

DISSERTATION

on

**Legal Rights and Remedies of the Victims of Wrongful Convictions and
Incarceration in Bangladesh: Is It Sufficient to Provide Compensation Only?**

Course Title: Supervised Dissertation

Course Code: LAW 406

Submitted By:

**Ummey Iffat
ID: 2018-3-66-016**

Submitted To:

**Md. Pizuar Hossain
Senior Lecturer,
Department of Law,
East West University**

Date of Submission: 06/09/2023

Words: 6885

Consent Form

The dissertation titled “**Legal Rights and Remedies of the Victims of Wrongful Convictions and Incarceration in Bangladesh: Is It Sufficient to Provide Compensation Only?**” prepared by Ummey Iffat, ID 2018-3-66-016 submitted to Mohammad Pizar Hossein, Senior Lecturer, Department of Law, for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

.....

Signature of the Supervisor

Date:

Acknowledgement

First and foremost, I am grateful to almighty Allah, by whose grace I have been able to come so far. I am also thankful to my respected supervisor Md. Pizar Hossein, Senior Lecturer, Department of Law, who assisted me in determining my thesis topic and guided me in this journey, and provided various research supports to conduct my thesis work. I want to thank all East West University's Department of Law faculty members for their advice and support throughout my undergraduate career. Finally, I want to thank my family and friends for motivating me at every stage of my life.

Declaration

I, Ummey Iffat, do hereby confirm that the research paper titled **“Legal Rights and Remedies of the Victims of Wrongful Convictions and Incarceration in Bangladesh: Is It Sufficient to Provide Compensation Only?”** has been prepared by my own findings and efforts. I also declare that this research is my original work and has not been submitted for any other degree or professional certification. Any information or content which was useful in finishing this study is acknowledged and specifically cited.

.....

Signature of the Supervisee

Date:

Table of Content

Abstract

Chapter One

Introduction

1.1 Introduction

1.2 Research Questions

1.3 Objective of the Research

1.4 Research Methodology

1.5 Literature Review

1.6 Research Limitation

1.7 Chapter Outline

Chapter Two

2.1 Introduction

2.2 Relevant Laws in Bangladesh

2.4.3 Jahalam case (2016).

Chapter Three

3.1 Introduction

3.2 Rights and remedies of wrongful conviction and incarceration under the international laws, conventions, and initiatives

3.2.1 Universal Declaration of Human Rights

3.2.2 International Covenant on Civil and Political Rights

3.2.3 The Torture Convention

3.2.4 Commonwealth Human Rights Initiative

3.3 Certain wrongful conviction and incarceration cases in different countries

3.3.1 Scottsboro Boys Case (1931)

3.3.2 Talwars' Double Murder Case (2008)

3.3.3 Birmingham Six Case (1963)

3.3.4 Sam Hallam Case (2005)

3.4 Conclusion

Chapter Four

4.1 Introduction

4.2 Possible remedies for wrongful conviction and incarceration in different countries 4.3 Is compensation sufficient for wrongfully convicted and incarcerated persons in Bangladesh?

4.4 Conclusion

Chapter Five

5.1 Concluding Remarks

5.2 Recommendations

Bibliography

List of Abbreviation

ICCPR: International Covenant on Civil and Political Rights

CHRI: Commonwealth Human Rights Initiative

CAT: The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UDHR: Universal Declaration of Human Rights

CrPC: The Code of Criminal Procedure

HCD: High Court Division AD: Appellate Division

NHRC: National Human Rights Commission

RAB: Rapid Action Battalion

Vs: Versus

Abstract

Wrongful convictions are cases where individuals are found guilty and sentenced for crimes they did not commit. Wrongful incarceration happens when an accused person is detained in custody for an unreasonably long period of time without trial and then proven as not guilty after the trial. The aim of this research is to investigate the causes and legal consequences of such wrongful convictions and incarceration in Bangladesh. This will highlight the legal rights and remedies of the victims of wrongful convictions and incarceration under the laws in Bangladesh. It also assesses whether providing only compensation to individuals who have been wrongfully convicted and incarcerated in Bangladesh is sufficient.

Chapter One

Introduction

1.1 Introduction

The number of people wrongfully convicted in prisons has reached an all-time high.¹ Also, the increasing rate of wrongful conviction makes people unreliable to our criminal justice system.² Wrongful conviction is the legal procedure in which a person is declared guilty and punished for a crime that they did not commit.³ It can have a serious impact on the wrongfully convicted person. Wrongful conviction may be wrongful for two reasons, one is the individual convicted who is factually innocent of the allegations and another one is there may have procedural errors that violated the wrongfully convicted person's rights.⁴ Also there are some causes as well such as police and prosecutorial misconduct, misleading statements, notably from government informants, fabricated proof, and incompetent defense counsel representation.⁵

Wrongful convictions highlight the flaws in the criminal justice system and raise the question of the credibility of evidence, witness testimony, and the overall fairness of the legal process.⁶ Wrongful convictions have drastic consequences such as innocent people spending year over year or lifetime in jail, sometimes even the death sentence.⁷ Wrongful convictions not only result in the loss of personal right, liberty, body, reputation, property or freedom only but also emotional, economical, and social difficulties for the individual and their family. It undermines

¹ Wrongful Convictions, Equal Justice Initiative. <<https://eji.org/issues/wrongful-convictions/>> accessed date 28 July 2023.

² Ibid.

³ Criminal Law & Procedure: Wrongful Conviction, Northeastern University School of Law (December 2022) <<https://lawlibraryguides.neu.edu/CrimLaw/wrongfulconviction>> accessed date 28 July 2023.

⁴ Wrongful Convictions “National Institute of Justice”<<https://nij.ojp.gov/topics/justice-system-reform/wrongful-convictions>> accessed date 28 July 2023.

⁵ H Patrick Furman, 'Wrongful Convictions and the Accuracy Of the Criminal Justice System' (The Colorado Lawyer, September 2003) <<https://lawweb.colorado.edu/profiles/pubpdfs/furman/03SeptTCL-Furman.pdf>> accessed 29 June 2023

⁶ Mantel Barbara, Wrongful Convictions, CQ Researcher (March 2022) (Volume 32, Issue 8) <<https://library.cqpress.com/cqresearcher/document.php?id=cqresrre2022031800>> accessed date 28 July 2023.

⁷ Ibid.

public confidence in the judiciary. Because of this people's trust is eroding from the justice system.

In recent history, the fast growth in incarceration began with President Nixon's and President Reagan's tough-on-crime, law-and-order, and war-on-drugs programmers.⁸ Presidents Bush and Clinton continued these tactics, which were aggravated by Clinton's 1994 crime bill.⁹ Wrongful incarceration has recently become common in Bangladesh.¹⁰ Wrongful imprisonment has always been incurred by those authorities that have the power to make the arrest.¹¹ Even police officers are arresting people without a warrant, and it has been shown many people have been incarcerated for offenses that do not even fall under the purview of law of Bangladesh.¹² As a result, many innocent persons have been unfairly incarcerated and jailed in Bangladesh throughout the years.¹³

Wrongful incarceration is increasing at an alarming rate.¹⁴ It is also a serious injustice that can have severe consequences for the innocent victim, their family, and society as a whole.¹⁵ Wrongful incarcerations can happen for a number of reasons, including as flaws in the criminal justice system, misconduct on the part of the police or prosecutors, a lack of qualified defense counsel, and misidentification by eyewitnesses, their maybe political influences as well.¹⁶ Wrongful imprisonment not only restricts innocent people of their liberty, but it also has a major impact on their life.¹⁷ These individuals may suffer from the social loss, relationships damages, harm to their reputations, psychological trauma, and the long-term impacts of incarceration even after their release. Unfortunately, it is increasing day by day. Some individuals abuse this power

⁸ Fair Fight Initiative, The History, Causes, and Facts on Mass Incarceration. <<https://www.fairfightinitiative.org/the-history-causes-and-facts-on-mass-incarceration/>> accessed date 29 June 2023.

