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LAW AND JUSTICE FOR MALICIOUS PROSECUTION IN INDIA: TOWARDS A VICTIM-CENTRIC STATUTORY FRAMEWORK AND THE ROLE OF CIVIL SOCIETY

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ABSTRACT

The legitimacy of a criminal justice system rests on fair, impartial and lawful prosecution. When proceedings are initiated without reasonable cause and with malicious intent, they constitute malicious prosecution, eroding public trust and undermining justice. In India, such wrongful prosecutions, often driven by personal vendetta, political influence or institutional bias, have produced prolonged undertrial detention, reputational damage, psychological harm and financial loss. Although remedies exist under tort law and Section 211 of the Indian Penal Code, now carried into the Bharatiya Nyaya Sanhita, neither the Code of Criminal Procedure, 1973 nor the Bharatiya Nagarik Suraksha Sanhita, 2023 provides a comprehensive statutory framework for relief, rehabilitation or compensation. This legislative gap produces inconsistent redress and limited accountability for prosecutorial and police misconduct. This paper undertakes a doctrinal and policy-analytic examination of India's fragmented remedial architecture, situates it against the persistently high undertrial share of India's prison population, and compares it with the structured, victim-centric approaches of the United Kingdom, Canada and Germany. It argues that India's constitutional jurisprudence on public-law compensation, though doctrinally sound, remains ad hoc and cannot substitute for dedicated legislation, and it proposes the architecture of a Wrongful Prosecution (Compensation and Rehabilitation) Act, built around an independent claims commission, scheduled heads of compensation, record-sealing and structured civil society partnership.

KEYWORDS: *Malicious Prosecution; Wrongful Prosecution; Undertrial Detention; Victim Compensation; Civil Society*

1. INTRODUCTION

Malicious prosecution occupies an uneasy space at the intersection of criminal law, constitutional tort and the law of civil wrongs. Its harms are multidimensional: deprivation of liberty, stigma, ruined livelihoods and lasting psychosocial trauma. Indian courts have long recognised public-law compensation under Articles 32 and 226 for violations of fundamental rights, particularly unlawful arrest, illegal detention, custodial violence and egregious investigative failures, yet no dedicated statute addresses malicious or wrongful prosecution comprehensively. The Law Commission of India's Report No. 277 of 2018 recommended a special legal framework for wrongful prosecution, but Parliament has not enacted such a law.[1] The Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced the Code of Criminal Procedure with effect from July 2024, substantially reenacts discrete compensation provisions, including

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1 Law Commission of India, Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies (Aug. 30, 2018).

for groundless arrest, and the victim-compensation architecture, but still stops short of a holistic scheme targeted at malicious prosecution as a distinct category of harm.

The wrongful prosecution of an individual is rarely a discrete, one-time event confined to the courtroom in which it is nominally litigated. It typically begins with an arrest, often accompanied by the informal social consequences of visible police action in a community; proceeds through an investigation during which the presumption of innocence operates, if at all, only as a formal legal doctrine rather than a lived reality; and concludes, if the prosecution fails, with an acquittal that restores the accused's legal status without restoring the employment, housing or social standing lost in the interim. This paper's central claim is that Indian law presently addresses only the first and narrowest slice of this continuum, the formal legal proceeding itself, while leaving the broader continuum of harm almost entirely unaddressed, a gap that a dedicated statute is uniquely positioned to close because, unlike ad hoc constitutional litigation, a statute can define the full scope of compensable harm in advance rather than leaving each element to be separately litigated and separately proved. The structure of this paper follows accordingly: it first traces the doctrinal boundary between malicious prosecution as a private-law tort and wrongful prosecution as a public-law wrong, then examines India's fragmented statutory and constitutional remedies, situates these remedies against the empirical scale of undertrial incarceration, identifies the doctrinal gaps that fragmentation produces, surveys comparative practice in three representative jurisdictions, assesses the present and potential role of civil society, and closes with a concrete legislative blueprint. The most recent Prison Statistics India data indicate that well above three-quarters of incarcerated persons are undertrial, amid chronic overcrowding, an environment in which wrongful or malicious prosecution inflicts disproportionate harm well before any question of guilt is judicially determined. The problem is further complicated by the misuse of protective provisions such as the erstwhile Section 498A of the Indian Penal Code, now Section 85 of the Bharatiya Nyaya Sanhita, which raises the difficult task of curbing over-broad or mechanical prosecution without diluting the protective intent such provisions were designed to serve. India is not alone in confronting this problem, but it is unusual among comparable democracies in having neither a dedicated statute nor a specialised institutional mechanism to address it, a gap this paper examines in detail against the comparative practice of jurisdictions that have developed such mechanisms. The stakes of closing this gap are not merely doctrinal. Every year that passes without a dedicated framework is a year in which individuals who are ultimately acquitted, sometimes after years of pre-trial detention, are left to absorb the full cost of a prosecution the State itself was unable to sustain, with no institutional mechanism beyond discretionary constitutional litigation to which they can turn.

