

WRONGFUL CONVICTION: NEED STRUCTURED RELIEFS TO THE EXONEREE

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ABSTRACT

The gravest miscarriage of justice is the conviction of an innocent. A wrongful conviction means the neglect of innocence. This can lead the innocent to think that ‘virtue is no security’ and therefore his behaviour is immaterial. Such a sentiment cannot be instilled because then that will be the end of social order. Though guilt is to be proven beyond reasonable doubt, instances of wrongful conviction are inevitable due to various factors. Since the presence of this evil is acknowledged, it is the duty of the laws to provide for a relief. Such relief should be in the form of a comprehensive framework. The fact that there is no redressal framework, to which the exoneree can seek refuge to, reflects the pathetic state of affairs. The only remedy which can be sought is the relief under Article 32 and 226. When left to a case to case determination, it is naturally bound to be arbitrary and such subjectivity can do grave harm to the aggrieved exoneree. Wrongful conviction, in addition to being injustices against the victim, like any other crime, has an impact on the society as a whole in that it lowers the incentive to remain innocent, thereby lowering deterrence.

The article looks into the aftermath of exoneration on the social, economic and psychological well-being of the exoneree and the social stigmatization surrounding them. The plight of the exonerees is no better than that of war veterans. The article studies the available remedies under the existing system and points out the inadequacy of those remedies. Further the article also tries to put forth possible suggestions for the formulation of a comprehensive legal framework suitable to the Indian judicial system.

Key words:

Wrongful conviction – Exoneree – Compensation – Innocence – Remedy

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INTRODUCTION

A murderer harms the victim in one go. But through wrongful conviction the state perpetually scars the convict for the rest of his life by depriving him of precious years of his life. This indicates the severity and graveness of wrongful conviction. Also, the status of the accused also plays a significant role in deciding his fate in a proceeding. This has been portrayed by Shakespeare in King Lear as follows:

“Through tattered clothes small vices do appear;

Robes and furred gowns hide all.

Plate sin with gold,

And the strong lance of justice hurtles breaks;

Arm it in rags, a pigmy’s straw does pierce it.”²

Such being the role of wealth in the justice system, wrongful conviction of the poor and less privileged becomes a common practice. The fact that there is no comprehensive statutory framework to seek remedy for such a grave injustice makes one wonder. When even the petty crimes are penalized, a crime with such a gravity as wrongful conviction necessarily demands a statutory remedy. It is vital that innocence should be protected for the welfare of the society. If innocence is not recognized and protected, then people will begin to operate under the thought that it is immaterial whether he remains innocent or not. Such a sentiment will lead the society into utter chaos. That is why innocence is to be incentivized by condemning wrongful conviction. The article studies the causes and effects of wrongful conviction and examines the remedies available to exonerees post release. It also puts forth suggestions for the formulation of a comprehensive statutory framework to deal with wrongful conviction.

WRONGFUL CONVICTION:

Wrongful conviction is the gravest miscarriage of justice. In *Babloo Chauhan v NCT Delhi*³ the Delhi High Court held that “wrongful conviction is a form of miscarriage of justice and there must

² William Shakespeare, King Lear, 1606.

³ 247 (2018) DLT 31.

be legislative framework to ensure that people are not wrongfully incarcerated and prosecuted and if they are, adequate remedies are provided to them.” Though there are other forms of miscarriage such as excessive or inappropriate sentences, violations of procedural rules, errors in interpretation of relevant laws or failure to convict a guilty person, wrongful conviction is to be given the topmost priority. The other forms are concerned with the criminal and the victim, while wrongful conviction involves an innocent person unrelated to the crime. Wrongful conviction is not only an injustice to the victim but also to the society in that the guilty person is still at large. Criminal justice officials of all fields and levels who, knowingly, fail to collect or disclose evidence that might be favorable to the defendant, or who fail to initiate procedures to exonerate a person whom they discover has been wrongfully convicted, should be liable to criminal prosecution, or at least some serious sanctions. In the 21st century when criminal justice systems around the world are moving to a reformative system, wrongful conviction is violative of the basic principles of human dignity. “It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilized society.