⁹ Ibid.

¹⁰ Anika Tahsin, A grim picture of wrongful convictions in Bangladesh, The Business Standard, (Dhaka, 29 November 2020) <<https://www.tbsnews.net/thoughts/grim-picture-wrongful-convictions-bangladesh-164614>> accessed date 29 June 2023.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Atiqur Rahman, Ensuring Compensation for the Victims of Wrongful Imprisonment and Wrongful Detention, Research Gate, (June 2020) (page 152) <https://www.researchgate.net/publication/341840026_Ensuring_Compensation_for_the_Victims_of_Wrongful_Imprisonment_and_Wrongful_Detention_in_Bangladesh> accessed date 29 June, 2023.

¹⁷ Ibid.

to keep innocent people in jail for various reasons. People will misuse this kind of power if it is easily accessible. It undermines public confidence in the judiciary. People's trust is eroding from the justice system.

1.2 Research Questions

This research paper addresses the following two questions:

1. What are the rights and remedies of the victims of wrongful convictions and incarceration under the laws in Bangladesh?
2. Whether providing solely compensation to individuals who have been wrongfully convicted and incarcerated in Bangladesh is sufficient?

1.3 Objective of the Research

The main aim of the research paper is to discuss the legal rights and remedies of wrongful conviction and wrongful incarceration persons in Bangladesh. The whole paper will discuss the causes of wrongful conviction and incarceration, impact of being a victim and its legal remedies or how to stop this under the Constitution of the People's Republic of Bangladesh and Code of Criminal Procedure in Bangladesh. Beside this, relevant provisions of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), Convention against Torture and Other Cruel, and Inhuman or Degrading Treatment or Punishment (Torture Convention).

1.4 Research Methodology

The main focus of this research is to ensure the legal rights and remedies of individuals who have been wrongly convicted or incarcerated in Bangladesh. "Content analysis" method of qualitative research has been adopted to analyze national and international journals, articles, newspaper articles, and organizational reports to find out the rights and remedies the victims of wrongful convictions and incarceration in Bangladesh.

1.5 Literature Review

Wrongful conviction and incarceration are now a serious concern in Bangladesh, and victims of such grave crimes suffer a miscarriage of justice. Various researchers and writers have written about wrongful conviction and incarceration and also to compensate victims of such activities. A number of papers and articles have been analyzed in this discussion. The concept, components, and certain aspects of wrongful incarceration were highlighted by Charles A. Weisman in his work “A Treatise on Arrest and False Imprisonment.” However, it does not go into detail on victim compensation programs. Md. Mustakimur Rahman details how wrongful imprisonment contravenes constitutional requirements and emphasizes the lack of a codified statute that handles victims’ restitution in his article, “Lawful Arrest and False Imprisonment.” The reasons why the state needs to pay the victims are described by Atiqur Rahman in his article on Compensation for the Victims of Wrongful Imprisonment. Also analyzing journal articles and cases of Bangladesh, India, USA and UK found a different compensation method. Also BY analyzing the laws of Bangladesh, India, USA and UK also found that Bangladesh has no provision for this miscarriage of justice.

1.6 Research Limitation

The limitation of the paper is that there are limited materials, such as judicial precedents and journal articles, about rights and remedies of the victims of wrongful conviction and incarceration in Bangladesh.

1.7 Chapter Outline

This dissertation consists of five chapters as follows:

Chapter 1 - Introduction: This chapter elaborates the background of the study, research question, methodology and what are the literature reviewed and limitations of this research paper.

Chapter 2 - Rights and Remedies of the Victims of Wrongful Convictions and Incarceration: Bangladesh Legal Framework: This chapter discusses the rights, remedies, dominating factors and legal framework under the CRPC, The Constitution of the People's Republic of Bangladesh,

tort law, the Penal Code of wrongful conviction and incarceration in Bangladesh. Also this chapter provides the answer to the first research question.

Chapter 3 - Rights and Remedies of the Victims of Wrongful Convictions and Incarceration: International Framework: This chapter discuss the rights and remedies of wrongful conviction and incarceration under the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, The Torture Convention and Commonwealth Human Rights Initiative. Also discuss some cases.

Chapter 4 - Compensation: This chapter makes an argument for the sufficiency of compensation as a remedy and defines the right to compensation for wrongfully convicted and incarcerated. Also this chapter provides the answer to the second research question.

Chapter 5 – Conclusion and Recommendation: This chapter finds some gaps in the law and effective mechanisms to prevent wrongful conviction and incarceration. It also makes some recommendations to prevent such wrongful acts.

Chapter Two

Rights and Remedies of the Victims of Wrongful Convictions and Incarceration: Bangladesh Legal Framework

2.1 Introduction

According to the report of the Legal Aid Committee of Bangladesh Supreme Court, till 8 January 2017, 462 people were detained without trial.¹⁸ 78.2 percent of Bangladesh's prisoners are pre-trial detainees or on remand, and more than 3.3 million cases are still outstanding throughout 2018.¹⁹ According to the report of World Prison Brief by 2021, 67,070 people are detainees which is 80.0% of the total prison population in Bangladesh.²⁰ The number of prisoners is increasing significantly, which raises the possibility that some of these prisoners are innocent.²¹ Many people are being held in detention for long periods of time before their guilt has been proven.²² This percentage of trial and pre-trial detainees is really very alarming.

2.2 Relevant Laws in Bangladesh

2.2.1 The Constitution of Bangladesh

Article 32 of Bangladesh's Constitution states, "No person shall be deprived of life or personal liberty except in accordance with law." Furthermore, Article 21 specifies that a person serving the state must be disciplined in official tasks. When an innocent person is imprisoned for no crime, we cannot argue that government officials did their jobs consistently, and in the process, they violated Article 21. Article 33 strictly prohibits arbitrary arrest, detention and torture.²³ This means that any wrongful incarceration long or short-term without legal grounds is

¹⁸ Mir Aftabuddin Ahmed, Why criminal justice reform is a must, The Daily Star, (publish 31 January 2019), <<https://www.thedailystar.net/opinion/governance/news/why-criminal-justice-reform-must-1695034>> accessed date 29 June 2023.

¹⁹ Tahsin Anika (n 10).

²⁰ World Prison Data (published in December 2021) <<https://www.prisonstudies.org/country/bangladesh>> accessed date 29 June 2023.

²¹ Ibid.

²² Ibid.

²³ Tahsin Anika (n 10).

unconstitutional and a violation of Article 32. It should be mentioned that when any person's fundamental rights are violated, they can file a writ to the court under Article 102.²⁴

2.2.5 Constitutional tort

There are no specific laws in Bangladesh for wrongful conviction and incarceration. So the citizens of Bangladesh need to seek compensation through Constitutional tort if any of their fundamental rights get violated and this type of litigation is known as constitutional tort.²⁵ Under Article 102 (1) of the Constitution of Bangladesh states about awarding compensation in case of constitutional tort.²⁶

2.2.2 The Code of Criminal Procedure 1898

The Code of Criminal Procedure states about wrongful incarceration under section 54, it specifies that a police officer can arrest without a warrant based on suspicion. Section 60 states that when a police officer arrests a person without a warrant, the officer is required to follow the provisions of the law regarding bail and to take the arrested person to the officer in charge and the magistrate who has jurisdiction. Section 61 clearly specifies that a person cannot stay in police custody for more than 24 hours, he needs to be taken before the magistrate within time. Also it is a fundamental principle of the criminal justice system that the detained individual must be brought before a magistrate as soon as possible after the arrest.²⁷

2.2.3 The Penal Code 1860

²⁴ The Constitution of People's Republic of Bangladesh, Article 21, 32,33, 102,

²⁵ Malik Fariha Mehnaz, Concept of Constitutional Tort in Bangladesh, Law Legum, (Publish, July 7, 2021), <<https://lawlegum.com/constitutional-tort-concept-in-bangladesh/>> accessed date 30 June 2023.