1.1 Objectives of the Study

1. To examine India's constitutional, statutory and judicial framework on malicious prosecution to identify gaps in prevention, accountability and victim compensation.
2. To assess the present and potential roles of civil society and non-governmental organisations in detection, legal aid, advocacy and rehabilitation, and to propose a practical, victim-focused reform architecture.

1.2 Research Methodology

This paper adopts a doctrinal method, examining constitutional provisions, the text of the Bharatiya Nagarik Suraksha Sanhita, the Code of Criminal Procedure and relevant precedent, combined with a policy-analytic approach drawing on Law Commission reports, official prison statistics and comparative materials. Secondary empirical indicators are drawn from the Prison Statistics India reports of 2022 through 2025. No primary field survey was conducted; the paper instead synthesises findings across sources to propose reforms consistent with India's constitutional jurisprudence on compensation and due process.

1.3 Conceptual Clarifications: From Malicious to Wrongful Prosecution

Malicious prosecution, as understood in Indian tort law, requires a claimant to establish prosecution by the defendant, termination of proceedings in the claimant's favour, absence of reasonable and probable cause, malice, and resulting damage.[2] The Supreme Court has articulated the contours of malice and of "reasonable and probable cause," underscoring the balance between enabling citizens to set the criminal law in motion and deterring abuse of legal process.[3] Wrongful prosecution, by contrast, is a broader public-law category, typically addressed through constitutional remedies where state action by police or prosecutors causes unlawful deprivation of life or liberty. Landmark rulings, including Rudul Sah, Nilabati Behera, D.K. Basu and Joginder Kumar, established compensation for violations of Article 21 and set due-process safeguards for arrest and detention.[4] These are not classic malicious-prosecution suits, but they constitute the normative foundation for compensating state-caused injustice. The risk of malicious or misdirected prosecution is heightened further by low thresholds for registering a First Information Report in certain contexts and by institutional incentives to charge first and verify later, a tension

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2 West Bengal State Electricity Board v. Dilip Kumar Ray, (2006) 1 S.C.C. 25 (India).

3 Id.

4 Rudul Sah v. State of Bihar, (1983) 4 S.C.C. 141 (India); Nilabati Behera v. State of Orissa, (1993) 2 S.C.C. 746 (India); D.K. Basu v. State of West Bengal, (1997) 1 S.C.C. 416 (India); Joginder Kumar v. State of Uttar Pradesh, (1994) 4 S.C.C. 260 (India).

the Supreme Court addressed in Arnesh Kumar v. State of Bihar and recalibrated in Social Action Forum for Manav Adhikar v. Union of India.[5]