CAUSES OF WRONGFUL CONVICTION

More focus on obtaining convictions rather than on the truth:

The police are pressured into closing cases. When they operate under such pressure, the pursuit of the truth is diluted amidst the haste. In the zeal of seeking justice, the wrong individual is punished. This can be observed from numerous cases. One of the prominent and recently spoken one due to the courtesy of a film⁴ is the *Rajakannu case*⁵ where the police, in order to dispose off cases, out of spite, even though they knew that the victim was not the criminal, subject him to torture to extort him into confessing. It is evident from this case that such a pressure averts the focus from the truth to mere disposal of the case. Measures like custodial torture are used as handy instruments in this process.

Plea bargaining:

⁴ Jai Bhim.

⁵ Ramasamy, Anthonysamy & Ors. v State.

In countries where plea bargaining exists, it is the major source of wrongful conviction. This is because, when the innocent person is given the option of either to face a trial with the risk of a harsh punishment or to plead guilty and undergo a lesser punishment, the person is likely to opt for the latter. Though some may argue that an innocent person should stand his ground if he is the innocent he claims to be, given the risk of a harsh punishment, an average risk averse human is only likely to plead guilty. This way innocent people are lured into entering a guilty plea⁶.

False confessions:

If confession due to custodial torture is on one hand, on the other hand is the voluntary false confession. This is an even grave danger. Even though mere confession cannot put an end to the case, when the police are desperate to close the case, its role may be huge. There may be instances where there are voluntary wrongful confessions to protect other criminals to make the police drop further investigation. This is similar to taking the rap for someone higher in a crime network⁷.

Focus of prosecutors on winning:

The duty of the prosecutor is only to enlighten the Court on the law and facts, and not to fight for securing conviction alone. The prosecutors focus on winning cases and consider their victory as the top priority and while doing so they only focus on convicting the person and even try to suppress evidence which may point to the innocence of the accused. This is because they aim to pursue a political career after a few years in office. With their political career at stake, they tend to overlook vital pieces of witness and evidence only to have a clear and exemplary track record. The over-commitment of prosecutors leads them to be unwilling to release retained evidence or reopen consideration with regard to the conviction⁸. When a prosecutor wins a case, it does not undo the harm caused to the victim. The only hope is to avoid such crimes in the future through deterrence, rehabilitation, etc. Such being the case, wrongful conviction does not help the cause.

Forensic evidence:

⁶ C. Ronald Huff and Martin Killias, *WRONGFUL CONVICTION*, Temple University Press, Chapter 15, pp. 285-300. <https://www.jstor.org/stable/j.ctt14btc21.17> (last visited on 4 Aug 2021)

⁷ Id.

⁸ 7 Seth F. Kreimer & David Rudovsky, *Double Helix, Double Bind: Factual Innocence and Postconviction DNA Testing*, 151 U. Pa. L. Rev. 547, 547-554 (2002); Orenstein, *supra* note 2, at 408-17.

Around the world, the advent of forensic sciences into the criminal justice systems has led to numerous exonerations. Innocent persons who were convicted due to lack of forensic evidence were exonerated. Now with advanced forensics, though that danger has been averted, there is a newer danger. When private labs are approached, there is a threat that they may not be totally unbiased. Chances of the reports being favourable to the party approaching them are always there. This again may lead to miscarriage of justice.

Preconceived notion of judges and media trial:

Sometimes it is possible that the presiding judges already have a preconceived notion about the case especially due to the propagation of the case and public condemnation of the accused. This leads the judge to operate on the preconceived notion that the accused is guilty and all witnesses are scrutinized under such a notion. Personal views of the judge may also be a determining factor. Media trial is yet another causative factor which leads to a judge deciding the fate of the accused. The *Nanavati case*⁹ is a case in point. The role of the media in this case has also been portrayed in the film “Rustom”. The influence of the news in the local newspaper on the mindset of the judge and the jury can be very explicitly observed. It was as if the media controlled what was to happen in Court the next day. Such being the case, wrongful conviction is a high possibility.

The problem of wrongful conviction is most serious especially among certain groups of citizens who are stereotyped. However serious the crime may be, irrespective of public condemnation and personal affirmations, the *“court’s approach to the evidence must be dispassionate and free from prejudice and the examination of the evidence must be fair and not just in fixing the guilt upon the accused persons.”*¹⁰ The same has been reiterated in the case of *Kashmira Singh v. State of Madhya Pradesh*¹¹ where the Supreme Court held that *“Where the murder committed is a particularly cruel and revolting one, it is necessary to examine the evidence with more than ordinary care lest the shocking nature of the crime might induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law.”* Also in *Kali Ram v. State of Himachal Pradesh*¹² it was held that “The guilt of the accused has to be judged not by the fact that a vast

⁹ 1962 AIR 695.

