPC').* After consideration of the material on record, by an order dated 11th July, 2008, the learned trial judge framed charge against the appellant for commission of the offence under Section 302 IPC.

19. The appellant pleaded not guilty and claimed trial.

20. In support of its case, the prosecution examined 22 witnesses. After consideration of the evidence led by the prosecution and the statement of the appellant under Section 313 of the Cr.P.C., the learned trial judge by the judgment dated 27th September, 2009 found the appellant guilty of commission of offences with which he was charged. As a result, by the order dated 4th of November, 2009, the appellant was sentenced to undergo life imprisonment and fine of ₹10,000/-, in default to undergo rigorous imprisonment of one year.

Challenge in the appeal

21. The appellant has assailed his conviction and sentence by way of present appeal primarily on the ground that there is no credible evidence to support the guilt of the appellant for commission of the offences with which he was charged. Mr. Praveen Chauhan, Id. counsel for the appellant has vehemently contended that the prosecution case rests on circumstantial evidence but the prosecution has failed to prove an unbroken chain of circumstances pointing to the guilt of the appellant. It is submitted that there is no reliable evidence of the deceased having been last seen alive in the company of the appellant shortly before he was murdered. It is further submitted that the investigation in the case is hopelessly deficient and in fact, the police is guilty of having padded up the investigation to support an untenable case against the appellant.

Ld. counsel for the appellant submits that the prosecution has miserably failed to establish any motive for the murder.

We propose to consider the challenge laid by the appellant submission-wise.

Challenge to the disclosures and recoveries

22. The prosecution has relied on the recovery of the blood stained knife and the blood stained shirt at the instance and pointing out of the appellant. Let us consider the evidence led in support thereof.

23. So far as the seizure of the shirt is concerned, it was seized vide memo dated 18th April, 2009 (Ex.PW13/D) recorded to support this recovery. The memo records that a grey coloured *bush shirt* having white stripes was recovered from a room on the first floor of the property No. C-47, Sector-3, Phase-III, Dwarka, Delhi wrapped in white polythene from amongst some old clothes lying below a *Charpoy* (cot). Ex.PW13/D notes that there were blood stains on the chest area and right sleeve of the *bush shirt.* After its recovery, the *bush shirt* was put in a polythene, and a *pulanda* made thereof in a white cloth. The *pulanda* was produced in court while recording the statement of ASI Zile Singh (PW-13) as parcel no. 2 having the seal of SB, FSL. On opening the sealed parcel, a shirt and white cloth was taken out therefrom.

24. Mr. Praveen Chauhan, learned counsel for the appellant would contend that there was tampering with the *pulanda* inasmuch as the polythene in which the shirt was wrapped was not in this parcel.

25. Mr. Varun Goswami, learned APP for the State has drawn our attention to the testimony of Inspector Ranjit Kumar (PW-20) who has stated that on 30th of May, 2008, he had sent the seized exhibits to the Forensic Science Laboratory, Rohini, Delhi (FSL) vide R.C. No. 19/21/08 and 20/21/08 through a police constable. The investigating agency has proved the dispatch of these articles and their receipt by the FSL as Ex.PW6/D. The articles include parcel no.2 which was then sealed with the seal of 'RFC' containing one shirt having blood stains which was described as *"blood stained shirt of accused Babloo Chauhan''* kept in a *"polythene"*.

26. The report of Ms. Shashi Bala, Senior Scientific Officer, Forensic Science Laboratory, Rohini; the biological report (Ex.PW20/F) and the serological report (Ex.PW20/G) and the report of Ms. Kavita Goel, Senior Scientific Assistant (Chemistry) FSL, Rohini, Delhi (Ex.PW20/H) were tendered in evidence by Insp Ranjit Kumar (PW-20).

27. The report of the FSL dated 5th September, 2008 (Ex.PW20/A) has reported the presence of human blood on the shirt, though it could not be identified by grouping.

28. It would therefore, appear that the polythene in which the shirt was wrapped did reach the FSL but there is nothing on record to show what happened to the polythene thereafter lending credence to the contention of the defence that there may have been tampering with the articles.

29. We now examine the seizure of the knife relied upon by the prosecution on the 18th of April 2008 vide Ex.PW13/C. In this regard, it becomes necessary to consider the testimony of Inspector Ranjit Kumar (PW-20). This witness has stated that after recovery of the knife from some dry grass in a cluster of eucalyptus trees near the wall of Netaji Subhash Institute near the DDA Park, he had prepared a sketch of the knife - Ex.PW13/B. Thereafter the knife was carefully kept in white paper; put in a white cloth as a *pulanda* which was sealed with the seal of 'RK'. This seizure was effected vide memo Ex.PW13/C which was duly signed by him.

30. We may note that, so far as the serological examination of the knife was concerned, by its report dated 5th of September 2008 (Ex.PW20/G), the laboratory has reported the existence of human blood on the knife as well, though the group could not be identified.

31. So far as the investigation *qua* weapon of the offence is concerned, though the police has relied upon the recovery of the knife, however, there is no evidence on record of the knife having been placed before the doctor who conducted the autopsy on the body of the deceased for an opinion as to whether the knife could have been the weapon of offence. No effort was thus made to connect the recovered knife to the commission of the offence.

32. The prosecution has claimed that *pulanda* containing the knife was also sent by the investigating agency to the FSL on the 30th of May 2008 and has been described as parcel '1' being the cloth parcel sealed with the seal of 'RK'. This parcel contained a knife which was described by the FSL as *"one of metallic knife having rusty brown stains"*.