²⁶ The Constitution of People's Republic of Bangladesh, Article 102 (1).

²⁷ The Code of Criminal Procedure 1860, section 54, 60, 61,

In the Penal Code, section 342 provides punishment for only those who wrongfully confine people, but does not specify any remedy for the person who was wrongfully incarcerated or confined.²⁸

2.2.4 National Human Rights Commission

In circumstances of wrongful conviction and incarceration, the National Human Rights Commission of Bangladesh (NHRC) can provide support and counseling. The NHRC has the jurisdiction to examine complaints, make recommendations, and take the necessary steps to protect human rights.²⁹

2.3 Remedies in Bangladesh

The main remedies for wrongful conviction and incarceration in Bangladesh is mainly monetary compensation. Analyzing some case laws in Bangladesh it is found that the Supreme Court of Bangladesh awarded monetary compensation usually. But it is not enough for the victim, they lose their time, family, social status and also have huge mental trauma as well. These losses are not curable by only monetary compensation.

2.4 Certain cases of wrongful conviction and incarceration in Bangladesh

2.4.1 Bablu Shiekh case (2001).

A day laborer who had been wrongly imprisoned for the last 17 years after being falsely implicated in a case was recently acquitted of all charges.³⁰ Following an appeal hearing, Natore Additional District and Session Judge Md Saifur Rahman Siddique issued an order releasing Bablu Sheikh 55 year old, the son of Yakub Ali of the hamlet of Achalkot in the district's Singra

²⁸ Penal Code 1860, section 342.

²⁹ National Human Rights Commission, Bangladesh

<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Remedy/NHRC_Bangladesh.pdf> accessed date 4 July 2023.

³⁰ Bablu Sheikh, yet another Jaj Mia, Jaha Alam, Prothom Alo (publish 18 October 2019), (Bangladesh, Dhaka) <<https://en.prothomalo.com/bangladesh/Bablu-Sheikh-yet-another-Jaj-Mia-Jaha-Alam>> accessed date 30 June 2023.

upazila. Public Prosecutor Sirajul Islam and Court Police Inspector Aminur Rahman both verified the development.³¹ Bablu, a Muslim, was forced to spend months in jail instead of Sri Babu, a Hindu guy from the same hamlet who was the genuine accused and also goes by the name Bablu.³² The court ordered police higher-ups, including the inspector general of police, to take action against the two case investigation officers who presented the charge sheet in the case without conducting an adequate investigation, resulting in Bablu Sheikh's wrongfully convicted.³³ The decision drew comparisons between Bablu Sheikh's cases and the highly publicized wrongfully convicted of Joj Mia and Jahalam.³⁴ The court further stated that Bablu Sheikh might seek compensation from the High Court Division of the Supreme Court of Bangladesh, if he wanted to claim.³⁵

2.4.2 Abdul Jalil case (2001).

Abdul Jalil was a minor when he was prosecuted for rape and wrongfully convict him under wrong law.³⁶ No procedures outlined in the Children Act of 1974 were followed when the District and Sessions Judge of Bhola established the Juvenile Court to conduct the trial.³⁷ Later, instead of the Juvenile Court, the Women and Children Repression Prevention Tribunal heard the case and sentenced Jalil to life in prison, treating him as an adult.³⁸ He spent 15 years imprisonment and was fined Tk 20,000.³⁹ The HC ordered his release immediately and awarded him 50 lac taka as compensation.⁴⁰

31 Ibid.

32 Ibid.

33 Ibid.

34 Ibid.

35 Ibid.

36 Ashutosh Sarkar, Justice stumbles at every step, The Daily Star, (Publish May 2016) (Bangladesh, Dhaka) <<https://www.thedailystar.net/frontpage/justice-stumbles-every-step-1229578>> accessed date 30 June 2023.

37 Ibid.

38 Ibid.

39 Ibid.

40 Ibid.

2.4.3 Jahalam case (2016).

Jahalam, a worker of a jute mill, was wrongly accused of corruption by a commercial bank and the Anti-Corruption Commission (ACC), and it was found that he spent three years in jail.⁴¹ Jahalam, who had been wrongfully accused of 33 cases of corruption, was freed from jail as a result of a High Court Division's decision.⁴² The Anti-Corruption Commission (ACC) acknowledged that they charged Jahalam as Abu Salek in error in this instance.⁴³ To get Jahalam released from the proceedings, the commission has filed an appeal with the lower court. But three years after Jahalam's life collapsed, he also lost his job.⁴⁴ Court ordered Brac Bank to pay 15 lakh Tk. as compensation but these three years were surely hard for him and his family because he was the sole earner in the household.⁴⁵

2.4.4 Awlad Hosen case (2019)

Awlad Hossain has been wrongfully incarcerated for 68 days on the basis of a false warrant.⁴⁶ He was caught from Ashulia, Dhaka charged with the torture of women and children in Cox's Bazar.⁴⁷ He was transferred from one jail to another, as well as from one court to another.⁴⁸ After 68 days in jail, Awlad was freed by order of the High Court on January 6, 2020.⁴⁹ And order to pay Tk. 50 lakh as compensation.⁵⁰

2.5 Dominating Factors of Wrongful Conviction and Incarceration in Bangladesh:

⁴¹ Tahsin Anika (n 10).

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Man jailed on fake warrant: HC issues rule for Tk50 lakh in compensation, The Business Standard, (Publish, 31 January 2022) <<https://www.tbsnews.net/bangladesh/court/man-jailed-fake-warrant-hc-issues-rule-tk50-lakh-compensation-36480>> (accessed date 29 June 2023)

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

The criminal justice system and legal system of Bangladesh are related to the causes of wrongful conviction and incarceration.⁵¹ The main reasons for this problem are: a) negligence of the presumption of innocence, b) forceful confession, c) political influence of law enforcement agency, d) arbitrary denial of bail, e) false witness, f) delay of process, g) misconduct by the prosecution, and h) false forensic evidence.⁵²

2.5.1 Negligence of the presumption of innocence

The presumption of innocence is a well-known maxim and important concept in criminal law.⁵³ According to this legal maxim, an accused is deemed innocent unless his guilt is proven beyond a reasonable doubt.⁵⁴ However, Bangladesh hypocritically maintains the presumption of guilt beyond innocence, resulting in wrongful conviction and incarceration.⁵⁵ According to a survey by World Prison Brief, 80.0% of Bangladeshi inmates are in pre-trial detention or on remand.⁵⁶ Many of the pre-trial inmates may be innocent. Because of suspicion, many of these individuals suffered loss of their fundamental rights. By rejecting the principle of presumption of innocence, individuals eventually become victims of wrongful incarceration and somehow wrongful conviction also.

2.5.2 Forceful confession

Confessions made in court make it simpler to carry out a criminal inquiry.⁵⁷ But in order to get a confession from the accused while they are being held in custody, law enforcement authorities like the police frequently torture detainees.⁵⁸ In Bangladesh, coerced confessions are obtained through the use of torture while a person is being held by the authorities.⁵⁹ Several detainees said that the police had threatened them that they would be subjected to severe torture if they did not

⁵¹ Atiqur Rahman (n 16).

⁵² Ibid.

⁵³ Presumption of Innocence, UOLLB (May 11, 2023) <<https://uollb.com/blog/law/presumption-of-innocence>> accessed date 29 June 2023.