¹⁰ State v. Shankar Sakharan Jadhav & Anr., AIR 1957 Bom 226.

¹¹ 1952 AIR 159.

¹² 1973 AIR 2773.

number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record.”

EFFECTS OF WRONGFUL CONVICTION

Post-exoneration trauma and double jeopardy:

The post traumatic stress of an exoneree is huge. To quote the words of Kirk Noble Bloodsworth¹³, a wrongfully convicted exoneree who spent 9 years in prison, *“No matter what happens to you, you are constantly put under this eye of distrust that you can never shake.... It never, ever ends. It never ends. It never ends. It never will be ended.”*¹⁴ These wrongfully convicted persons are exposed to incarceration just like the guilty individuals. However, these innocent persons undergo different experiences during the sentence and post-release in that they serve time for crimes they did not commit. This is because over and above the trauma of incarceration, they also have the trauma of being wrongfully implicated for a crime they did not commit. Coping with the trauma post exoneration seems like an extended sentence to the wrongfully convicted persons. Such exonerees resort to various coping mechanisms which may be positive or negative¹⁵. Religion is also seen as a way in which individuals cope with the PTSD from wrongful conviction.

Post release, exonerees face severe difficulty in finding employment and rebuilding families or starting new ones. This has a profound impact on the mental wellbeing of the exoneree. Exonerees feel that on exoneration, they are no longer the same person. Lack of employment opportunities also breaks their emotional stability. Most enterprises are reluctant to employ exonerees because irrespective of whether they are innocent or not, the social outlook is that he is a ‘con man’. This is the stigma attached with wrongful convictions. There are instances where victims are subjected to social isolation and ostracism after release¹⁶. Those who manage to overcome these difficulties, however, end up facing difficulties which can be attributed to the wrongful conviction. Not only this, but there is intense trauma due to the hardships they underwent during their prison sentence. Instances of assault in prison by the inmates are not something new. This adds on to the trauma of

¹³ Rob Hiaasen, *The Second Life of Kirk Bloodsworth*, The Baltimore Sun, Jul. 20, p. 2000.

¹⁴ Sara Rimer, *Life After Death Row*, N.Y. Times, Dec. 10, 2000, 6 (Magazine), p. 100.

¹⁵ Rashaan A. DeShay, *“A lot of people go insane behind that”*: coping with the trauma of being wrongfully convicted, *Criminal Justice Studies, A Critical Journal of Crime, Law and Society*, pp. 199-213.

¹⁶ N. Vijayakumar v. State of Tamil Nadu, 2021 SCC Online SC 53.

the exoneree¹⁷. While some exonerees may become activists to make peace with what has happened to them, others may not take the trauma as well.

The exonerees therefore are in double jeopardy in that they not only undergo prison time but also the trauma that follows. This is being punished twice for the same offence which he did not even commit. Even a guilty person should not go through such a punishment. Considering that an innocent person goes through this, reflects the appalling state of the victim and the serious nature of the crime of wrongful conviction.

External effects of wrongful conviction:

Wrongful convictions can be expensive in that once the wrongfully convicted victim is exonerated or when the conviction is overturned, the state has to spend huge sums to settle the lawsuits of such wrongfully convicted persons for the lost years of their lives. The money spent to compensate wrongfully convicted persons could be devoted to programs and services to help the crime victims or their survivors. Over and above the settlement costs, there are also incarceration costs, lawyer fees and other litigation costs¹⁸.

Impact on victims:

When an innocent person is convicted for someone else's commission, the actual offender is still at large. A criminal who got away with the first crime is incentivized to commit further crimes. For instance in the murder case of 11 year old Jeanine Nicarico in Illinois¹⁹, police arrested two men for the rape and murder. During the course of their trial, the actual killer confessed. But in the interval, with the incentive offered by the wrongful conviction, he was free and he committed sexual assaults, murders. This way, wrongful conviction takes its toll on the victims of heinous crimes by allowing the real perpetrator to escape justice and remain free to harm another victim. Also, through wrongful conviction there is a new class of victims ie. wrongfully accused or convicted and the crime victims fit into the role of perpetrators. To quote the words of a victim who learned that the wrong person had been convicted, ***"I was a mess. I was absolutely hysterical***

¹⁷ Stephanie Armour, *Wrongly Convicted Walk Away With Scars*, Usa Today, Oct. 13, 2004, at 1A.