Mr. Praveen Chauhan, ld. counsel for the appellant has vehemently contended that this knife was not the knife which was allegedly sealed on the 18th of April 2008 inasmuch as the knife in the parcel received by the FSL was not wrapped in a white paper.

33. When Dr. B.N. Mishra (PW-10) who conducted the post-mortem, appeared in the witness box on 2nd April, 2009, parcel no.1 having seal of FSL SB was produced by the MHCM and was opened in court, when one knife having some stains was taken out and shown to the doctor. He was asked to opine as to whether the injuries on the body of the deceased could have been caused by the weapon which was marked as Ex.P-1. The witness stated that the injuries found on the dead body could be caused by the weapon (Ex.P-1).

34. It is again pointed out by Id. counsel for the appellant that the knife produced from the *pulanda* in court was not found wrapped in any paper.

35. We may note the categorical testimony of Inspector Ranjit Kumar (PW-20) on this very issue that after preparation of the sketch of the knife, he had wrapped it in a white paper, put it in a white cloth and thereafter sealed it with a seal of 'RK' and seized it vide seizure memo Ex.PW13/C.

36. In this context, our attention is drawn to the testimony of ASI Zile Singh (PW-13), who has claimed to have witnessed the recovery of the knife on the 18th of April 2008 and its handling thereafter. In the witness box, PW-13 stated that he could identify the recovered case property if shown to him. Consequently, the sealed parcel having a court seal was directed to be produced and opened. We find that the record notes that the parcel when opened *"from the envelope, one knife wrapped in the white paper is taken out"*. When the same was shown to the witness PW-13, he identified it as the same knife which the accused got recovered. The knife was exhibited as Ex.P-1 while the white paper was separately exhibited as Ex.P-2.

37. The prosecution is unable to explain that if the knife recovered on 18th April, 2008, was actually the one sent to the FSL or produced for the opinion of Dr. B.N.

Mishra (PW-10) on 6th of April 2009, then what happened to the white paper with which the knife was wrapped?

38. Mr. Varun Goswami, ld. APP for the State would want us to accept the explanation that it is in the evidence of Inspector Ranjit Kumar that the seal of 'RK' was intact on the parcel and the parcel was cut from one side and therefore, it would appear that the paper had remained inside the *pulanda* while only the knife was taken out. Unfortunately, the testimony of the witness does not support this explanation. We find that the FSL has very carefully noted the presence of the polythene in which the shirt was marked and even given it a separate exhibit mark. If the position was as expressed by Mr. Goswami, the Forensic Science Laboratory would have given a note and given an exhibit mark to the paper in which the knife was wrapped as well. The explanation for the missing paper by Mr. Varun Goswami, learned APP for the State propounded for the first time before us is clearly not acceptable. There is thus merit in the appellant's challenge to the authenticity of the recovery of the knife and to all investigation steps relating thereto.

39. There is yet another matter of import which compels us to doubt the genuineness of this recovery. According to the prosecution the recovery of the knife was effected from western side of DDA Land Sector-3, Phase-III, Dwarka, Delhi. It is in the testimony of ASI Zile Singh (PW-13) that the knife was recovered near the boundary wall of the Netaji Subhash Institute of Technology by the side of the road from *"underneath the heap of dry grass which was between the eucalyptus trees".* ASI Zile Singh is categorical that the knife had sharp edges and was having blood stains on it. This statement is fully corroborated by Inspector Ranjit Kumar (PW-20).

40. We find that the memo Ex.PW13/C has recorded that the knife was found concealed below dry grass amongst the eucalyptus trees near the NSIT wall. Ex.PW13/C has also carefully recorded that blood was in substantial quantity on the blade of the knife.

41. It is nobody's case that after commission of the offence, the alleged murderer waited at the spot for the blood to dry on it before concealing the knife. It can be reasonably accepted that the knife would have been hidden at the earliest and the murderer having flown from the spot in order to escape detection. If the knife had been concealed in the manner alleged, there can be no doubt at all that dry grass would have stuck to the blood on the blade of the knife and would have been present on the knife when it was got recovered at the instance of the appellant. There is no mention of dried grass on the blade of the knife in Ex.PW13/C. The Forensic Science report (Ex.PW20/G) also does not mention presence of dry grass on the blade of the knife which was examined by it. The knife when produced from the parcel before ASI Zile Singh (PW-13) also did not have any grass on it. The record does not contain any mention of grass even in the *pulanda.*

42. In fact, PW-13 has unequivocally stated in his cross-examination that no grass was found stuck to the blade of the knife. For all these reasons, we therefore, find substance in the contention of learned counsel for the appellant that this court ought to disbelieve the recovery of the knife at the instance of the appellant.

43. The appellant stood arrested and was in police custody which the disclosures were made and alleged recoveries were effected. The recoveries being disbelieved, the

bar contained in Sections 24 to 27 of the Evidence Act renders Ex.PW7/A and Ex.PW20/E completely inadmissible in evidence.

Evidence of last seen

44. One more circumstance which has been heavily relied upon by the prosecution to bring home the guilt of the appellant is the oral evidence of the deceased having been last seen alive in the company of the appellant before he was murdered.

45. We find that Inspector Ranjit Kumar (PW-20) has stated that when he reached the spot in the morning of 9th of April 2008, he had called 10 or 12 persons from the area. He had recorded the statement of one lady Sheela (PW-3) and her son Rinku (PW-4). The investigating officer is categorical that other than recording the testimony of PW-3 on the spot, he had recorded the testimony of the relevant witnesses under Section 161 Cr.P.C. only at the police station.