⁵⁴ Ibid.

⁵⁵ Atiqur Rahman (n 16).

⁵⁶ World Prison Data (n 20).

⁵⁷ Atiqur Rahman (n 16).

⁵⁸ Ibid.

⁵⁹ Ibid.

confess.⁶⁰ A Narayanganj girl vanished and then returned one and a half months later.⁶¹ Md. Abdullah and two other people were forced to provide a fake confession of the murder of the child.⁶²

2.5.3 False forensic evidence

DNA analysis has helped to identify the guilty and acquit the innocent across the country.⁶³ While DNA testing was established through important scientific study at leading academic institutions, many other forensic procedures, including hair microscopy, bite mark comparisons, weapon tool mark analysis, and shoe print comparisons, have never been rigorously scientifically evaluated.⁶⁴ Meanwhile, adequately approved forensic procedures, such as laboratory tests, sometimes known as blood type, are frequently carried out incorrectly or presented incorrectly in trial testimony.⁶⁵ In some situations, forensic analysts forged results or engaged in unlawful conduct.⁶⁶

2.5.4 Political influence of law enforcement agency

The political influence of law enforcement authorities is allegedly one of the main causes of wrongful incarceration in Bangladesh.⁶⁷ The country's residents are detained and arrested by law enforcement organizations because they are politically motivated.⁶⁸ General Citizens of Bangladesh's usual thoughts about law enforcement agencies is that they are just for those with money and power.⁶⁹ Police in Bangladesh are not required to present evidence in order to file charges against someone.⁷⁰ Because they are politically motivated, police and RAB (Rapid

60 Ibid.

61 Ibid.

62 Ibid

63 Causes of Wrongful Conviction, Western Michigan University, <<https://wmich.edu/sociology/causes-wrongful-conviction>> accessed date 29 June 2023.

64 Ibid.

65 Ibid.

66 Ibid.

67 Atiqur Rahman (n 16).

68 Ibid.

69 Ibid.

70 Ibid.

Action Battalion) search charges, arrest, and wrongfully incarcerated and also convicts in some cases.⁷¹

2.5.5 False witness

False witness is one of the major issues of wrongful conviction and incarceration in Bangladesh.⁷² In some cases, it is shown that the other party influences or threatens or may show monetary gain to give false witness in favor of the other party.⁷³ Because of this sometimes innocent people are incarcerated for years to years. Also in some cases other parties may threaten the accused to confess the guilt that's also a reason for wrongful conviction.

2.5.6 Delay of process

The delay of the procedure is a raising factor. The administration of justice is hampered by delay of process.⁷⁴ There is a maxim called Justice delayed is justice denied, and Bangladesh is a great example of this. Usually most of the cases in Bangladesh have procedural delay such as parties made delay to suffer other party, to not to get proper justice, lawyers negligence huge presses of case, shortage of enough court etc. are the main reason of delay of process and this case be one of the main reason of wrongful conviction and incarceration.

2.5.7 Misconduct by the prosecution

There are several phases to a criminal prosecution, and official misconduct can arise in a number of ways.⁷⁵ Police commit misconduct during the investigative stage when they employ suggestion in an identification method, pressure a witness to identify a suspect, manufacture

⁷¹ Ibid.

⁷² S M Mahbubullah, The state of witness protection in Bangladesh, The Daily Star, (Publish April 7, 2023) <<https://www.thedailystar.net/law-our-rights/news/the-state-witness-protection-bangladesh-3291146>> accessed date 29 June, 2023.

⁷³ Ibid.

⁷⁴ Atiqur Rahman (n 16).

⁷⁵ Why Do Wrongful Convictions Happen, Korey Wise Innocence Project, University of Colorado Law School, <<https://www.colorado.edu/outreach/korey-wise-innocence-project/our-work/why-do-wrongful-convictions-happen>> accessed date 30 June 2023.

physical evidence, or use incorrect interrogation tactics to get a confession.⁷⁶ Prosecutors taint the process at the trial stage by concealing exculpatory evidence or introducing false or perjured testimony.⁷⁷

2.6 Conclusion

In Bangladesh, a large number of those who were wrongfully convicted and incarcerated spend their whole lives behind bars, facing miserable hardships before establishing their innocence. In jail they don't even get their necessary things, this affects the prisoner's mental health also. They can't get out from this trauma easily. Because of this they could also have lost their social standing. In Bangladesh, the delays of process in the settlement of criminal cases also cause the people who were wrongfully convicted and incarcerated great social and emotional suffering. Wrongful convictions need to stop right away, and victims need to be given fair compensation. Recently, the Supreme Court of Bangladesh issued a number of landmark decisions awarding compensation to those who were wrongfully convicted and incarceration⁷⁸. Nowadays the High Court of Bangladesh gives a verdict in favor of the suffering person so that they can get desired damages or compensation according to their damages. Though it can't be compensated fully, it can help a little to the suffering person.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Tahsin Anika (n 10).

Chapter Three

Rights and Remedies of the Victims of Wrongful Convictions and Incarceration: International Framework

3.1 Introduction

Laws protect people's rights but sometimes some loopholes and negligence of law also violate the rights of people. And this is happening all over the world. There are some remedies as well for this. Wrongful conviction and incarceration is a widely known term in several cases. Almost every country has wrongful conviction and incarceration cases. Different countries provide different rights and remedies.

Presumption of innocence is a known term in the case of the criminal justice system. But for most of the cases it shows some irregularities for biasness, negligence sometimes this term didn't work properly. The statistics of wrongful conviction and incarceration is very alarming. In a statistic of US shows that 4-6% people are innocent who are wrongfully convicted or incarcerated in prison⁷⁹ The USA has the highest record of wrongful incarceration. The UK has a record of mass incarceration.⁸⁰

There are some international laws and conventions to ensure remedies for wrongful conviction and incarceration. Such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Torture Convention).

3.2 Rights and remedies of wrongful conviction and incarceration under the international laws, conventions, and initiatives

⁷⁹ The Structural and Systemic Causes of Our Wrongful Conviction Problem, Georgia Innocence Project <<https://www.georgiainnocenceproject.org/general/beneath-the-statistics-the-structural-and-systemic-causes-of-our-wrongful-conviction-problem/>> accessed date 10 July 2023.

⁸⁰ Ell Folan, The UK Has Its Own Mass Incarceration Crisis It isn't just America, Novara Media, (Publish 2 January 2023) <<https://novaramedia.com/2023/01/02/the-uk-has-its-own-mass-incarceration-crisis/>> accessed date 10 July 2023.

3.2.1 Universal Declaration of Human Rights

Wrongful conviction and incarceration are serious miscarriage of justice also.⁸¹ The UDHR was issued by the United Nations General Assembly in 1948 that established fundamental human rights and freedoms to be universally maintained.⁸² The UDHR states that “Who is accused of a criminal act has the legal right to be assumed innocent unless proven guilty in a court of law at a public trial when he has been provided with all the protections required for his defense.⁸³ The UDHR emphasizes that everyone is entitled to life, liberty, and personal security. Wrongful conviction and incarceration without legal grounds wrongfully deprive people’s rights and freedom.⁸⁴ Article 7 states that everyone is equal before the law and has the right to equal protection under the law.