2. INDIA'S STATUTORY AND CONSTITUTIONAL FRAMEWORK

2.1 Statutory Provisions Under the IPC, CrPC and BNSS

Several discrete statutory provisions bear on malicious and wrongful prosecution, none comprehensively. Making a false charge with intent to injure was criminalised under Section 211 of the Indian Penal Code and is carried into the Bharatiya Nyaya Sanhita; this targets malicious complainants but is rarely invoked to deliver victim-centric rehabilitation, since it operates as an ordinary criminal offence requiring the wrongfully prosecuted person to initiate and prove a fresh prosecution against their original accuser, a burden few victims are equipped or willing to bear after already enduring one round of criminal process.[6] Section 250 of the Code of Criminal Procedure empowered magistrates to award compensation where an accusation was made without reasonable ground; the Bharatiya Nagarik Suraksha Sanhita preserves this remedy in Section 273, with minor textual adjustments including revised appeal thresholds, but it remains a narrow, case-bound power exercisable only by the trial magistrate at the conclusion of proceedings, with modest caps that bear little relationship to the actual harm suffered over a protracted prosecution.[7] Section 358 of the Code of Criminal Procedure allowed compensation where a person was groundlessly arrested at another's instance; the Bharatiya Nagarik Suraksha Sanhita maintains this scheme in Section 399, with a ceiling commonly noted at one thousand rupees per person, a figure widely criticised as inadequate and effectively unchanged in real terms for decades despite the escalating economic and reputational cost of wrongful arrest.[8] Section 357A of the Code of Criminal Procedure mandated state-level victim compensation schemes administered through the Legal Services Authorities; the Bharatiya Nagarik Suraksha Sanhita retains this in Section 396, though it remains conceptually aimed at victims of crime generally, persons harmed by an offender, rather than the wrongfully prosecuted, persons harmed by the State's own prosecutorial machinery, a category the scheme was never designed to

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5 Arnesh Kumar v. State of Bihar, (2014) 8 S.C.C. 273 (India); Social Action Forum for Manav Adhikar v. Union of India, (2018) 10 S.C.C. 443 (India).

6 The Indian Penal Code, No. 45 of 1860, § 211 (India) (repealed); The Bharatiya Nyaya Sanhita, No. 45 of 2023, § 226 (India).

7 The Code of Criminal Procedure, No. 2 of 1974, § 250 (India) (repealed); The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 273 (India).

8 The Code of Criminal Procedure, No. 2 of 1974, § 358 (India) (repealed); The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 399 (India).

serve and does not serve well.[9] Finally, the prior-sanction requirement for prosecuting public servants, formerly Section 197 of the Code of Criminal Procedure, is retained in Section 218 of the Bharatiya Nagarik Suraksha Sanhita, now with a deemed-sanction timeline of one hundred and twenty days; this shields bona fide official action but can impede accountability for malicious conduct unless courts find the conduct falls outside the scope of "official duty," a determination that itself requires litigation and thus delays the very accountability the provision is meant to enable in cases of genuine misconduct.[10]

2.2 Constitutional Tort and Judicial Compensation

Alongside these statutory provisions, the Supreme Court has, through a series of decisions, fashioned a public-law remedy resting directly on Article 21 rather than on private-law tort principles. The foundation of this remedy was laid in Rudul Sah v. State of Bihar, where the Court, confronted with an individual detained for over fourteen years despite acquittal, held for the first time that constitutional courts cannot merely declare a violation but must provide effective relief, including monetary redress.[11] This principle was reaffirmed in Nilabati Behera v. State of Orissa, where the custodial death of a young man prompted the Court to hold that the State is strictly liable for violations of fundamental rights, and that compensation in such cases flows from the State's public-law duty rather than from tort law.[12] Alongside compensation, the Court developed preventive safeguards: D.K. Basu v. State of West Bengal laid down comprehensive arrest and detention guidelines, including mandatory arrest memos, medical examinations and the right of detainees to inform relatives, later given statutory recognition in the Code of Criminal Procedure.[13] Joginder Kumar v. State of Uttar Pradesh held that the power to arrest is not equivalent to a duty to arrest, requiring proportionality and necessity in the exercise of coercive state power.[14] Most significantly for malicious prosecution specifically, the Court in S. Nambi Narayanan v. State of Kerala awarded substantial compensation to a former ISRO scientist who had been maliciously prosecuted and subjected to grave humiliation in a fabricated espionage case, holding that wrongful prosecution is not only a deprivation of liberty but an assault on dignity, reputation and professional standing.[15] The significance of

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9 The Code of Criminal Procedure, No. 2 of 1974, § 357A (India) (repealed); The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 396 (India).

10 The Code of Criminal Procedure, No. 2 of 1974, § 197 (India) (repealed); The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 218 (India).