46. Sheela (PW-3) has appeared in the witness box and has categorically stated that police did not make any inquires at the spot but had made inquiries from her only at her residence. She is also categorical that her statement was not recorded on the date when the body was recovered i.e. on the 9th of April 2008 but on the day after the date of discovery of the dead body.

47. Inspector Ranjit Kumar (PW-20) is further controverted by the testimony of Rinku (PW-4) who stated that he had not visited the police station even once and that his statement was recorded at some street corner *('nukkar').*

48. So far as the evidence of the deceased having been last seen alive in the company of the appellant is concerned, the prosecution has relied upon the testimony of Sheela (PW-3). We find that Sheela (PW-3) has made contradictory statements. She has stated that on the night intervening 8th/9th of April 2008, she had gone to attend a ladies *sangeet* programme and *lagan* ceremony at the house of one Ramphal, a neighbour. At about 0045 hrs, her son Rinku (PW-4), who works in a pickle factory, came to Ramphal's house to escort her home. While they were returning from the programme, her son Rinku pointed out to her that Babloo Chauhan (appellant) and the deceased Kayamuddin were going towards the DDA flats. The witness explained that she knew Kayamuddin before that date for the reason that he was also a resident of their colony. In cross-examination, PW-3 disclosed that when she had seen him going with the appellant, Kayamuddin was wearing a light blue colour *Banyan.* In the same breath, PW-3 states that she could not notice the colour of his pant as it was dark. She could not identify the colour of Babloo Chauhan's shirt also on account of darkness.

49. On the other hand, her son Rinku, appearing as PW-4, has claimed that he could see the appellant and Kayamuddin clearly as there was proper lighting. He has submitted that Kayamuddin was wearing a *Sandoz banyan* but he could not remember its colour and that he was wearing jeans at that time. This witness had no recollection at all of the appellant's clothes.

50. Mr. Praveen Chauhan, learned counsel for the appellant has staunchly contended that the witnesses had not only seen the body of the deceased but had also been shown the photographs of the dead body which enabled them to affirmatively state what

deceased Kayamuddin was wearing. We find that PW-3 has in fact categorically stated that she had seen the dead body of Kayamuddin.

51. We find that PW-3 has clearly stated that it was dark and it was not possible to notice the clothes or colour of what appellant was allegedly wearing. The witnesses are referring to spotting the appellant at 0045 hrs. which is in the dead of the night. The very fact that both witnesses recollect the apparel worn by the deceased (whom they later saw) and do not testify about the appellant's clothes establish that it was dark. The testimony of PW-3 and PW-4 to the effect that they had seen the appellant with the deceased, therefore, must be doubted keeping in view the evidence of the darkness at the time when these witness were allegedly returning home.

52. In the post-mortem report (Ex.PW10/A), the doctor had opined time of death as *"one and a half days prior to the post-mortem examination"* which would take us to around midnight of 8th of April 2008.

53. The prosecution has relied on recoveries from the spot in the immediate proximity of the body of the deceased Kayamuddin which include three quarter bottles of the alcohol of the make *Bonnie* out of which two were empty while the third still contained a small quantity of liquid; two plastic tumblers; four empty polythene bags as well as a small quantity of *chowmein* still lying in one of the polythenes. These articles were recovered at a distance of barely about 6-7 feet of the dead body clearly supporting their consumption at the spot where the dead body was found.

54. As per the FSL report dated 10th of July 2009 (Ex.PW20/H), there was yellow coloured transparent liquid volume kept in the glass bottle labelled as *Bonnie Special Whisky* which on chemical examination was discovered to contain *ethyl alcohol.* The viscera examination of the deceased detected some *ethyl alcohol* in the stomach; piece of small intestine, liver, spleen and kidney.

55. As per the post-mortem report (Ex.PW10/A), the stomach contained about 100 millilitres of digested food. The doctor has also noted the smell of alcohol from the dead body.

56. Even if PW-3 and PW-4 were to be believed that they had seen the deceased in the company of the appellant at 0045 hrs, it is obvious that the deceased has consumed alcohol and food with somebody at the place where his body was discovered before his death, which alcohol had sufficient time to spread all over his body and the food to reach the stomach as well.

57. The presence of more than one glass, three bottles of alcohol, empty polythene bags as well as partially consumed polythene bag of *chowmein* coupled with the presence of alcohol in the viscera of the deceased as well as the smell of alcohol from his body establish that the appellant had consumed alcohol in company at the spot before he was murdered. The post-mortem report has confirmed that food had been consumed by the appellant also.

58. It was important for the police to ascertain who were the persons who were with him when he had consumed the alcohol and the food. There is no evidence which would establish the presence of the appellant with the deceased at the spot where he had consumed the liquor and the food or thereafter. Therefore, even if the testimony of PW-3

and PW-4 that they had seen the appellant with the deceased together that night was accepted, it would be of no consequence inasmuch as the deceased was in the company of some person at the spot whose identity is not known. The prosecution has therefore, been unable to effectively establish that the deceased was last seen alive in the company of the appellant.

Motive

59. On critical aspect of the case in fact completely contradicts the rest of the prosecution case and in fact exonerates the appellant. As per the prosecution case, Mohd. Saleem (PW-1) told the police that his deceased brother - Kayamuddin had a quarrel with the appellant -Babloo Chauhan on 7th April, 2008 at about 6:00 pm. This dispute could be settled only due to intervention of their father Mohd. A lam (PW-2). While departing, Babloo Chauhan had threatened Kayamuddin that he would be killed within a day or two *("Tu kal se parso tak is duniya me nahi rahega").* We may note that this is the only attribution of motive to the appellant Babloo Chauhan for commission of the offence.