Wrongful convictions and incarceration can occur as a consequence of discrimination based on race, ethnicity, religion, socioeconomic background, or other characteristics that deny persons their right to equal treatment under the law.⁸⁵ The UDHR declares that everyone has the right to compensation from the competent national tribunal for violating their fundamental right. For wrongful conviction and incarceration, an individual has the right to redress to exoneration by following their legal system.⁸⁶

3.2.2 International Covenant on Civil and Political Rights

Wrongful conviction and incarceration are specifically addressed in the International Covenant on Civil and Political Rights (ICCPR), with an emphasis on the protection of people' fair trial rights and presumption of innocence. Adopted by the United Nation General Assembly 1966, the ICCPR ensures people have a fair trial. Article 14 of the ICCPR establishes a comprehensive set of fair trial rights that are essential in preventing wrongful convictions and incarceration and

⁸¹ Professor K. Shamsuddin Mahmood, Rethinking miscarriage of justice, The Daily Star, (Publish, July 2019), <<https://www.thedailystar.net/law-our-rights/news/rethinking-miscarriage-justice-1772026>> accessed date 10 July 2023.

⁸² United Nations.

⁸³ Universal Declaration of Human Rights, Article 11.

⁸⁴ Universal Declaration of Human Rights, Article 3.

⁸⁵ Universal Declaration of Human Rights, Article 7.

⁸⁶ Universal Declaration of Human Rights, Article 8. .

ensuring justice. Also, it ensure some rights such as the right to be informed of the charges, the right to sufficient time to prepare a defense, the right to hire legal representative, if anyone cannot afford it he have the right to receive legal aid, the right to a speedy trial, the right to question witnesses and examine them and the right not to be forced to confess guilt.⁸⁷ Under Article 7 of the ICCPR, wrongful incarceration can serve sufferings to the victims, can serve mistreatment. The ICCPR strictly prohibits wrongful incarceration for not to suffer any individual.⁸⁸ This treaty also provides rights and remedies as same as the Universal Declaration of Human Rights (UDHR). This treaty also ensures compensation and social acknowledgement for people who are wrongfully convicted and incarcerated.

3.2.3 The Torture Convention

The Torture Convention is an international human right treaty to stop inhuman torture or degrading punishment all over the world. It was adopted by the United Nations in 1984. In case of wrongful conviction and incarceration, sometimes people are forced to confess guilt even if they are not guilty. Because of this forceful confession most of them were incarcerated wrongfully. Article 15 of this Convention states that not to obtained statement during torture.⁸⁹ But most of the cases people got wrongfully convicted by the statement which obtained during torture. This Convention also states to provide the rehabilitation program for the victim of wrongfully convicted and incarcerated to recover from physical, physiological effect and reintegrate to the society.⁹⁰ This Convention also provides compensation for whose human rights are violated for wrongfully convicted and incarcerated.

⁸⁷ International Covenant on Civil and Political Rights, Article 14(1).

⁸⁸ International Covenant on Civil and Political Rights, Article 7.

⁸⁹ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15.

⁹⁰ Nora Sveaass, Gross human rights violations and reparation under international law: approaching rehabilitation as a form of reparation, National Library of Medicine (Published May 2023) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3650211/>> accessed date 10 July 2023.

3.2.4 Commonwealth Human Rights Initiative

Commonwealth Human Rights (CHRI) Initiative is an NGO for protecting the human rights of commonwealth members. This Initiative is not legally binding like UDHR, ICCPR and Torture Convention. CHRI monitored the justice system, judiciary and prison conditions, and made a report on this. If they find any miscarriage of justice, they take action against it. Also they provide legal aid service for those who can't afford the cost. Also provide rehabilitation programs for victims of wrongfully convicted and incarcerated persons.

3.3 Certain wrongful conviction and incarceration cases in different countries

3.3.1 Scottsboro Boys Case (1931)

Nine African American adolescents wrongly convicted of raping two white ladies aboard an Alabama train.⁹¹ The case had shoddy legal counsel, biased by all-white jury, and forceful confessions.⁹² Although some convictions were finally reversed, the process took years, and the case exposed racial bias and injustice in the legal system.⁹³

3.3.2 Talwars' Double Murder Case (2008)

The double murder case of Aarushi Talwar in Noida, Uttar Pradesh in 2008, the first police inquiry was heavily criticized for procedural flaws and evidence manipulation.⁹⁴ The Talwars

⁹¹ The Scottsboro Boys, National Museum of African American History and Culture <<https://nmaahc.si.edu/explore/stories/scottsboro-boys>> accessed date 10 July 2023.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ What is the Aarushi Talwar murder case?, The Indian Express, (Published October 13, 2017) <<https://indianexpress.com/article/what-is/what-is-the-aarushi-talwar-murder-case-allahabad-high-court-hemraj-rajesh-talwar-nupur-talwar-4886203/>> accessed date 2023.

were acquitted and found not guilty by the Allahabad High Court in 2017.⁹⁵ The case emphasizes the significance of conducting a fair investigation, properly managing evidence, protecting the rights of innocent people, and ensuring that innocent people are not wrongly convicted.⁹⁶

3.3.3 Birmingham Six Case (1963)

In 1974, a series of pub bombings occurred in Birmingham, England, killing 21 people and injuring many more.⁹⁷ Six Irish men were arrested and charged with the explosions.⁹⁸ They always maintained their innocence, claiming that the authorities pressured them into writing false confessions.⁹⁹ Despite the fact that there was no direct evidence tying them to the bombs, they were wrongfully convicted and sentenced to life in prison in 1975.¹⁰⁰ However, major issues have been raised throughout the years concerning the credibility of the evidence used to condemn them. It became clear that vital information that may have exonerated them had not been given during the trial.¹⁰¹ There were also claims of evidence fabrication and misconduct by the police.¹⁰² The convictions were quashed in 1991 by the Court of Appeal, who cited the inaccuracy of their confessions and other evidence.¹⁰³ The Court of Appeal decided that their trial was so unfair as to be unsafe.¹⁰⁴ The case uncovered fundamental faults in the criminal justice system and highlighted the possibility of wrongful imprisonment in the United Kingdom.¹⁰⁵ It led demands for changes to improve the collection of evidence, safeguard the rights of accused, and guarantee fair trials.¹⁰⁶ The United Kingdom has taken steps to remedy

95 Ibid.

96 Ibid.

97 Baptist Street Church Bombing, FBI FEDERAL BUREAU OF INVESTIGATION. <<https://www.fbi.gov/history/famous-cases/baptist-street-church-bombing>> accessed date 11 July 2023.

98 Ibid.

99 Ibid.

100 Ibid.

101 Ibid.

102 Ibid.

103 Ibid.

104 Ibid.

105 Ibid.

106 Ibid.

for miscarriages of justice.¹⁰⁷ And for wrongful conviction and incarceration for 17 years they were compensated £840,000 to £1.2 million.¹⁰⁸

3.3.4 Sam Hallam Case (2005)

Sam Hallam was wrongly convicted of the murder of Essayas Kassahun in London in 2005.¹⁰⁹ He endured incarceration for seven years before his conviction was overturned in 2012 because of doubts about the reliability of witness identifications and secret material.¹¹⁰ This case highlights wrongful incarceration for wrongful conviction.¹¹¹

3.4 Conclusion

These cases show the flaws and loopholes of the criminal justice system. According to the international convention or treaty or law it shows that people need more awareness, the justice system needs to have more transparency and a fair trial system. In the justice system there should be no biasness of racial, religion, gender, sociological and political.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid..

¹⁰⁹ Sam Hallam released after seven years in prison, The Guardian, <<https://www.theguardian.com/uk/2012/may/16/sam-hallam-released-seven-years>> accessed date 11 July 2023.

¹¹⁰ Ibid.

¹¹¹ Ibid.

Chapter Four

Analysis and Discussion

4.1 Introduction

In Bangladesh legal system wrongful conviction and incarceration is one of the crucial matters. Courts give orders to provide sole remedy for the victims of wrongful conviction and incarceration for these unlawful acts. As it is an internationally accepted principle to provide compensation to the victims though Bangladesh has no specific law for providing compensation, rights and for the victim of wrongful conviction and incarceration. This chapter will analyze the sufficiency of providing compensation for the victims of wrongful conviction and incarceration. Also this chapter will answer the second research question of this thesis paper.