11 Rudul Sah v. State of Bihar, (1983) 4 S.C.C. 141 (India).

12 Nilabati Behera v. State of Orissa, (1993) 2 S.C.C. 746 (India).

13 D.K. Basu v. State of West Bengal, (1997) 1 S.C.C. 416 (India).

14 Joginder Kumar v. State of Uttar Pradesh, (1994) 4 S.C.C. 260 (India).

15 S. Nambi Narayanan v. State of Kerala, (2018) 10 S.C.C. 804 (India).

Nambi Narayanan for this paper's argument is difficult to overstate: it is the clearest instance of the Supreme Court awarding compensation explicitly for malicious prosecution rather than for the narrower categories of illegal detention or custodial violence addressed in Rudul Sah and Nilabati Behera, and it therefore demonstrates that the constitutional vocabulary for such relief already exists. What Nambi Narayanan does not supply, precisely because it was decided on its own extraordinary facts rather than under any general statutory standard, is a repeatable test that a trial court or a lower-profile claimant could invoke without first securing special leave before the Supreme Court itself. Read together, these decisions mark a progressive trajectory from declaratory relief toward an active compensatory and preventive framework, though, as Part 4 demonstrates, one that remains principled yet fundamentally ad hoc, available in practice only to claimants with the resources, visibility and persistence to carry a case to the apex court. This asymmetry of access is itself a form of injustice compounding the original wrong: the constitutional remedy that Nambi Narayanan demonstrates exists in principle functions, in practice, as a remedy calibrated to the profile of the claimant rather than to the severity of the harm, since a distinguished scientist able to retain senior counsel and command national media attention secures a form of redress that remains, as a practical matter, unavailable to the far larger population of undertrials whose cases never rise to comparable public visibility.

3. THE UNDERTRIAL CRISIS: EMPIRICAL DIMENSIONS

India's prison system continues to be weighed down by prolonged undertrial incarceration and chronic overcrowding, a context within which the practical cost of malicious prosecution is magnified far beyond what any eventual acquittal can repair. As of 2022, undertrials accounted for nearly seventy-five to seventy-six per cent of all inmates, while national occupancy stood at approximately one hundred and thirty-one per cent of sanctioned capacity.[16] By 2023, undertrial prisoners formed seventy-six per cent of the prison population, with occupancy reported at 130.2 per cent. The 2024 Prison Statistics India report confirmed the persistence of this trend, with undertrials constituting seventy-four per cent of total prisoners and occupancy continuing at approximately 131 per cent. By the first quarter of 2025, there were nearly 3.75 lakh undertrial prisoners, comprising 74.2 per cent of the overall prison population. These figures have remained remarkably stable across the four-year window examined here, suggesting not a transient administrative backlog but a structural feature of India's criminal justice system, one in which the ordinary operation of pre-trial process itself, independent of any individual case's merits, produces a standing population of several hundred thousand persons deprived of liberty without conviction at any given time.

16 National Crime Records Bureau, Prison Statistics India 2024.

Table 1: Undertrial Share and Prison Occupancy in India, 2022 to 2025

Period	**Undertrials as Share of Total Prisoners**	**National Occupancy Rate**
2022	75-76%	~131%
2023	76%	130.2%
2024	74%	~131%
Jan-Mar 2025	74.2%	Data consistent with prior years

The consequences are severe and multifaceted. Prolonged pre-trial incarceration undermines the presumption of innocence and creates structural coercion, since individuals awaiting trial are more vulnerable to pressure for coerced settlements and plea bargains, suffer deep social stigma, and endure disproportionate personal and economic costs. Malicious or unfounded prosecutions become far more punitive in practice precisely because lengthy pre-trial detention itself operates as a form of punishment before conviction, a dynamic that inverts the presumption of innocence in practical, if not formal, terms: an accused person who might ultimately be acquitted after a malicious complaint has, by the time of that acquittal, often already lost employment, housing stability and social standing, harms that no acquittal can retroactively undo and that the existing compensation architecture, capped and narrowly triggered as described in Part 2, does little to address. The government and judiciary have sought to strengthen Undertrial Review Committees and expand fast-track mechanisms for bail and case disposal, and these interventions have improved monitoring, yet significant bottlenecks remain in the form of poor-quality police investigation, restrictive interpretation of bail provisions, and chronic trial delays. Indian jurisprudence on wrongful detention and procedural fairness has continued to develop alongside this empirical picture: Bhim Singh v. State of Jammu and Kashmir and Nambi Narayanan recognised compensation for wrongful detention and abusive prosecution respectively, State of Gujarat v. Kishanbhai stressed the duty of fair investigation, the Delhi High Court in Babloo Chauhan v. State (NCT of Delhi) urged a statutory compensation framework for wrongful prosecution, and West Bengal State Electricity Board v. Dilip Kumar Ray clarified the tort-based elements of malicious prosecution, reinforcing accountability even as it confirmed the high evidentiary burden such claims impose.[17] The Babloo Chauhan judgment