¹⁸ 8 John Conroy & Rob Warden, *A Tale of Lives Lost, Tax Dollars Wasted and Justice Denied*, BetterGov.Org (June 18, 2011), http://www.bettergov.org/investigations/wrongful_convictionsl.aspx.

¹⁹ Donald Sevener, r, *A Capital Blunder*, Chi. Reader, July 28, 1989, section 1 at 1.

and distraught. This was way worse than being attacked... This was horrible because... Now I was a perpetrator.” Over and above the trauma from the attack, the victims also have to undergo this guilt of having implicated an innocent person.

Lowered deterrence and incentive effect in crime levels:

One of the effects of wrongful conviction would be the lowered deterrence among prospective offenders. This is because of wrongful conviction, by lowering the payoff for being innocent while leaving the payoff for being guilty untouched²⁰. To quote the words of Richard Posner²¹, “*Greater accuracy in the determination of guilt increases the returns to being innocent.*” When there is no payoff or incentive to be innocent, every person, under the impression that they might be convicted at any time even for a crime they did not commit, then it is only a while before the society breaks into chaos because people start to consider that instead of being punished for a crime they did not commit, they might as well commit a crime. This is the traditional view. Say A risks being imprisoned for a crime committed by someone else. Then A may be less deterred by the chance of imprisonment for robbing the bank because even if A does not rob, someone else will and A may be suspected. With this risk of suspicion, there is nothing which prevents A from committing the crime. Also, when A is wrongfully suspected, the investigation switches its focus to A and thus lowering the likelihood of the offender being caught, leaving the criminal at large. Both outcomes are not desirable. The modern view tries to add on to what is laid down by the traditional view. Accordingly the three main indirect effects of wrongful conviction on deterrence²² are as follows:

- i. It may lead to closure of investigation, thereby leaving the actual offender at large. This incentivizes the offender by offering him a chance that an innocent may be convicted for his crime.
- ii. When faced with the risk of wrongful conviction, the potential offender will not want to forgo a crime opportunity because even if he does not commit the crime, someone else might and he will have to face the charges for that.

²⁰ Henrik Lando, *Wrongful Conviction Lower Deterrence?*, The Journal of Legal Studies, Vol. 35, No. 2 (June 2006), pp. 327-337. <https://www.jstor.org/stable/10.1086/501095> (last visited on 11 Aug 2021).

²¹ Richard Posner, 1999, *An Economic Approach to the Law of Evidence*, Stanford Law Review, p. 1484.

²² Eric Rosmusen, 1996, *Stigma and Self-Fulfilling Expectations of Criminality*, Journal of Law and Economics.

- iii. With this always existent threat of wrongful conviction, the prospect of being correctly sanctioned seems less of a threat since there is a possibility that the actual offender may get away with it when there is a wrongful conviction for the crime.

Therefore wrongful conviction while lowering deterrence also incentivizes the offender by offering him a probability that he may not be apprehended and that an innocent person will face the brunt of his action or when he believes that he is anyway going to be convicted irrespective of whether he is guilty or not.

AVAILABLE REMEDIES, THEIR INSUFFICIENCY AND THE NEED FOR A STATUTORY RECOGNITION

The ICCPR calls for the signatories to take steps to ensure the right to compensation for wrongful arrests and detentions. Article 14(6) of the International Covenant on Civil and Political Rights lays the foundation for compensating the wrongfully convicted: *"When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law."* Though India had its reservations in ratifying, the Supreme Court has nevertheless recognized the right to compensation by making it a necessary public law remedy. This provides a remedy to the exoneree. However, there are difficulties in availing such remedies. This can be seen from various cases.

ISRO Spy case:

The ISRO spy case²³ which has been elaborately portrayed in the movie "ROCKETRY" is pertinent in this regard. ISRO scientist Nambi Narayanan and his colleague were arrested in 1994 on the allegation that they leaked official secrets to a spy racket. The claim of the Kerala Police was that they had passed on secret documents to other countries, especially Pakistan. Later the case was handed over to the CBI who found the case to be false and that the Kerala Police had acted unprofessionally. Narayanan was exonerated in 1996 and moved the NHRC seeking compensation of Rs. 1 crore. The movie highlights the plight not only of the scientist but also of his family. The trauma suffered by them is unspeakable. The NHRC ordered for an interim

²³ Nambi Narayanan v. Siby Mathews & Ors (2018) 10 SCC 804.

compensation of Rs. 10 lakhs. A division Bench of the Kerala High Court turned down his plea for action against the erring police officers and hence he appealed to the Supreme Court. Finally, after 24 years the payment of the compensation of Rs. 50 lakhs was ordered.