4.2 Possible remedies for wrongful conviction and incarceration in different countries

Different countries provide different types of compensation under different laws. In the United States, those who have been wrongfully convicted and incarcerated can seek compensation in a number of ways such as traditional common law tort, moral bills of obligation and civil rights actions.¹¹² Victims are most likely to find wrongful conviction and jail compensation through jurisdictions with wrongful conviction compensation provisions.¹¹³ However, not all jurisdictions have implemented such statutes, and the current statute varies highly in terms of compensation standards and amounts.¹¹⁴ This statute doesn't have jurisdiction all over the United States.¹¹⁵ Different states in the United States calculate compensation for wrongfully incarcerated different amounts such as Wisconsin provide 5000 to 25000 Dollar per year of incarcerated, Texas provide 80,000 Dollar per year with annual annuities, Federal provide 50,000 dollar per year of

¹¹² Meghan J. Ryan, Compensation for Wrongful Conviction and Incarceration in the United States, SSRN, (SMU Dedman School of Law Legal Studies Research Paper No. 534, page no 1) (publish date, 11 January 2022), <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4002746> accessed date 30 June 2023.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

incarceration.¹¹⁶ In 2007 the court awarded the largest compensation by following Federal statutes, 101.7 million dollars for four men and 47 million for one man in another verdict.¹¹⁷ In Bangladesh there are no laws or statues for the victims of wrongful conviction and incarceration where the USA have specific amounts of compensation for this miscarriage of justice.

In the United Kingdom, the government has a Compensation scheme to compensate those who suffer for miscarriage of justice.¹¹⁸ As wrongful conviction and incarceration is a serious miscarriage of justice the government of UK provides 1 million pounds for 10 or more year wrongfully incarcerated persons and 50,000 for up to 10 year wrongfully incarcerated persons.¹¹⁹ In *Andrew Malkinson case* (2003), a 57 year British man who was wrongfully convicted for 17 year for the rape a 33 year old woman in Salford.¹²⁰ The court ordered that for wrongful conviction as it is a miscarriage of justice, victims don't need to pay the expenses for the time they spent in prison.¹²¹ The court also ordered that those who wrongfully convict for more than 10 years will get up to 1 million pounds and those who wrongfully convict up to 10 years will get up to 500,000 pounds from the government compensation scheme.¹²² In this case the above mentioned compensation is implemented. Similarly, in Bangladesh it is shown that there are no specific provisions for providing compensation for the victims of wrongful conviction and incarceration.

In India, for wrongful conviction and incarceration victims can seek compensation under public law remedy, private law remedy, criminal law remedy. When a person suffers for miscarriage of justice can seek compensation under article 21, 22 and 32 of the constitution of India. In *Rudul Sah v State of Bihar* 1983 AIR 1086, 1983 SCR (3) 508, the petitioner who had been imprisoned for more than 14 years lodged a writ of habeas corpus under article 32 of the Constitution of

¹¹⁶ What Can You Expect From Wrongful Incarceration Compensation, Mceldrew Purtell, (Publish, February 2, 2023) <<https://www.mcelandrewpurtell.com/news/what-can-you-expect-from-wrongful-incarceration-compensation>> accessed date 30 June 2023.

¹¹⁷ Ibid.

¹¹⁸ Wrongly-convicted no longer face being 'charged' for saved living expenses, Government.UK, (publish, 6 August 2023), <<https://www.gov.uk/government/news/wrongly-convicted-no-longer-face-being-charged-for-saved-living-expense>> accessed date August 9 2023.

¹¹⁹ Ibid.

¹²⁰ Wrongly convicted in Britain no longer forced to pay 'saved living costs' in prison, The Guardian, (Publish August 2023), <<https://www.theguardian.com/society/2023/aug/06/wrongly-convicted-in-britain-no-longer-forced-to-pay-saved-living-costs-in-prison>> accessed date August 9 2023.

¹²¹ Ibid.

¹²² Ibid.

India on the grounds of wrongful incarceration. The Supreme Court ordered the petitioner's immediate release and ordered to pay the damages.¹²³ The Supreme Court ordered the state to give Rs. 30,000 as the damages of the petitioner.¹²⁴ In *Bhim Singh, MLA v State of J & K & Ors.* (1985) 4 SCC 677, case Court exercising its authority to award RS. 50000 as compensation under article 32, ordered the State to make a monetary payment to the petitioner as compensation for the illegal detention of Bhim Singh in police custody by referring *Rudul Sah v State of Bihar* 1983 AIR 1086, 1983 SCR (3) 508 case and said that when someone comes to us with a complaint about being detained and imprisoned with malice or malicious purpose, as well as an infringement on their constitutional and legal rights, their release from imprisonment cannot undo the damage.¹²⁵ In these two landmark cases it ensures that if someone's fundamental rights are violated or suffer for miscarriage of justice they are entitled to get compensation. It is similar to Bangladesh, in Bangladesh the victims of wrongful conviction and incarceration used to get monetary compensation for miscarriage of justice.

In Bangladesh there is no law or provision for the victims of wrongful conviction and incarceration. There are no case precedents to follow. Also there are no statutes or provisions where wrongful conviction and incarceration is defined. But in some cases courts give compensation for the victims of wrongful conviction and incarceration. There are some successful cases in Bangladesh. In *Bilkis Akhter Hossain vs Bangladesh* (1997) [17 BLD 395], for the first time, the High Court Division of Bangladesh granted compensation under Article 102(1) of the Constitution of Bangladesh. A writ petition filed by Bilkis Akhter who is the wife of politician Dr. Khandakar Delowar Hossein for illegal detention for her husband. In this writ petition her husband claimed the right to life, liberty, and freedom under the Article 36, 37, 31 and 32 of the Constitution of Bangladesh. As his right was violated, which was guaranteed in the Constitution, he claimed monetary compensation. The court also found it was illegal detention, and ordered 1 lakh taka monetary compensation for each detainee.¹²⁶ Also in the *Javed Ali case*

¹²³ Rudul Sah vs State Of Bihar And Another 1983, AIR 1086, 1983 SCR (3) 508, India Kanoon <<https://indiankanoon.org/doc/810491/>> accessed date 30 June 2023.

¹²⁴ Ibid.

¹²⁵ Bhim Singh, MLA v State of J & K & Ors. (1985) 4 SCC 677, India Kanoon <<https://indiankanoon.org/doc/1227505/>> accessed date 30 June 2023.

¹²⁶ Bangladesh Journal of legal studies, Bilkis Akter Hossain v. Government of Bangladesh, (1997) 17 BLD (HCD) 395 (March 14,2016), <<https://bdjls.org/bilkis-akter-hossain-v-government-of-bangladesh-1997-17-bld-hcd-344-2-mlr-1997-%20113>> accessed date 30 July 2023.

(2000), Javed Ali spent 13 years in jail for murdering his daughter.¹²⁷ He was acquitted by the order of the High Court in 2003 but this order was not sent to district jail.¹²⁸ After that he was released from jail in 2016, The High Court order to give 20 lakh taka as compensation.¹²⁹ We can see courts only provide monetary compensation but it is not sufficient for the victims to rebuild their life or what they lost. But in some cases monetary compensation can be sufficient as a remedy.