60. To corroborate PW-1, the prosecution also examined Mohd. Alam (PW-2) - the father of Kayamuddin. According to Mohd. Alam, in the fight with the deceased on the 7th of April 2008, Babloo Chauhan @ Dabloo had threatened that he would finish the deceased within one or two days ("*Mem ek, do din ke andar-andar, iska kam kar doong")*

61. Mr. Praveen Chauhan, learned counsel for the appellant has however, drawn our attention to the material divergence in the exact words which have been attributed to the appellant by these witnesses.

62. But even if we accept the attribution of the alleged threat to the appellant, clearly, the investigating agency has sought to establish a mutually destructive case against the appellant.

63. If the appellant had actually issued threats attributed to him, the deceased Kayamuddin would not have been walking in the streets of the colony in the middle of the night with the arm of the appellant around his neck *(as deposed by PW-4).*

64. It is not conceivable that the deceased would have indulged in a merry making bout with the appellant who threatened to kill him barely a day prior and enjoyed drinks and snacks with him, as is evidenced by the recovery of the liquor bottles, glasses and *chowmein* from the spot.

65. Therefore, if we believe the testimony of motive of PW-1 and PW-2, the testimony of last seen together by PW-3 and PW-4 has to be completely discarded. If the evidence of last seen as deposed by PW-3 and PW-4 is accepted, the entire evidence of PW-1 and PW-2 has to be rejected. Then even the recoveries of liquor bottles, glasses and the *chowmein* would have to be disbelieved. The prosecution has clearly led no credible and acceptable evidence of either motive or last seen.

Defective investigation

66. We may note that there is much in the case which would show that investigation was not only deficient but was infact faulty. The prosecution has proved on record the photographs of the spot which include those of the dead body. We find in the

photographs Ex.PW8/9, there is a pair of *chappals* lying near the corpse on the ground. The seizure memos proved on record do not disclose seizure of any *chappals.* No effort was also made to track the owner of these *chappals.*

67. Interestingly, even the FIR No.95/08 was registered not only under Section 302 but under Section 34 as well in these circumstances.

68. We also find that while the police has proved the road certificate relating to the shirt and the knife from the *malkhana* to the FSL however, the police has failed to establish the deposit of the knife and a shirt in the *malkhana.* This is a serious lapse and casts doubt on these recoveries.

69. We also find that Inspector Ranjit Kumar (PW-20) has stated in his evidence that he made no inquiries from the *chowkidar* in the park or the guards in the colony with regard to the incident. He has also given no evidence and made no efforts to lift fingerprints from the knife which would have been the valuable inputs so far as the commission of the offence is concerned.

70. No investigation has been carried out with regard to the bottles, glasses and the polythene bags which were recovered. These articles which have been recovered from the spot, clearly suggest the presence of more than one person. This assumes significance inasmuch as the FSL has detected ethyl alcohol, a component of liquor, in the recovered glass bottles labelled by manufacturer *Bonnie special* whisky; stomach and small intestine of the deceased as well as in the pieces of the liver, spleen and kidney of the deceased.

Result

71. In view thereof, the judgment of the trial court dated 27th October, 2009 and order on sentence dated 4th November, 2009 in S.C. No. 115/08 arising out of FIR No. 95/08 registered by P.S. Bindapur are hereby set aside and quashed. We direct that the appellant be set at liberty forthwith, if not wanted in any other case.

GITA MITTAL, J

P.S. TEJI,

SEPTEMBER 15, 2016
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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 157/2013

BABLOO CHAUHAN @ DABLOO .....Appellant

Through : Mr. Praveen Chauhan, Mr. Sanjay Chauhan, Mr. Naveen Kumar, Mr. Vijay Kumar, Ms. Jhanvi and Ms. Iti Gupta, Advs.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through : Mr. Varun Goswami, APP.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

O R D E R
15.09.2016

1. By a separate judgment dictated today, we have set aside the judgment dated 27th October, 2009 and order on sentence dated 4th November, 2009 in S.C.No. 115/08 arising out of FIR No. 95/08 registered by P.S. Bindapur. We have noted that apart from the sentence of imprisonment, the learned trial judge imposed a fine of ₹10,000/- upon the appellant. Simultaneously, the trial court directed that in case the appellant defaulted in payment of the fine, he would be required to undergo rigorous imprisonment for one year.

2. Several cases have been brought before us wherein in default of payment of fine, convicts have been sentenced to undergo rigorous imprisonment.

We are noting hereafter some of the appeals decided by the Division Bench presided by one of us *(Gita Mittal, J.)* which had been filed by the convicts convicted for commission of the offence of murder under Section 302 of the IPC and sentences imposed:

Criminal Appeal	*Date of Order on Sentence*	*Imprisonment awarded for commission of offence*	*Fine (₹)*	*Imprisonment in default of payment of fine*
Crl A. 516/2000	31.07.2000	For Life	25,000/-	Simple Imprisonment for Two Years

Crl A. 518/2000	31.07.2000	For Life	25,000/-	Simple Imprisonment for Two Years
Crl A. 352/2000	31.05.2000	For Life	5,000/-	Rigorous Imprisonment for Six Months
Crl A. 526/2000	10.06.2000	For Life	1,000/-	Rigorous Imprisonment for Three Months
Crl A. 385/2000	23.05.2000	For Life	1,000/-	Rigorous Imprisonment for Six Months
Crl A. 435/2000	23.05.2000	For Life	1,000/-	Rigorous Imprisonment for Six Months

3. We have found that so far as imprisonment in default is concerned, no reasoning has been assigned in any of the cases. There is no methodology adopted by the trial courts in this regard, perhaps under the impression that the convict has been sentenced to life imprisonment (life meaning remainder of natural life of the convict) and therefore, the default sentence is inconsequential. But this may not always be so, say for instance where a fixed tenure sentence is awarded to the convict for commission of an offence. In our view, there has to be some method and guideline for awarding default sentence.