17 Bhim Singh v. State of Jammu & Kashmir, (1985) 4 S.C.C. 677 (India); State of Gujarat v. Kishanbhai, (2014) 5 S.C.C. 108 (India); Babloo Chauhan v. State (NCT of Delhi), 2017 SCC OnLine Del 9399 (India); West Bengal State Electricity Board v. Dilip Kumar Ray, (2006) 1 S.C.C. 25 (India).

deserves particular emphasis: delivered by the Delhi High Court in the context of an individual who spent years in custody before being acquitted, it explicitly recommended that the Law Commission examine the question of a compensatory framework for wrongful prosecution, a recommendation that led directly to the Law Commission's Report No. 277 discussed in Part 1. That report, now over seven years old, has not resulted in legislation, illustrating a recurring pattern in Indian law reform whereby judicial recognition of a gap, followed by an expert body's detailed recommendations, nonetheless fails to translate into parliamentary action absent sustained political or public pressure of the kind this paper's proposed reforms would require to succeed where the 2018 report alone has not.

4. DOCTRINAL AND PROCEDURAL LACUNAE

Five structural gaps emerge from the foregoing analysis. First, India lacks a comprehensive statute treating malicious and wrongful prosecution as a distinct category of harm; the existing remedies under Sections 273, 396 and 399 of the Bharatiya Nagarik Suraksha Sanhita are fragmented and procedural, and none captures the continuum of harm, prolonged incarceration, reputational damage, economic loss and psychological trauma, that wrongful prosecution actually inflicts. This fragmentation is not merely an academic inconvenience: a claimant seeking redress today must identify which of three or four distinct, narrowly triggered provisions might apply to their specific circumstances, satisfy that provision's own procedural preconditions, and accept whatever modest ceiling that provision happens to impose, a process that itself replicates the burdens of navigating criminal process that the underlying wrongful prosecution already imposed. Second, civil remedies through tort law remain largely inaccessible: a claimant must establish not only the absence of reasonable or probable cause but the presence of malice, a highly subjective evidentiary standard that, combined with judicial delay and litigation cost, renders tort law an impractical avenue for most victims, particularly those from economically disadvantaged backgrounds who are, empirically, also more likely to be subject to malicious prosecution in the first instance. Third, accountability is hindered by the sanction-shield mechanism in Section 218 of the Bharatiya Nagarik Suraksha Sanhita; although courts have narrowed the interpretation of "official duty" to exclude mala fide or unconstitutional acts, the sanction requirement continues in practice to generate delay and insulate errant officials from swift accountability.[18] Fourth, compensation under Section 396 of the Bharatiya Nagarik Suraksha Sanhita operates through state-specific schemes with wide variation in eligibility, timelines and quantum, because victims of wrongful prosecution are not treated as a separate statutory category but are subsumed within frameworks originally designed for victims of substantive

[18] State of Gujarat v. Kishanbhai, (2014) 5 S.C.C. 108 (India).

offences. Fifth, India lacks time-bound mechanisms for expungement or sealing of arrest and trial records, or statutory requirements for official acknowledgment of wrongful prosecution; acquitted individuals continue to bear tainted records and diminished livelihood prospects long after exoneration, a gap that comparative practice in the United Kingdom and Germany treats as an integral element of restorative justice. Taken together, these five gaps do not merely leave isolated remedial holes; they compound one another, since a claimant defeated by the evidentiary burden of a tort suit has no fallback statutory claims commission to turn to, and a claimant who does secure the modest compensation available under Section 273 or Section 399 nonetheless remains saddled with an unexpunged record that continues to generate harm indefinitely.