The fact that the order took 24 years is a glaring check on the reality ie. the need to correct wrongs caused by unlawful or wrongful arrests. This calls for a statutory recognition of the right of compensation for wrongful arrests and convictions which allows the victims to avail the remedy without having to go through years of litigation²⁴.

Akshardham terror case:

Though the court did right by the wrongfully convicted victims in reprimanding the authorities who conducted the investigation in an injudicious manner and levied serious allegations against innocent persons²⁵, it refused to entertain the victim's plea for compensation. The Court held that the acquittal does not automatically give them the right of compensation and would set a dangerous precedent if allowed²⁶.

Nisarudin's case:

Another noteworthy case is the case of Nisarudin who was wrongfully accused under the TADA Act for a bomb blast, only to be exonerated later. He was convicted when he was 19 and was exonerated after 23 years. This loss of 23 years of his life due to the gross negligence of the judiciary cannot be indemnified in any way whatsoever. It is a shameful point that the Court did not even grant him any compensation for the grave injustice done to him.

In India, there is a lack of compensation scheme or legal mechanism which punishes the state for its mistakes. There are no clear cut provisions in the statutes which provide the victims to seek redressal. There are various judgements, reports and commentaries on the same, but a clear elucidated provision has not been enumerated in the law books. Under the existing laws, there are

²⁴ Sonam Saigal, *Prisoners of the System*, THE HINDU (Feb. 20, 2017, 07:53 PM),

²⁵ PTI, Akshardham Terror Attack Case: SC Refuses Compensation Plea of Acquitted Persons, THE INDIAN EXPRESS (Jul. 05, 2016, 5:29 PM).

²⁶ See Id.; See also SC denies compensation to 6 acquitted; calls it "dangerous precedent", THE TRIBUNE (Jul. 05, 2016, 5:40 PM).

three remedies available viz. Public Law Remedy under Article 21 and 22 through Article 32 or 226, Private Law Remedy under Article 300; and Criminal Law Remedy under Chapter IX of IPC.

All these remedies boil down to the determination of a Court. The inconsistency in verdicts delivered by different judges shows how flawed our judicial system is. Judges may often be guided by their personal beliefs and prejudices or in their faith in the fault finding process ie. the police. All this arbitrariness is showered upon the families of innocent victims who are persecuted for crimes they did not commit. Such judicial arbitrariness along with a vengeful police force and inefficient and corrupt intelligence apparatus do not help the cause of the exonerees. In India this is particularly observed in the pattern of the police to pick up mainly the youth from the Muslim community for the alleged “Islamic terrorist conspiracy”. This is the same with the poor tribal youth in certain parts of the country on charges of “Maoist extremism”.

The victims who survive and manage to get themselves acquitted, have to go through the cumbersome and expensive process of appealing till they reach the Supreme Court. And even if they are lucky enough to reach there, there is a question whether their case will be heard by a bench that is discerning enough to examine the evidence and establish their innocence. The fate of hundreds of innocent people hangs by this narrow game of chance. Due to scarcity of finances, many individuals may not even think of approaching the Supreme Court to seek compensation. they tend to be satisfied with having been finally exonerated from the system.

Therefore, a statutory right to compensation will provide a legal remedy to the citizens and will subsequently make the state officials, in particular, the police, institutionally liable. This is possible only when there is a statute in place which provides for well structured and well defined remedies.

Law Commission 277th Report:

The Law Commission of India in its 277th report titled “*Wrongful Prosecution (Miscarriage of Justice): Legal remedies*”²⁷ recommended amendments to the Criminal Procedure Code for compensation for victims of wrongful prosecution. It recommended setting up of Special Courts for delivery of speedy justice to victims. The most important recommendation is the compensation legislative framework. It observes that there cannot be a fixed compensation for the victims and

²⁷ Law Commission of India, ‘*Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*’, Report No.277, (Aug. 30, 2018) <http://lawcommissionofindia.nic.in/reports/Report277.pdf> (last accessed Sep. 23, 2020, 1:50 PM).

hence it lays out ‘guiding principles’ such as the seriousness of the offence, severity of punishment, length of detention, damage to health, harm to reputation and loss of opportunities. The report also recommends the grant of interim compensation by the State which may be both ‘pecuniary and non-pecuniary’ in nature. The pecuniary compensation includes the amount of compensation and non-pecuniary compensation includes the measures taken by the State to reintegrate the victim into the society especially in the avenue of employment and removal of the social stigma associated with it. Wrongful conviction is an even graver injustice to the victim and hence also deserves the same kind of remedy as available to victims of wrongful prosecution. It has been a while since the report was published, but the Government has not taken measures to implement the recommendations.