4. No reasoning is assigned for the quantification of fine as well. In some cases, the guideline is to be found by the limits of statutory prescription but where there is no limit and prescription, no reasoning is offered by the trial courts.

5. We have also come across instances when the court has found that the convict has been wrongly implicated and is acquitted after long years of incarceration. As a result, the person suffers grave violation of his right to life under Article 21 of the Constitution of India. During the period of long incarceration, not only the immediate rights of the convict are affected but his family, property, livelihood, social relations and career prospects are completely devastated. To our mind, this is an important legal issue and needs to be examined.

6. These matters cannot therefore, end at simple acquittals and have to be examined from the perspective of appropriate compensation legally permissible to an accused person or his family.

7. Another aspect of criminal jurisdiction which is greatly troubling us is the completely restricted use of Section 389 CrPC ; the importance of suspending the sentence of persons during the pendency of the appeal and the parameters on which such orders must be premised. This issue assumes importance as adjudication may take some time whilst the appellants may have an arguable case on merits and fair chance of acquittal, yet are denied suspension of sentence. As a result, they are released after years of incarceration.

8. Before parting with the present case, we deem it necessary to conduct an examination of these issues. Professor G.S. Bajpai, Registrar, National Law University, Delhi (an authority on criminal law) has recently co-authored the book titled *"Victim Justice - A Paradigm Shift in Criminal Justice System in India"*. Professor Bajpai would be conversant about the above aspects.

9. We therefore, appoint Prof. G.S. Bajpai, Registrar, National Law University, Delhi as *amicus curiae* in this matter to facilitate our consideration.

Let a copy of this order be furnished to him by the Registry, to enable him to submit a comprehensive report in this regard before the court within a period of eight weeks from today.

List on 15th November, 2016 at 2:15 pm for this limited purpose.

GITA MITTAL, J

P.S. TEJI, J

SEPTEMBER 15, 2016/aj

MEDIA COVERAGE

THE TIMES OF INDIA

REHABILITATE THOSE WRONGFULLY JAILED, DELHI HC TELLS GOVT

TNN | Dec 4, 2017, 04.31 AM IST

NEW DELHI: Empathising with victims of wrongful imprisonment, the Delhi high court said that there is an "obvious gap" in law to compensate and rehabilitate such persons.

In a recent order, Delhi high court requested the Law Commission of India to examine the legal lacunae and recommend to the government, preferably by way of a law, to rehabilitate victims of wrongful prosecution and imprisonment.

A bench of Justices S Muralidhar and I S Mehta said that whether such a law can be "an omnibus legislation or scheme that caters to both the needs of the victim of the crime, as well as those wrongfully incarcerated, including the family and dependents of the prisoner, or these have to be dealt with in separate legislations or schemes" is a matter for discussion, deliberation and consultation with a cross-section of interest groups.

However, the basic issue that needs to be addressed is compensating those wrongfully jailed, the court observed.

HC noted that instances of acquittals by high courts and the Supreme Court after several years of imprisonment "are not infrequent" and such persons are left to their devices "without any hope of reintegration" in the society as the best years of their lives have been spent behind bars.

The court said that for such victims to invoke civil remedies would not be "efficacious, affordable or timely" and stressed the need "for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration."

The court's order came subsequent to a report given by amicus curiae, a professor of criminology and criminal justice from NLU Delhi, appointed by it to look into the issue of compensation for wrongful incarceration.

FIRST POST

DELHI HIGH COURT SAYS URGENT LAW NEEDED TO REHABILITATE VICTIMS OF WRONGFUL PERSECUTION AND IMPRISONMENT

Monday, December 04, 2017

New Delhi: The Delhi High Court has said there is an urgent need for a framework, preferably a law, to rehabilitate victims of wrongful prosecution and imprisonment. A bench of justices S Muralidhar and IS Mehta noted that at present there was no statutory or legal scheme in the country to compensate those who have been wrongfully incarcerated.

File image of Delhi High Court. PTI

It directed the Law Commission to undertake a comprehensive examination of the issue and give its recommendations to the central government. It observed that instances of acquittals by the high courts and the Supreme Court after several years of imprisonment "are not infrequent" and such persons are left to their devices "without any hope of reintegration" into society as the best years of their lives have been spent behind bars.

The court further noted that for such victims to invoke civil remedies would not be "efficacious, affordable or timely". "There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated." There is an urgent need, therefore, for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration," the bench said.

The court's order came subsequent to a report given by an amicus curiae, a professor of Criminology and Criminal Justice from NLU Delhi, appointed by it to look into the issue of compensation for wrongful incarceration. Recently, a bench headed by Acting Chief Justice Gita Mittal had also raised the issue of lack of compensation for inactions and omissions, including wrongful incarceration, by local authorities.

The bench of the Acting Chief Justice had referred to the case of a bus conductor who was initially accused of murdering Ryan International School student Pradhuman Thakur and had recently got bail. It had asked the AAP government and the legal services authority to examine the feasibility of framing a scheme to compensate the victims of inaction or omission by the authorities.