5. COMPARATIVE PERSPECTIVES

The United Kingdom codified compensation for miscarriages of justice through Section 133 of the Criminal Justice Act 1988, enacted to give effect to Article 14(6) of the International Covenant on Civil and Political Rights, though post-2014 amendments narrowed the definition of "miscarriage of justice" and capped compensation, restricting eligibility to cases where innocence can be affirmatively demonstrated.[19] Despite this narrowing, the scheme represents a statutory right to compensation that India presently lacks, complemented by the Criminal Cases Review Commission, an independent body established in 1997 to review alleged miscarriages of justice and refer cases back to appellate courts.[20] The Commission model is instructive for India specifically because it separates the function of identifying potential miscarriages of justice from the function of adjudicating compensation, allowing specialist investigators with access to forensic and case-file resources to conduct the kind of sustained factual inquiry that an overburdened trial court, occupied with a fresh docket of cases, is rarely positioned to undertake.

Canada does not recognise compensation for wrongful conviction as a statutory right, but a set of Federal-Provincial Guidelines in place since 1988 provides a structured administrative framework for claims, offering a coherent national policy despite the absence of statutory certainty.[21] The Canadian model demonstrates that formal legislation is not the only route to predictability; a sufficiently detailed and consistently applied administrative guideline can achieve much of the same coordinating function, a point of some practical relevance for India given the political and federal complexities that a full

19 Criminal Justice Act 1988, c. 33, § 133 (UK); Anti-social Behaviour, Crime and Policing Act 2014, c. 12 (UK).

20 Criminal Cases Review Commission (UK, established 1997).

21 Federal-Provincial Guidelines on Compensation for Wrongfully Convicted Persons (Can. 1988).

parliamentary statute would need to navigate. Germany's Strafrechtsentschädigungsgesetz provides a statutory entitlement to compensation for those acquitted in retrials or whose convictions are overturned, operating more automatically than the British or Canadian models by presuming entitlement without requiring proof of malice or innocence, and supplemented by broader public-law liability principles.[22] The German model's presumption of entitlement is the most claimant-favourable of the three, reflecting a rule-of-law tradition that treats the State's own erroneous exercise of the power to prosecute as inherently compensable, regardless of whether the individual complainant or investigating officer can be shown to have acted with subjective malice, precisely the evidentiary hurdle Part 4 identifies as the central obstacle facing Indian tort claimants today.

At the international level, Article 9(5) of the International Covenant on Civil and Political Rights guarantees an enforceable right to compensation for victims of unlawful arrest or detention, while Article 14(6) requires compensation for wrongful conviction except where new evidence demonstrates guilt; as a signatory, India remains obliged to align domestic remedies with these provisions, though it has yet to operationalise them through dedicated legislation.[23] India's position here is not unique among signatories that have been slow to domesticate treaty obligations, but it is notable given the comparative sophistication of India's constitutional jurisprudence on Article 21 more generally; a legal system capable of producing the reasoning in Rudul Sah and Nilabati Behera plainly possesses the doctrinal resources to give the ICCPR's compensation guarantees domestic effect, and the absence of legislation to date reflects a gap in political will and legislative prioritisation rather than any deficiency in constitutional or international legal capacity. The comparative record suggests that predictable, victim-centric remedies are achievable through varied institutional forms, a statutory scheme, an administrative guideline framework, or an automatic entitlement regime, each of which India could adapt to its own constitutional and administrative context. What unites all three comparative models, and what India's current fragmented approach conspicuously lacks, is a single, identifiable institutional home for wrongful-prosecution claims, whether a court exercising a dedicated statutory jurisdiction, a review commission, or an administrative panel, rather than the diffuse combination of ordinary criminal courts, writ jurisdiction and disconnected state compensation schemes through which an Indian claimant must presently navigate.

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22 Strafrechtsentschädigungsgesetz [StrEG] [Compensation for Criminal Prosecution Measures Act] (Ger.).

