

[Law](#)

# How India can compensate for wrongful imprisonment

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**A comprehensive compensation scheme must also address rehabilitation, counselling and reintegration into the society.**

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*Compensation for wrongful incarceration involves elements of restorative justice such as reintegration, rehabilitation. Photo: Ron Lach/Pexels*

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Wahid Sheikh of Mumbai suffered imprisonment for nine years for a crime he did not commit. A trial court [acquitted](#) him in 2015 when it found there was no evidence against him in the deadly 2006 Mumbai [serial train blasts](#), in which 189 people died and over 800 were injured.

Ten years after Wahid Sheikh was discharged from jail, 12 other persons who were convicted for their alleged role in the same case were set free by the Bombay High Court which [ruled](#) that “the prosecution has utterly failed to prove the case against the accused. It is hard to believe that the accused committed the crime. Hence, their conviction is quashed and set aside”.

In [July 2001](#), Syed Wasif Haidar, a resident of Kanpur in Uttar Pradesh, was arrested on serious charges – from sedition to waging war against the state, rioting, and murder. He was accused as an operative of the Hizbul Mujahideen, an internationally designated terrorist organisation. Haidar languished in prison for eight years before he was discharged in December 2016.

Despite their acquittal, none of them were ever compensated by the state for being wrongfully jailed.

There is no criminal justice system in the world that can claim to be “[infallible](#)” or without

drawbacks. In India, the debate over monetary compensation for wrongful incarceration is not something that originated in recent times but has been a matter of concern [historically](#).

Globally, [many democracies](#) have recognised this grave miscarriage of justice and have established legal mechanisms to provide compensation and rehabilitation for victims who have suffered due to wrongful prosecution and delayed justice.

The US, UK, Germany and New Zealand have laws that offer both monetary and psychological support to such victims.

India, however, needs to put in place mechanisms to address such a violation of fundamental rights. After all, individuals who suffer wrongful prosecution or imprisonment not just lose the prime of their lives but also their dignity, livelihood, health and psychological wellbeing.

## **Lack of uniform policy**

In India, despite constitutional guarantees under [Article 21](#) that focus on the right to life and personal liberty, there is no comprehensive legislation or uniform policy that mandates compensation for wrongful prosecution or delayed justice. Although the judiciary has, through [judgements](#), often granted compensation in certain cases, such instances are not common and remain inconsistent and ad hoc.

Thus, the absence of a legal framework continues to erode public trust in the justice system and leaves innocent individuals without redress or compensation. Being the largest democracy committed to the rule of law and human dignity,

India must institutionalise [compensation mechanisms](#) that acknowledge and remedy the injustices suffered by those wrongfully accused or imprisoned.

Under the Indian Constitution, unjust incarceration violates Article 21. In several instances, the Supreme Court has [held](#) that when the state violates fundamental rights, monetary compensation may be awarded under public law remedies. In this regard, the landmark decision of [Rudal Shah v. State of Bihar \(1983\)](#) is instructive. This was the first such decision to award compensation to a man who was unlawfully detained for 14 years after acquittal, wherein it was recognised that compensation is a constitutional remedy.

Likewise, in [Nilabati Behera v. State of Orissa \(1993\)](#), the Supreme Court clarified that compensation for violation of fundamental rights is distinct from private tort actions. Unlike tort claims, which arise between private parties, constitutional compensation is awarded under Articles 32 and 226 to enforce accountability of the State for breach of rights and is directly enforceable against the state.

In recent times, in [Babloo Chauhan v. State](#) (2017), the Delhi High Court recognised wrongful prosecution as a serious human rights issue and made a reference to [Article 14\(6\) of the International Covenant on Civil and Political Rights \(ICCPR\)](#), that obligates states to compensate victims for miscarriage of justice.

However, despite these progressive judgements, many victims don't approach higher courts due to

lack of resources, leaving them without any relief despite years of wrongful imprisonment.

## Legislative vacuum

Even as India lacks a dedicated statutory framework for compensating victims of wrongful incarceration, The Law Commission of India [re-commended](#) in 2018 to enact a comprehensive law to address wrongful prosecution.

Its stand was that compensation should consider the period of incarceration, psychological and physical suffering, loss of income and the attached social stigma. It also proposed a clear procedure for claiming compensation and highlighted the need for rehabilitation measures.

Several countries have established structured compensation mechanisms for wrongful prosecution and delayed justice. In the US, federal and state-level laws, such as the [Innocence Protection Act \(2004\)](#), provide for compensation that in some states can be as high as \$50,000 per year of wrongful incarceration, along with tuition waivers, counselling and job training. In the UK, the [Criminal Justice Act, 1988](#), offers compensation up to £1 million for long-term wrongful imprisonment, as assessed by the Home Office.

Germany, on the other hand, provides compensation at a standard rate of €75 per day under its [Criminal Compensation Act \(StrEG\)](#), along with damages for loss of earnings. New Zealand, as guided by Cabinet Guidelines based upon Article 14(6) of the ICCPR, provides compensation for both pecuniary and non-pecuniary losses.

Compensation for wrongful incarceration involves elements of restorative justice such as reintegration, rehabilitation etc and through monetary compensation, the acknowledgement on the part of the state. It also serves as a form of deterrence, pushing law enforcement and the judiciary to be more careful and efficient in preventing miscarriage of justice.

The absence of a legal framework for compensation in India is a matter of concern. A specific law must be institutionalised to ensure compensation for those acquitted after prolonged wrongful incarceration. The law should provide clear guidelines for calculating compensation, taking into consideration the years lost, emotional suffering and loss of income.

Until such legislation is passed, the judiciary must adopt a liberal and humanistic approach by awarding substantial compensation in public law claims as done in the past and by directing state authorities to create rehabilitation schemes and centres.

For justice to be transformative, it must not only acquit the innocent but also restore their dignity through adequate redress.

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