SUGGESTIONS

In line with the recommendations of the 277th Law Commission, just like for wrongful prosecution, the formulation of a statute for wrongful conviction is essential. The statutory framework, in addition to the compensation provisions as prescribed by the Law Commission, may incorporate the following aspects:

Revising the role of prosecutors to limit wrongful conviction:

Prosecutors, while focusing on winning the case, should also be open to reviewing cases where they find a lead which may point towards the innocence of the accused. The review process cannot be demanded by merely a new law or rules. There should be a structure which provides uniformity in the justice delivery system. Two practical and doable structures may be:

- a) Tiered review systems in prosecutors’ offices
- b) Appointment of independent commissions to review suspect convictions.

However the success of these structural processes depends on the prosecutors who should share the same interest in uncovering innocence instead of being fixated on securing a conviction.

Exception to attorney-client privilege:

The ethical code of professional conduct of advocates guarantees confidentiality to the client of any information which he may disclose to the advocate. However, like every other rule, this has

its own exceptions. The death and substantial bodily harm exception is a case in point²⁸. Wrongful conviction certainly leads to substantial bodily harm and hence disclosures made by the client which may point towards the innocence of the accused, then such disclosure should not be covered under the attorney-client privilege. This helps in substantially minimizing instances of wrongful conviction. This way undue and unlawful use of the confidentiality may be avoided.

Liability for wrongful conviction:

There should be a mechanism in the judicial system to penalize the agents of prosecution who are responsible for wrongful conviction for reasons of their bias, neglect and irresponsibility. These agents include the police, the public prosecutor and the Courts. Just like any other crime, wrongful conviction is also a very serious offence. Hence the perpetrators should be made to pay the price for the miscarriage caused, ruining the lives of innocent people. The Nuremberg trial²⁹ is a case in point. The war criminals included 16 German jurists and lawyers, out of whom 10 were found guilty of various crimes ranging from anti-Jewish bias to currying favours with the ruling Nazi government. Their sentencing was based on evidence from the survivors of their prejudiced judgments. The courts exposed their complicity with the ruling regime and their racist bias against Jews.

People should be held liable for the crime irrespective of the position they hold. So, be it a judge or a reputed prosecutor, a crime is a crime and the person deserves to be prosecuted and punished. The liability, apart from temporary suspension or transfer, should include the trial and punishment for falsely implicating innocents and putting them through the injustice. This is because wrongful conviction is a sole doing of judicial irresponsibility.

CONCLUSION

Once an innocent person is convicted of murder and is hanged, the harm resulting from the conviction is irretrievable. Not many persons undergoing the pangs of wrongful conviction are

²⁸ Inbal Hasbani, *When the law preserves injustice: issues raised by a wrongful incarceration exception to attorney-client confidentiality*. *The Journal of Criminal Law and Criminology* (1973-), Vol. 100, No. 1 (Winter 2010), pp. 277-308.

²⁹ Nuremberg Trial Archives, The International Court of Justice: Custodian of the archives of the International Military Tribunal at Nuremberg.

fortunate like Dreyfus³⁰ to have an Emile Zola to get the verdict of guilt annulled. The less fortunate end up serving the sentence of the punishment for a crime they did not commit. The fate of an innocent person cannot be totally dependent on the decision of a single judge. In line with Blackstone's ratio "*It is better that ten guilty persons escape than that one innocent suffer.*", the preservation of innocence should be a top priority compared to the detection of guilt and that is why wrongful conviction is a serious crime in need of urgent penalization. The risk of wrongful conviction of the innocent, of course, is always inevitable in any system of administration of criminal justice. Such a risk can however be minimized under a comprehensive statutory framework. Just like how the society has benefited from the conviction of a guilty person, the society owes it to the wrongfully convicted person and is liable to rectify the errors by helping the victims in securing post exoneration remedies. To facilitate this, there should be a comprehensive framework to tackle the injustice of wrongful conviction.

³⁰ Adam Gopnik, *Trial of the Century: Revisiting the Dreyfus affair*, The New Yorker, September 2009.