23 International Covenant on Civil and Political Rights arts. 9(5), 14(6), Dec. 16, 1966, 999 U.N.T.S. 171.

6. THE ROLE OF CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANISATIONS

Civil society occupies a critical, if presently informal, position in addressing wrongful prosecution across five distinct functions. In access-to-justice pipelines, the Legal Services Authorities at national, state and district levels already administer victim-compensation schemes and free legal aid, and civil society organisations supplement this architecture by identifying eligible beneficiaries, assisting with compensation applications, and documenting harm; jail legal aid clinics and paralegal volunteer networks constitute critical access points for undertrials navigating complex legal processes, often reaching individuals whom the formal legal aid machinery, constrained by caseload and geographic reach, cannot serve promptly. In strategic litigation and fact-finding, organisations such as the People's Union for Civil Liberties have historically advanced constitutional jurisprudence on encounter killings, custodial deaths and police accountability, with their public interest litigation and fact-finding reports generating judicial scrutiny that indirectly deters malicious prosecution by raising the institutional cost of arbitrary state action; the doctrinal lineage running through Rudul Sah, Nilabati Behera and D.K. Basu owes a considerable, if often uncredited, debt to civil society litigants and interveners who brought the underlying facts before the courts in the first place. In exoneration support, innocence-network initiatives and people's tribunals document wrongful prosecutions and produce advocacy reports that keep systemic reform on the policy agenda while providing narrative visibility and solidarity for survivors, a function with no formal statutory analogue in India but one that the Innocence Project model in the United States and comparable initiatives in the United Kingdom have shown can meaningfully shift both public opinion and eventual legislative reform over time.

In rehabilitation and re-entry, non-governmental organisations fill a statutory vacuum by offering psychosocial support, livelihood reintegration and limited assistance with record clean-up, interventions that are critical given that acquittal alone does not restore social or economic standing; an employer conducting even a cursory background check, or a landlord relying on informal community knowledge, will often treat a prior arrest or prosecution as disqualifying regardless of its eventual outcome, and only sustained, resourced re-entry support can begin to counteract that informal but pervasive form of continuing punishment. Finally, in training and monitoring, civil society and academic institutions are well placed to design continuous training modules for police and prosecutors on ethical charging practices and disclosure obligations, and to build independent monitoring frameworks tracking patterns in arrest, bail and prosecution outcomes, work that can surface systemic patterns, particular police stations or districts with disproportionately high rates of subsequently withdrawn or acquitted prosecutions, that no individual claimant's case, litigated in isolation, could reveal. The five functions described above are not merely complementary to eventual statutory reform; they are, on the present record, the only mechanisms performing these roles at all, which is precisely why Part 7 proposes formalising civil society's role within the statutory architecture rather than treating it as an informal adjunct to be consulted after the fact.

7. TOWARDS A WRONGFUL PROSECUTION (COMPENSATION AND REHABILITATION) ACT: A REFORM BLUEPRINT

The comparative and doctrinal analysis above converges on the need for dedicated legislation built around six elements. First, scope and definitions: the statute should define triggering events, honourable acquittal or discharge for lack of evidence or prosecutorial default, quashing for abuse of process, proven fabrication or suppression of material, and closure reports confirming false implication, and should adopt a balance-of-probabilities standard rather than requiring proof of malice, aligning India with comparative jurisdictions that compensate on the basis of objective wrongfulness rather than the subjective mental state of the original complainant or investigating officer. This single definitional shift, from a malice-based to a wrongfulness-based trigger, would resolve the evidentiary bottleneck identified in Part 4 as the principal reason tort-based remedies remain inaccessible to most victims. Second, an independent claims commission: state-level commissions comprising retired judges, forensic and mental-health experts and civil society nominees should operate under strict timelines, applications filed within two years of exoneration, reasoned orders within one hundred and twenty days, and appeal to a High Court tribunal, structurally mirroring the separation of investigative and adjudicative function that makes the British Criminal Cases Review Commission model effective. Third, scheduled heads of compensation covering both pecuniary loss, lost income, legal expense and impaired future earnings, and non-pecuniary harm, loss of liberty, reputational injury and family disruption, indexed to inflation, with interim relief payable within thirty days of a prima facie eligibility determination, ensuring that claimants are not left without support for the months or years a full claims process might otherwise require.