Published Date: Dec 03, 2017 11:26 am | Updated Date: Dec 03, 2017 11:26 am

The Indian EXPRESS

URGENT LAW NEEDED TO REHABILITATE WRONGFUL IMPRISONMENT VICTIMS: DELHI HC

By: PTI | New Delhi | Updated: December 3, 2017 2:03 pm

Delhi High Court (File)

The Delhi High Court has said there is an urgent need for a framework, preferably a law, to rehabilitate victims of wrongful prosecution and imprisonment. A bench of justices S Muralidhar and I S Mehta noted that at present there was no statutory or legal scheme in the country to compensate those who have been wrongfully incarcerated.

It directed the Law Commission to undertake a comprehensive examination of the issue and give its recommendations to the central government. It observed that instances of acquittals by the high courts and the Supreme Court after several years of imprisonment "are not infrequent" and such persons are left to their devices "without any hope of reintegration" into society as the best years of their lives have been spent behind bars.

The court further noted that for such victims to invoke civil remedies would not be "efficacious, affordable or timely". "There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated."

"There is an urgent need, therefore, for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration," the bench said. The court's order came subsequent to a report given by an amicus curiae, a professor of Criminology and Criminal Justice from NLU Delhi, appointed by it to look into the issue of compensation for wrongful incarceration.

Recently, a bench headed by Acting Chief Justice Gita Mittal had also raised the issue of lack of compensation for inactions and omissions, including wrongful incarceration, by local authorities. The bench of the Acting Chief Justice had referred to the case of a bus

conductor who was initially accused of murdering Ryan International School student Pradhuman Thakur and had recently got bail.

It had asked the AAP government and the legal services authority here to examine the feasibility of framing a scheme to compensate the victims of inaction or omission by the authorities.

THE HINDU

'LAW NEEDED FOR THOSE WRONGFULLY IMPRISONED'

NEW DELHI, DECEMBER 04, 2017 00:00 IST

They should be rehabilitated: Delhi HC

The Delhi High Court has asked the Law Commission of India to see if a new legislation can be brought in to provide relief and rehabilitation to victims of wrongful prosecution and incarceration. There is no statutory or legal scheme at present to compensate those who spend years in jail only to be acquitted later.

NCRB data: The National Crime Records Bureau (NCRB) says of 4,19,623 inmates lodged in various jails across the country in 2015, 67% are undertrials. Prison records show that 3,599 undertrials were detained in jails for five years or more in the country. The highest number of such undertrial prisoners were reported from Uttar Pradesh (1,364) followed by West Bengal (294) and Bihar (278). The same year, 82,585 undertrials were released after being acquitted.

"The instances of those being acquitted by the High Court or the Supreme Court after many years of imprisonment are not infrequent," said a Bench of Justice S. Muralidhar and Justice I.S. Mehta.

It remarked that, "they are left to their devices without any hope of reintegration into society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls".

The Supreme Court in various judgments over the years has held that compensation can be awarded by constitutional courts for violation of fundamental rights under Article 21 of the Constitution.

While these have included instances of compensation being awarded to those wrongly incarcerated as well, these are episodic and not easily available to all similarly situated persons.

"The possibility of invoking civil remedies can by no stretch of imagination be considered efficacious, affordable or timely. Further, this has to invariably await the final outcome of the case which may take an unconscionably long time," the Bench said.

On the request of the court, Professor G.S. Bajpai, who is Registrar, National Law University at Delhi, submitted a report on the issue. It referred to the practice in the United States and the United Kingdom.

Prof Bajpai pointed out that 32 States in the US have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. The report further said there are specific schemes in the UK and New Zealand in this regard.

Noting that there is an "urgent need" for a legal, preferably legislative, framework for providing relief to victims of wrongful incarceration, the Bench directed the Law Commission to undertake a comprehensive examination of the issue and make its recommendation to the central government.

They are left to their devices without any hope of reintegration into society...since the best years of their life have been spent behind bars, invisible behind the high prison walls...

Delhi High Court

WRONGLY INCARCERATED PEOPLE NOT BEING PROPERLY COMPENSATED: DELHI HC

Sun, 03 Dec 2017

Summary: "There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated. The instances of those being acquitted by the High Court or the Supreme Court after many years of imprisonment are not infrequent. He had pointed out that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. People who have been wrongly incarcerated are "left to their devices without any hope of reintegration into the society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls", the Delhi High Court has said. The observation came while dealing with three wide issues which had come up while hearing a criminal appeal.

People who have been wrongly incarcerated are "left to their devices without any hope of reintegration into the society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls", the Delhi High Court has said. A bench of Justice S Muralidhar and Justice I S Mehta expressed concern over non-presence of a legal scheme for compensating these people who, at various instances, have been acquitted by the High court or the Supreme Court after many years of imprisonment. "There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated. The instances of those being acquitted by the High Court or the Supreme Court after many years of imprisonment are not infrequent. "They are left to their devices without any hope of reintegration into society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls," the bench said. The court said that even though there is a provision of compensating the victims through Sections 357 and 357 A to C of the Code of Criminal Procedure, its effective implementation hinges upon the concerted efforts of legal services authorities and governments. "As far as compensating 'persons groundlessly arrested', Section 358 Cr PC offers some token relief. This provision, however, fails to acknowledge the multiple ways in which not only the prisoner, who may ultimately be declared to be innocent, but the family of the prisoner faces deprivation and hardship, *As Reported By DNAIndia.*

