

The Failure of Indian Criminal Justice System: Miscarriage of Justice Due to False Prosecution

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Introduction

Paul Roberts and Adrian Zuckerman, in their book *Criminal Evidence*, –acquitting the innocent and convicting the guilty, dealing with the prosecution and defence fairly, recognizing human rights (especially the right to a fair trial), respecting the interests of witnesses, victims and jurors, ensuring that the court has the information it needs to make properly informed decisions, and dealing with cases efficiently, expeditiously and proportionately in the light of their gravity and complexity is as serviceable a list of primary criteria of justice in criminal adjudication as one is likely to find in any philosophical treatise on the subject.¹

JURISPRUDENCE BEHIND THE CONCEPT

The criminal justice system consists of three major institutions- law enforcement agencies, courts, and corrections. Each one of these components of the system are responsible collectively to safeguard the society, maintain law and order and avert the rising incidence of crime. The police as law enforcement agency are responsible for controlling crime and maintaining order. They also play the pivotal role as investigative authorities. The courts are responsible for judging the suspected offender by determining innocence or guilt. The prosecution and defence are integral part of this sub-system.

VIOLATION OF DUE PROCESS OF LAW

Being a part of the British system of administration in the past India inherited most of the English principles, practices, and institutions in the matter of administering justice to the people. One such principle introduced by the British here was the theory of Due Process of law .

The phrase due process of law extends to two concepts- –procedural due process and substantive due process . Procedural due process refers to the presence of procedural fairness in the curtailment of life and liberty of persons. This acts as a restraint on the power of police, investigative authority, judiciary, and other lawenforcing bodies of the government. This implies that the decisions abridging rights of persons must be fairly and reasonably made.

Although the Constitution and the laws do not in so many words declare Due Process theory, but the implications of the, inter-alia, principle of –Rule of Law, the –principle of Equality and the –principle of Natural Justice are, that the principle of Due Process of Law impliedly operates in our country regarding several aspects of the State Administration.

The Constitution of India, 1950 does not explicitly mention the expression of due process of law ‘although it is expressly mentioned in the constitution of the United States of America.’² The makers of the Indian constitution deliberately omitted using the term ‘due process of law’, and instead incorporated the term –procedure established by law in Article 21 of the constitution. However, despite this omission, the Supreme Court of India has always tried to interpret Article 14 and Article 21 in light of due process. Thereby –Indian judiciary acquired vast power to supervise and invalidate any union or state action, whether legislative or executive or of any public authority perceived by the court to be arbitrary or unreasonable. The process of realization of justice over the period has transited savage and crude procedure of law into refined and civilized procedure. Further due process concept has strengthened procedure of law by integrating all its components and by addressing each of them with the principle of equality and fairness.

The case of Punjab and Haryana High Court reveals the case of wrongful prosecution which shows the biasness. The young woman at 17 (Kewasi Hedme) was arrested for Naxal offence, kept in jail (2008-2015), finally acquitted in April 2015. Her name was not in *FIR*. The incident of the Maruti factory, where one manager died, 148 workers was prosecuted

¹ Roberts And Zuckerman, *Criminal Evidence*, 1.3, (Five Foundational Principles)

² Amendment 5 - Trial and Punishment, Compensation for Takings. Ratified 12/15/1791.

for fire and riots in the factory. 117 were acquitted. The witnesses were not able to identify any of the workers.

The nature of the state is also very important. The case of the *Arushi Talwar* is very important in this regard. Malicious prosecution was first defined in (*WB electricity board v Kumar*) in 2007. Section-211, IPC which subject to Sec-195 of CRPC, deals with wrongful prosecution. Sec-18, NHRC also deals the same. (*Girija V Uma Shankar*), deals with the reasonable and the probable cause to deal the prosecution. In England, there are two tests which suppress the cases of wrongful prosecution.

DISCRIMINATORY APPROACH AND SELECTIVE BIAS

False here refers to the consequences from which it appears that proper laws don't seem to be followed while "conducting investigation, recording confessions, identification of the accused by the witness and also the right to counsel", and when such prosecution of accused appears to be prejudice, biased and unfair or not in lines with the constitutional provisions. Prosecution here means "the post adjudication stage in which either the 'trial court' or the 'first appellate court' has adjudicated false the case". A prosecution could also be categorized as false for following more reasons:

1. There have been some errors in procedure that violated the convicted person's rights.
2. The one who is convicted is factually innocent of the charges.