4.3 Is compensation sufficient for wrongfully convicted and incarcerated persons in Bangladesh?

Comparing Bangladesh's law and international laws and case precedents it is found that there are many provisions in international law defining wrongful conviction and incarceration but in Bangladesh there are no specific definitions in any laws. In international law it is to ensure the rights and remedies of the victims but in Bangladesh there are no specific legal rights and remedies. In the previous chapter of this thesis paper some international laws provision has been discussed. In UDHR states wrongful conviction and incarceration is the violation of the fundamental rights and everyone has the right to get the compensation for this violation but in Bangladesh there are no such laws. In ICCPR wrongful conviction and incarceration is specifically addressed. This treaty also provides rights and remedies as same as the Universal Declaration of Human Rights (UDHR). This treaty also ensures compensation and social acknowledgement for people who are wrongfully convicted and incarcerated. Bangladesh is the party of the ICCPR even though the victims of wrongful convicted and incarcerated don't get proper compensation. Also, the government doesn't take any steps to give compensation to the victims of wrongful convictions and incarceration. CAT provides compensation for whose human rights are violated for wrongfully convicted and incarcerated. This Convention also states to provide the rehabilitation program for the victim of wrongfully convicted and incarcerated to recover from physical, physiological effect and reintegrate to the society.¹³⁰ CHRI also provides

¹²⁷ HC for compensation to Satkhira's Javed Ali, The Independent, (Publish May 2016), <<https://www.theindependentbd.com/post/44890>> accessed date 30 June 2023.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Nora Sveaass, Gross human rights violations and reparation under international law: approaching rehabilitation as a form of reparation, National Library of Medicine (Published May 2023) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3650211/>> accessed date 10 July 2023.

rehabilitation programs for victims of wrongfully convicted and incarcerated persons. In Bangladesh there is no such program to rehabilitate or reintegrate into society and give support to mental trauma after being released from jail.

In Bangladesh the NHRC states to examine complaints, make recommendations, and take the necessary steps to protect human rights. They provide only recommendations but ultimately, they don't take any adequate steps to provide remedies to the wrongfully convicted and incarcerated person. Police misuse the power which is given under section 54 of the Code of Criminal Procedure 1898, police can arrest without warrant based on reasonable doubt and any credible information. It's also a reason for wrongful conviction and incarceration. In the Penal Code, section 342 provides punishment for only those who wrongfully confine people, but does not specify any remedy for the person who was wrongfully incarcerated or confined. By analyzing the cases of the USA and UK courts provide other remedies along with monetary compensation but analyzing the cases of India and Bangladesh it is found that they only provide monetary compensation.

So based on this analysis it is found that where other countries provide other remedies such as compensation schemes, rehabilitation, social reintegration, psychological rehabilitation, reemployment of jobs in Bangladesh there is no such way to provide compensation. In some cases courts give orders to provide compensation only. But this is not adequate to the victim. Also victims of wrongful conviction and incarceration faced a lot of problems such as there is lack of resources for the victim of wrongful conviction and incarceration to challenge the police and seek remedies from court. They need to seek the remedies from the court indirectly. Though it is the discretion of the court to award or order to pay the proper amount of compensation. Even if the court orders to give compensation though it is very time consuming to get the compensation. Also procedural delay is another reason where victims can't keep their patient to get compensated in most of the cases they don't even claim just to avoid the procedural delay.

4.4 Conclusion

It is clear from the case discussion, that wrongful conviction and wrongful incarceration giving monetary compensation to people who have been victims of such miscarriage of justice, for this kind of miscarriage of justice Bangladesh's legal system are facing issues. Considering all the negative consequences of wrongful conviction and wrongful incarceration, it becomes mandatory for the state to right the wrongs committed by law enforcement agents and assist victims in reintegrating into society, provide facility to cope up victim's psychological issues causes wrongful conviction and wrongful incarceration and compensating them properly. This chapter has explained that monetary compensation is not a useful or sole remedy, it is not sufficient or helpful to victims properly.

Chapter Five

Concluding Remarks and Recommendations

5.1 Concluding Remarks

Wrongful conviction and incarceration is the serious miscarriage of justice in all over the world. In Bangladesh it is increasing at an alarming rate. There are various reasons behind this. One of the major reasons is the law enforcement officer ex. police, RAB without proper information and warrant arrest is the reason for this miscarriage of justice. Because of this innocent people suffer a lot. In Bangladesh there are no laws for the victim of wrongful conviction and incarceration. That's why they don't even get proper remedy. Though there are some laws that try to give some remedies indirectly, in some cases courts give orders to give compensation when analyzing other international and other countries remedies. It is also found that other countries provide other remedies along with monetary compensation. In the UK and USA there is a fixed amount of compensation for the victims of wrongful conviction and incarceration. To ensure the victims' rights and remedies there should be laws for and other provisions also.

5.2 Recommendations

Laws and Compensation scheme:

Bangladesh should have a statute or statutory provision which can define wrongful conviction and incarceration. There should be specific rights and remedies for this miscarriage of justice. Also they should have the punishment procedure for those this type miscarriage of justice occur. This law should have fixed compensation amounts as like in the USA and the UK. Then it will be easier to do fixed compensation for the victims of the miscarriage of justice. And at least have a minimum fixed amount of compensation so that people at least get some financial support after suffering from a miscarriage of justice. There should be a clear method and guideline to calculating compensation. And include the statutory framework of mandatory and non-

mandatory compensation. In the UK they fixed the compensation on the basis of how long the victims suffered. Also this law should set a fixed period of time to pay compensation money to avoid delay, also should have the provisions for not to delay the proceedings to provide compensation money.

Psychological Support:

Miscarriage of Justice Organization (MOJO) is a Scottish charity that deals with human rights and works for the after care for the victim of serious miscarriage of justice like wrongful conviction and incarceration mentally. But in Bangladesh there is no such organization or charity for mental after care of the victim of wrongful conviction and incarceration. So the state should have this type of organization to provide mental support to the victim of such miscarriage of justice.

Re-employment in job:

Victims of the miscarriage of justice may lose their job or earning source for their wrongful conviction and incarceration. Usually they don't find any other good job after being released from jail. States should take effective measures for their re-employment. And their workplace should create a friendly environment so that they don't have to do their job easily.

Social Reintegration:

The National Center for Victims of Crime (NCVC) is an organization to support the victims of crimes they never committed such as wrongful conviction and incarceration. They work for the victim to rebuild their life and reintegrate into society. Usually society used to stigmatize the people who came from jail. They give a tag as criminal. In Bangladesh it is a common scenario in our society. So the state should take an initiative step for the sufferer of miscarriage of justice.

Bibliography

Statutes:

1. The Constitution of People's Republic of Bangladesh 1972.
2. The Code of Criminal Procedure 1860.
3. Penal Code 1860.
4. United Nations 1945.
5. Universal Declaration of Human Rights 1948
6. International Covenant on Civil and Political Rights 1976.
7. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.
8. Commonwealth Human Rights Initiative 1987.
9. National Human Rights Commission 2007.