According to the Newspaper,Particularly poignant is the plight of the spouse, children and aged parents of the prisoner who are unable to find legal redress for their losses," the

court held. It stressed on "an urgent need for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration". "Whether this should be an omnibus legislation or scheme that caters to both the needs of the victim of the crime, as well those wrongfully incarcerated, including the family and dependants of the prisoner, or these have to be dealt with in separate legislations or schemes is a matter for discussion, deliberation and consultation with a cross-section of interest groups. The observation came while dealing with three wide issues which had come up while hearing a criminal appeal. The court had directed GS Bajpai Professor of Criminology & Criminal Justice and Registrar, National Law University, Delhi to be the amicus curiae and submit a report on the three issues. The other two included Fines and default sentences and Suspension of sentence. The court also requested the Law Commission of India to undertake a comprehensive examination of the issue of incarceration and make its recommendation thereon to the Government of India. The report submitted by Prof Bajpai had referred to the practice in the United States of America (USA) and the United Kingdom (UK). He had pointed out that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated.

DNA

WRONGLY INCARCERATED PEOPLE NOT BEING PROPERLY COMPENSATED: DELHI HC

WRITTEN BY Richa Banka

Sunday 3 December 2017 13:53 IST

People who have been wrongly incarcerated are "left to their devices without any hope of reintegration into the society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls", the Delhi High Court has said.

A bench of Justice S Muralidhar and Justice I S Mehta expressed concern over non-presence of a legal scheme for compensating these people who, at various instances, have been acquitted by the High court or the Supreme Court after many years of imprisonment.

"There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated. The instances of those being acquitted by the High Court or the Supreme Court after many years of imprisonment are not infrequent.

"They are left to their devices without any hope of reintegration into society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls," the bench said.

The court said that even though there is a provision of compensating the victims through Sections 357 and 357 A to C of the Code of Criminal Procedure, its effective implementation hinges upon the concerted efforts of legal services authorities and governments.

"As far as compensating 'persons groundlessly arrested', Section 358 Cr PC offers some token relief. This provision, however, fails to acknowledge the multiple ways in which not only the prisoner, who may ultimately be declared to be innocent, but the family of the prisoner faces deprivation and hardship. Particularly poignant is the plight of the spouse, children and aged parents of the prisoner who are unable to find legal redress for their losses," the court held.

It stressed on "an urgent need for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration".

"Whether this should be an omnibus legislation or scheme that caters to both the needs of the victim of the crime, as well those wrongfully incarcerated, including the family and dependants of the prisoner, or these have to be dealt with in separate legislations or

schemes is a matter for discussion, deliberation and consultation with a cross-section of interest groups.

The observation came while dealing with three wide issues which had come up while hearing a criminal appeal. The court had directed GS Bajpai Professor of Criminology & Criminal Justice and Registrar, National Law University, Delhi to be the amicus curiae and submit a report on the three issues.

The other two included Fines and default sentences and Suspension of sentence.

The court also requested the Law Commission of India to undertake a comprehensive examination of the issue of incarceration and make its recommendation thereon to the Government of India.

The report submitted by Prof Bajpai had referred to the practice in the United States of America (USA) and the United Kingdom (UK). He had pointed out that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. There are specific schemes in the UK and New Zealand in this regard.

INDIA TODAY

URGENT LAW NEEDED TO REHABILITATE WRONGFUL IMPRISONMENT

December 3, 2017 | UPDATED 10:05 IST

New Delhi, Dec 3 (PTI) The Delhi High Court has said there is an urgent need for a framework, preferably a law, to rehabilitate victims of wrongful prosecution and imprisonment.

A bench of justices S Muralidhar and I S Mehta noted that at present there was no statutory or legal scheme in the country to compensate those who have been wrongfully incarcerated.

It directed the Law Commission to undertake a comprehensive examination of the issue and give its recommendations to the central government.

It observed that instances of acquittals by the high courts and the Supreme Court after several years of imprisonment "are not infrequent" and such persons are left to their devices "without any hope of reintegration" into society as the best years of their lives have been spent behind bars.

The court further noted that for such victims to invoke civil remedies would not be "efficacious, affordable or timely".

"There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated.

"There is an urgent need, therefore, for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration," the bench said.

The courts order came subsequent to a report given by an amicus curiae, a professor of Criminology and Criminal Justice from NLU Delhi, appointed by it to look into the issue of compensation for wrongful incarceration.

Recently, a bench headed by Acting Chief Justice Gita Mittal had also raised the issue of lack of compensation for inactions and omissions, including wrongful incarceration, by local authorities.

The bench of the Acting Chief Justice had referred to the case of a bus conductor who was initially accused of murdering Ryan International School student Pradhuman Thakur and had recently got bail.

It had asked the AAP government and the legal services authority here to examine the feasibility of framing a scheme to compensate the victims of inaction or omission by the authorities. PTI HMP PPS SKV ZMN

BAR & BENCH
THE NEW FACE OF LEGAL JOURNALISM IN INDIA

DELHI HC ASKS LAW COMMISSION TO EXAMINE ISSUE OF COMPENSATION FOR WRONGFUL IMPRISONMENT

Ashutosh Gambhir December 5, 2017 Litigation News, News

The Delhi High Court, by an order passed on November 30, requested the Law Commission of India to examine the need for a legal framework for compensation to victims of wrongful imprisonment.

The Court had appointed Prof **GS Bajpai**, Professor of Criminology & Criminal Justice and Registrar at the National Law University, Delhi as *amicus curiae.* It had sought his inputs on three issues: fines and default sentences, suspension of sentence and remedies for wrongful incarceration.