Fourth, non-monetary remedies including mandatory sealing or expungement of arrest and First Information Report records, formal notice to background-check agencies, and, where relevant, service restoration with back wages for public employees suspended during proceedings, alongside re-entry services in housing, healthcare and skill training delivered through partnerships between District Legal Services Authorities and non-governmental organisations, the same civil society actors whose current informal role Part 6 describes. Fifth, accountability and deterrence mechanisms empowering commissions and courts to impose personal cost orders and trigger departmental proceedings where fabrication or mala fide conduct is proven, alongside a codified open-file disclosure duty requiring prosecutors to disclose exculpatory material at an early stage, operationalising the Supreme Court's direction in Kishanbhai and giving it a statutory enforcement mechanism it presently lacks.[24] Sixth, data and oversight through a National Registry of Exonerations, documenting annual statistics on exonerations, compensation and causative factors such as mistaken identification or coerced confession, published in consultation with the National Human Rights Commission and the National Legal Services Authority, alongside regular audits of state victim-compensation schemes to harmonise eligibility, timelines and quantum across states whose current practice, as Part 4 notes, varies widely with no central coordinating standard.

A phased implementation beginning with pilot programmes in the three or four states with the highest undertrial populations, paired with standardised training for police and magistrates on identifying red flags of malicious prosecution and with performance-linked grants to the non-governmental partners implementing outreach and re-entry services, would allow the reform to be tested and refined before national rollout, an approach consistent with how the Undertrial Review Committee mechanism itself was incrementally strengthened rather than imposed nationally in a single legislative stroke. Throughout, the underlying tension exemplified by the Section 498A and Section 85 debate, between robust protection for genuine victims and safeguards against mechanical or omnibus arraignment, illustrates that procedural safeguards of the kind proposed here can protect complainants and the accused simultaneously without eroding the protective core of the substantive law, provided the safeguards are embedded in everyday enforcement rather than left to case-by-case judicial correction long after the harm of an unwarranted arrest has already been sustained.[25]

8. CONCLUSION

India's constitutional jurisprudence, rooted in Article 21, has consistently denounced arbitrary arrest, abusive investigation and state-inflicted harm, yet remedies for malicious and wrongful prosecution remain indirect, piecemeal and inconsistent. The absence of a dedicated statute reflects a persistent gap between constitutional principle and practical remedy: the judiciary has innovated through public-law compensation, but such relief remains reactive and cannot substitute for a coherent legislative framework capable of treating wrongful prosecution as a distinct, recognised harm with predictable eligibility criteria, quantum and procedure. A Wrongful Prosecution (Compensation and Rehabilitation) Act, incorporating an independent claims process, clear eligibility thresholds, scheduled heads of damages, record-sealing mechanisms,

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24 State of Gujarat v. Kishanbhai, (2014) 5 S.C.C. 108 (India).

25 Arnesh Kumar v. State of Bihar, (2014) 8 S.C.C. 273 (India); Social Action Forum for Manav Adhikar v. Union of India, (2018) 10 S.C.C. 443 (India).

interim relief and structured re-entry services, would give practical effect to the constitutional principle that a right without a remedy is no right at all, while harmonising Indian law with its obligations under the International Covenant on Civil and Political Rights. Civil society organisations and legal aid bodies are indispensable partners in this architecture, surfacing cases, shepherding claims through legal process, providing psychosocial and rehabilitative care, and monitoring statutory compliance, functions that Part 6 shows they already perform informally and that formal statutory recognition would only strengthen and scale.

The reform outlined in this paper is not a departure from India's existing constitutional trajectory but its logical continuation. The Supreme Court's own jurisprudence, from Rudul Sah through Nambi Narayanan, has already established every substantive principle the proposed statute would codify, that liberty wrongly taken must be compensated, that dignity wrongly injured must be restored, and that the State bears responsibility for the conduct of its own prosecutorial machinery. What India lacks is not constitutional principle but institutional architecture capable of applying that principle predictably, to every claimant rather than only to those whose cases happen to reach the Supreme Court on facts dramatic enough to command its attention. Codifying decades of judicial reasoning, comparative practice and policy recommendation into a unified statutory framework would allow India to move from sporadic, discretionary relief toward a predictable, humane and constitutionally faithful response to malicious prosecution, one commensurate with the scale of the problem that the undertrial data reviewed in Part 3 make plain.

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