Cases:

1. Rudul Sah vs State Of Bihar And Another 1983, AIR 1086, 1983 SCR (3) 508, India Kanoon <<https://indiankanoon.org/doc/810491/>> accessed date 30 June 2023.
2. Bhim Singh, MLA v State of J & K & Ors. (1985) 4 SCC 677, India Kanoon <<https://indiankanoon.org/doc/1227505/>> accessed date 30 June 2023.
3. Bablu Shiekh case (2001)
4. Abdul Jalil case (2001)
5. Jahalam case (2016)
6. Awlad Hosen case (2019)
7. Scottsboro Boys Case (1931)
8. Talwars' Double Murder Case (2008)

9. Birmingham Six Case (1963)
10. Sam Hallam Case (2005)
11. Andrew Malkinson case (2003)
12. Bilkis Akhter Hossain vs Bangladesh (1997) [17 BLD 395]
13. Javed Ali case (2000)

Newspaper Article:

1. Bablu Sheikh, yet another Jaj Mia, Jaha Alam, Prothom Alo (publish !8 October 2019), (Bangladesh, Dhaka) <<https://en.prothomalo.com/bangladesh/Bablu-Sheikh-yet-another-Jaj-Mia-Jaha-Alam>> accessed date 30 June 2023.
2. Ashutosh Sarkar, Justice stumbles at every step, The Daily Star, (Publish May 2016) (Bangladesh, Dhaka) <<https://www.thedailystar.net/frontpage/justice-stumbles-every-step-1229578>> accessed date 30 June 2023.
3. Man jailed on fake warrant: HC issues rule for Tk50 lakh in compensation, The Business Standard, (Publish, 31 January 2022) <<https://www.tbsnews.net/bangladesh/court/man-jailed-fake-warrant-hc-issues-rule-tk50-lakh-compensation-36480>> accessed date 29 June 2023.
4. Anika Tahsin, A grim picture of wrongful convictions in Bangladesh, The Business Standard, (Dhaka, 29 November 2020) <<https://www.tbsnews.net/thoughts/grim-picture-wrongful-convictions-bangladesh-164614>> accessed date 29 June 2023.
5. Mir Aftabuddin Ahmed, Why criminal justice reform is a must, The Daily Star, (publish 31 January 2019), <<https://www.thedailystar.net/opinion/governance/news/why-criminal-justice-reform-must-1695034>> accessed date 29 June 2023.
6. HC for compensation to Satkhira's Javed Ali, The Independent, (Publish May 2016), <<https://www.theindependentbd.com/post/44890>> accessed date 30 June 2023.

7. Professor K. Shamsuddin Mahmood, Rethinking miscarriage of justice, The Daily Star, (Publish, July 2019), <<https://www.thedailystar.net/law-our-rights/news/rethinking-miscarriage-justice-1772026>> accessed date 10 July 2023.
8. What is the Aarushi Talwar murder case?, The Indian Express,(Published October 13, 2017) <<https://indianexpress.com/article/what-is/what-is-the-aarushi-talwar-murder-case-allahabad-high-court-hemraj-rajesh-talwar-nupur-talwar-4886203/>> accessed date 2023.

Websites:

1. World Prison Data (published in December 2021) <<https://www.prisonstudies.org/country/bangladesh>> accessed date 29 June 2023.
2. Malik Fariha Mehnaz, Concept of Constitutional Tort in Bangladesh, Law Legum, (Publish, July 7, 2021), <<https://lawlegum.com/constitutional-tort-concept-in-bangladesh/>> accessed date 30 June 2023.
3. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15. Nora Sveaass, Gross human rights violations and reparation under international law: approaching rehabilitation as a form of reparation, National Library of Medicine (Published May 2023) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3650211/>> accessed date 10 July 2023.
4. Baptist Street Church Bombing, FBI FEDERAL BUREAU OF INVESTIGATION. <<https://www.fbi.gov/history/famous-cases/baptist-street-church-bombing>> accessed date 11 July 2023.
5. Sam Hallam released after seven years in prison, The Guardian, <<https://www.theguardian.com/uk/2012/may/16/sam-hallam-released-seven-years>> accessed date 11 July 2023.
6. What Can You Expect From Wrongful Incarceration Compensation, Mceldrew Purtell, (Publish, February 2, 2023) <<https://www.mcelandrewpurtell.com/news/what-can-you-expect-from-wrongful-incarceration-compensation>> accessed date 30 June 2023.
7. Wrongly-convicted no longer face being ‘charged’ for saved living expenses, Government.UK, (publish, 6 August 2023),

<https://www.gov.uk/government/news/wrongly-convicted-no-longer-face-being-charged-for-saved-living-expense>> accessed date August 9 2023.

8. Wrongly convicted in Britain no longer forced to pay 'saved living costs' in prison, The Guardian, (Publish August 2023), <https://www.theguardian.com/society/2023/aug/06/wrongly-convicted-in-britain-no-longer-forced-to-pay-saved-living-costs-in-prison>> accessed date August 9 2023.

Journal Article:

1. National Human Rights Commission, Bangladesh https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Remedy/NHRC_Bangladesh.pdf> accessed date 4 July 2023.
2. Criminal Law & Procedure: Wrongful Conviction, Northeastern University School of Law (December 2022) <<https://lawlibraryguides.neu.edu/CrimLaw/wrongfulconviction>> accessed date 28 July 2023.
3. Wrongful Convictions "National Institute of Justice"<<https://nij.ojp.gov/topics/justice-system-reform/wrongful-convictions>> accessed date 28 July 2023.
4. H Patrick Furman, 'Wrongful Convictions and the Accuracy Of the Criminal Justice System' (The Colorado Lawyer, September 2003) <<https://lawweb.colorado.edu/profiles/pubpdfs/furman/03SeptTCL-Furman.pdf>> accessed 29 June 2023
5. Mantel Barbara, Wrongful Convictions, CQ Researcher (March 2022) (Volume 32, Issue 8) < <https://library.cqpress.com/cqresearcher/document.php?id=cqresrre2022031800>> accessed date 28 July 2023.

6. Fair Fight Initiative, The History, Causes, and Facts on Mass Incarceration. <<https://www.fairfightinitiative.org/the-history-causes-and-facts-on-mass-incarceration/>> accessed date 29 June 2023.
7. Atiqur Rahman, Ensuring Compensation for the Victims of Wrongful Imprisonment and Wrongful Detention, Research Gate, (June 2020) (page 152) <https://www.researchgate.net/publication/341840026_Ensuring_Compensation_for_the_Victims_of_Wrongful Imprisonment_and_Wrongful_Detention_in_Bangladesh> accessed date 29 June, 2023.
8. Presumption of Innocence, UOLLB (May 11, 2023)<<https://uollb.com/blog/law/presumption-of-innocence>> accessed date 29 June 2023.
9. Causes of Wrongful Conviction, Western Michigan University, <<https://wmich.edu/sociology/causes-wrongful-conviction>> accessed date 29 June 2023.
10. S M Mahbubullah, The state of witness protection in Bangladesh, The Daily Star, (Publish April 7, 2023) <<https://www.thedailystar.net/law-our-rights/news/the-state-witness-protection-bangladesh-3291146>> accessed date 29 June, 2023.
11. Why Do Wrongful Convictions Happen, Korey Wise Innocence Project, University of Colorado Law School, <<https://www.colorado.edu/outreach/korey-wise-innocence-project/our-work/why-do-wrongful-convictions-happen>> accessed date 30 June 2023.
12. The Structural and Systemic Causes of Our Wrongful Conviction Problem, Georgia Innocence Project <<https://www.georgiainnocenceproject.org/general/beneath-the-statistics-the-structural-and-systemic-causes-of-our-wrongful-conviction-problem/>> accessed date 10 July 2023.
13. Ell Folan, The UK Has Its Own Mass Incarceration Crisis It isn't just America, Novara Media, (Publish 2 January 2023) <<https://novaramedia.com/2023/01/02/the-uk-has-its-own-mass-incarceration-crisis/>> accessed date 10 July 2023.
14. The Scottsboro Boys, National Museum of African American History and Culture <<https://nmaahc.si.edu/explore/stories/scottsboro-boys>> accessed date 10 July 2023.
15. Meghan J. Ryan, Compensation for Wrongful Conviction and Incarceration in the United States, SSRN, (SMU Dedman School of Law Legal Studies Research Paper No. 534, page no 1) (publish date, 11 January 2022),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4002746> accessed date 30 June 2023.

16. Bangladesh Journal of legal studies, Bilkis Akter Hossain v. Government of Bangladesh, (1997) 17 BLD (HCD) 395 (March 14, 2016), <<https://bdjls.org/bilkis-akter-hossain-v-government-of-bangladesh-1997-17-bld-hcd-344-2-mlr-1997-%20113>> accessed date 30 July 2023.