Prof Bajpai submitted a detailed report on the issues and referred to the practices in different countries. He pointed out that there are 32 states in the USA that have enacted laws that provide monetary and non-monetary compensation to people who were wrongfully incarcerated.

The Court stated that, in India, there is no statutory or legal scheme for compensating those who were wrongfully incarcerated and that instances of those being acquitted by higher courts, after serving several years of imprisonment, are also not uncommon.

The Division Bench of Justices **S Muralidhar** and **IS Mehta** observed that,

> *"They (victims) are left to their devices without any hope of reintegration into society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls. The possibility of invoking civil remedies can by no stretch of imagination be considered efficacious, affordable or timely."*

The Court held that Section 358 of the CrPC offers some relief to persons who are arrested without any grounds. However, the Court said that the provision fails to acknowledge how the family of the prisoner (who is ultimately adjudged as innocent) faces deprivation and hardship.

With regard to the legal framework required to deal with the pressing issue, the Bench observed that,

> *"Whether this should be an omnibus legislation or scheme that caters to both the needs of the victim of the crime, as well those wrongfully incarcerated, including the family and dependants of the prisoner, or these have to be dealt with in separate*

> *legislations or schemes is a matter for discussion, deliberation and consultation with a cross-section of interest groups."*

Finally, the Court held that the Law Commission is best suited to examine the issue, as it is tasked with advising the government on legislative measures needed to fill gaps in the law.

The Court also lauded Prof Bajpai for his assistance in the matter.

EXAMINE THE POSSIBILITY OF LAW FOR RELIEF TO THOSE WRONGLY PROSECUTED AND JAILED: DELHI HC REQUESTS LAW COMMISSION

The Delhi High Court, on Thursday, requested the Law Commission of India to examine the possibility of a legislation for providing relief and rehabilitation to victims of wrongful prosecution and incarceration in India.

BY: APOORVA MANDHANI

DECEMBER 3, 2017 10:43 AM

The Delhi High Court, on Thursday, requested the Law Commission of India to examine the possibility of a legislation for providing relief and rehabilitation to victims of wrongful prosecution and incarceration in India.

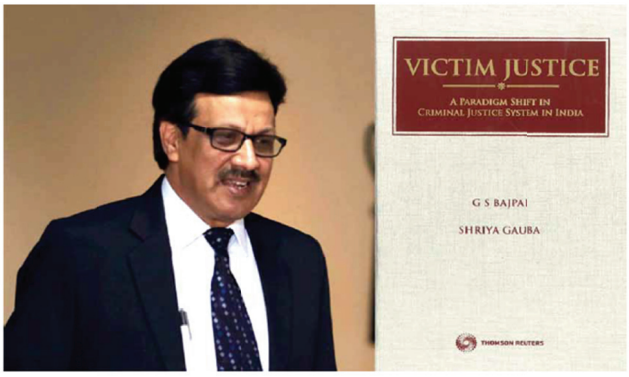
The Bench comprising Justice S. Muralidhar and Justice I.S. Mehta highlighted the "urgent need" for a framework, observing, "There is an urgent need, therefore, for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration. Whether this should be an omnibus legislation or scheme that caters to both the needs of the victim of the crime, as well those wrongfully incarcerated, including the family and dependents of the prisoner, or these have to be dealt with in separate legislation or schemes is a matter for discussion, deliberation and consultation with a cross-section of interest groups.

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. This is a task best left in

the first instance to the body tasked with advising the government on the legislative measures needed to fill the obvious gap."

The Court had, in September last year, highlighted several issues that needed consideration, while disposing of a case wherein the Trial Court had ordered the convict to undergo rigorous imprisonment of one year in event of default in payment of fine. The Court had then inter alia opined that the issue concerning the possible legal remedies for victims of wrongful incarceration and malicious prosecution needed deliberation.

During the hearing, amicus curiae Prof. (Dr.) G.S. Bajpai, Professor of Criminology & Criminal Justice and Registrar, National Law University, Delhi, informed the Court that 32 States in the USA have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. The Court was told that specific schemes have been put in place in the UK and New Zealand as well.



Dr. Bajpai also informed the Court that while India does not have an exclusive legislation on the issue, the Supreme Court has time and again ordered compensation to be ordered to the wrongly prosecuted. The Court then noted, "There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated. The instances of those being acquitted by the High Court or the Supreme Court after many years of imprisonment are not infrequent. They are left to their devices without any hope of reintegration into society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls. The possibility of invoking civil remedies can by no stretch of imagination be considered efficacious, affordable or timely. Further, this has to invariably await the final outcome of the case which may take an unconscionably long time."

The Court then took note of the existing provisions. It expressed qualms over the implementation of Section 436-A of the Code of Criminal Procedure Code, which permits release on personal bond of under trial prisoners who have completed up to one half of the maximum period of imprisonment for that offence. "In any event, it is not an answer to the hardship undergone by an innocent person who is declared as such after spending more than a decade in jail," it opined.

The Court further noted that while Section 358 of the Code provides for compensation to 'persons groundlessly arrested', it "fails to acknowledge the multiple ways in which not only the prisoner, who may ultimately be declared to be innocent, but the family of the prisoner faces deprivation and hardship".

It then directed, "The Court, accordingly, requests the Law Commission of India to undertake a comprehensive examination of the issue highlighted in paras 11 to 16 of this order and make its recommendation thereon to the Government of India.

॥न्यायस्तत्र प्रमाणं स्यात्॥

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