According to Duhaime's dictionary, "a false prosecution is a prosecution of a person accused of a crime which, in the result of the subsequent investigation, proves erroneous", the following is also included in the definition is the individual who have committed the act and planning of crimes however whose prosecution were obtained in violation of constitutional or different procedural rights. When such innocent respondent is found guilty in criminal proceedings or once they coerced to confess to confess to the crimes they didn't even committed so as to avoid the death sentence or imprisonment for life, when such innocent defendant spends years in prison or under trial, unfair penalties will result. Various investigations explored that a large proportion of innocent under trial prisoners who endanger their lives in prisons suffers from serious mental health problems, including anxiety disorders and post-traumatic stress, which don't seem to be very casual. After spending years of life in prisons, the life of such victims becomes much more miserable after their release which makes it difficult to rehabilitate them into their normal life. Although many states still don't have any scheme for providing financial compensation to such victims and to their family. Due to all this the requirement of providing financial compensation becomes much more important because there is no other way to recover money from the police or prosecutors. As it's not only the need of the individual but also of his family in whose absence they suffered both financially and emotionally. The cases of these types are very rare but once such comes into light it cuts the wire of trust between public and criminal justice system.

The term 'false' in common parlance means not true. In the legal sense, it refers to a "false act done intentionally without just cause or excuse." The term prosecution means "a proceeding in a court of law charging a person with a crime "for the offence person has done. 'False Prosecution' means" a prosecution on a charge of crime, which is not true, erroneous, and not correct against the such person where prosecutor's sense of duty and right is been violating the normal rights of the person. It is a common misconception that false prosecution of offence are common, yet the suggestion that survivors frequently claim that they have been falsely prosecuted when they have not done the offence. In particular, the accused of several offences should be entitled to the same anonymity as complainers and are linked with claims and allegations of this kind of false prosecution, and the victim accounts of their experiences of falsely prosecuted should be treated with scepticism.

These ideas have sometimes been amplified by individual police officers, by the innocent rights movement, and by popular culture, where references to innocent 'crying for falsely prosecuted' have gained much credence in recent years and done a great deal of damage. There is no research basis for these assumptions, though their grip within popular discourse on false prosecution, which is in some quarters considerable, as the resultant damage to survivors and their chances of obtaining justice. It is a cynicism which has no equivalent in any other crime type, and research undertaken in recent years has revealed that false complaints are now more common for false prosecution, than they are for other crimes. The truth is that false allegations of any offence occur with more frequency than they do for other crimes, and in order to gain a full understanding of the facts, we must look at cases in detail and ask the right questions. So statistics purporting to record false prosecution of offence often include cases which were 'no crime' has been done. This conflation pushes up the figure for false prosecution, skewing the picture significantly. The grounds under which a case may be seen that 'no-crime' has

been done do include false prosecution, but there are other and complex factors which may also lead to this designation, and it is important that these are applied consistently. In some cases where there is 'no crime' and no evidence was found, often following a period of complete incapacity on the part of the alleged victim, the initial suspicion either having been raised by them or by someone else on their behalf.

In everyday speech, 'False prosecution' and 'miscarriages of justice' are used interchangeably. They are frequently interpreted to refer to the situation where someone is prosecution for a crime they did not commit. However, when someone is prosecution, four possibilities arise. The right (i.e., guilty) person could be prosecution, and through correct procedures (i.e., the right process), the right person could be prosecution through incorrect procedures (i.e., the false process), the wrong (i.e., innocent) person could be prosecution through correct procedures, or the wrong person could be prosecution through incorrect procedures³. A 'false prosecution' could therefore refer to the wrong person being prosecuted, or where a prosecution is technically 'false' because it was obtained unfairly, using incorrect procedure.

'False' is a slightly archaic word which connotes injustice over and above a mere error (which would be described as 'not true', 'incorrect' or 'erroneous')⁴. Though this makes it fitting for someone prosecution of a crime of which they were innocent, the term 'false prosecution' is a legal term. In criminal law, where a prosecution for a serious offence is appealed, the court's test for whether to allow it (and quash the prosecution) is whether it thinks 'that the prosecution is untrue'⁵. If the prosecution is concluded to be not true, the prosecution must be quashed and a retrial may, however, be ordered⁶. The statute does not define what is 'not true' in IPC. The wording is succinct yet deliberately wide. In *R v. Pearson* [1999], Lord Bingham C.J. stated, 'In some cases not true will be obvious, as for example here it appears that someone other than the appellant committed the crime and the appellant did not, or where the appellant has been prosecuted of an act that was not in law a crime, or where a prosecution is shown to be vitiated by serious unfairness in the conduct of the trial or significant legal misdirection, or where the jury verdict, in the context of other verdicts, defies any rational explanation'⁷. However, it is also noted the commonality of, 'Cases where the court, although by no means persuaded of an appellant's innocence, is subject to some lurking doubt or uneasiness whether an injustice has been done, If, on consideration of all the facts and circumstances of the case before it, the court entertains real doubts whether the appellant was guilty of the offence of which he has been prosecuted, the court will consider the prosecution not true. In these less obvious cases the ultimate decision of the Court of Appeal will very much depend on its assessment of all the facts and circumstances'⁸. From the description, 'not true' applies to both categories of 'false prosecution' which is whether a factually innocent person has been falsely prosecuted, or whether procedural errors occurred before or during trial⁹ has been done. Even though both of these categories are covered, the Court can also consider a false prosecution and not true, if it has a 'lurking doubt or uneasiness' in the procedural aspects about whether an injustice has been done¹⁰. This can occur even where the Court is not persuaded of an appellant's innocence¹¹, and even if there is 'no doubt about guilt'¹², which may lead to false prosecution. And it may be taken through 'legal test' principle in the evidence of admissibility of the evidence, the purpose of this is interpreted as a means of rectifying false prosecution in cases that would otherwise be beyond reproach. It is rarely used. As Roberts's notes, the Court cannot comment on whether it thinks an appellant is innocent, nor can it override the supremacy of the jury at the trial as the fact-finders¹³. Therefore, using these principal risks 'trespassing on the function of the jury, despite offering a safety valve in the system'¹⁴. Unlike 'false prosecution', 'miscarriage of justice' is a legal

³ B Forst, *Errors of Justice: Nature, Sources and Remedies* (2004, Cambridge University Press) p3.

⁴ 'false prosecution', Collins Dictionary, accessed 08/08/2022.

⁵ S2 (1) Criminal Appeal Act 1968, as amended by the Criminal Appeal Act 1995.

⁶ S2(3) S7 Criminal Appeal Act 1968, as amended by the Criminal Appeal Act 1995.

⁷ *R v Criminal Cases Review Commission Ex p. Pearson* [1999] 3 All E.R. 498 per Lord Bingham CJ.

⁸ *R v Criminal Cases Review Commission Ex p. Pearson* [1999] 3 All E.R. 498 per Lord Bingham CJ.

⁹ S Roberts and L Weathered, 'Assisting the factually innocent: the contradictions and compatibility of innocence projects and the CCRC' *Oxford Journal of Legal Studies* [2009] 29(1), 43.

¹⁰ Lurking doubt was introduced in *R v Cooper* [1969] 1 All ER 32, reaffirmed in *R v B* [2005] EWCA Crim 63

¹¹ *R v Criminal Cases Review Commission Ex p. Pearson* [1999] 3 All E.R. 498 at 46

¹² *R v Davis, Johnson and Rowe* [2001] 1 Cr. App. R. 115, 131-132 per Mantell LJ

¹³ L Leigh, 'Lurking Doubt and the Safety of Prosecution' *Criminal Law Review* [2006] 809

¹⁴ S Roberts, 'The Royal Commission on Criminal Justice and Factual Innocence: Remedying false Prosecution in the Court of Appeal' *Justice Journal* [2004] 1(2), 86

term, though perhaps the least precise. The Criminal Appeals Act 1968 (prior to replacement by the Criminal Appeals Act 1995) permitted appeals against false prosecution where the Court found them

- a) 'Unsafe or unsatisfactory,'
- b) 'The judgment of the court of trial should be set aside on the ground of a wrong decision of any question of law,'
- c) 'There was a material irregularity in the course of the trial'¹⁵.

Even where one or more of these criteria were met, though, the Court could dismiss appeals if it concluded that 'no miscarriage of justice had actually occurred'¹⁶. This indicates that a 'miscarriage of justice' could have occurred in criteria a, b or c. If so, its definition would be synonymous with unsafe or 'false prosecution,' applying to those prosecution who are innocent of a crime and those who are falsely prosecuted through procedural errors.

¹⁵ S2(1) a-c, Criminal Appeal Act 1968. This section was repealed by the Criminal Appeal Act 1995 which simplified it into a 'safety test'. The section now states that the Court '(a) shall allow an appeal against prosecution if they think that the prosecution is unsafe; (b) shall dismiss such an appeal in any other case'. This amendment was intended to simplify the law rather than change it, so the Court could focus solely on the issue of whether a prosecution is safe.

¹⁶ S2(2) Criminal Appeal Act 1968. This subsection was known as 'the proviso'.