

“Wrongful Prosecution in India - Judicial Acknowledgment without Institutional Remedy”

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ABSTRACT

Wrongful prosecution represents a profound structural failure of criminal justice systems, implicating not only individual liberty but the legitimacy of state power itself. In India, courts have increasingly recognized the phenomenon through constitutional jurisprudence, acknowledging investigative abuse, malicious prosecution, arbitrary arrests, and misuse of criminal law as violations of fundamental rights. However, this judicial recognition has not translated into the creation of institutional remedial mechanisms. The Indian legal system continues to lack structured compensation regimes, independent review bodies, prosecutorial accountability frameworks, and systemic rehabilitation mechanisms for victims of wrongful prosecution. This paper argues that India exhibits a paradoxical legal condition, wrongful prosecution is judicially acknowledged but institutionally unaddressed. Through a constitutional, doctrinal, and structural analysis, the paper demonstrates how Indian jurisprudence individualizes harm through case-specific relief while avoiding systemic reform. It situates wrongful prosecution as a constitutional crisis of governance rather than a mere procedural error and contends that the absence of institutional remedies transforms judicial recognition into symbolic justice rather than transformative justice.

Keywords: *Wrongful Prosecution, Criminal Justice System, Constitutional Remedies, Prosecutorial Accountability, Institutional Reform, Due Process, Judicial Compensation, Rule of Law*

INTRODUCTION

Wrongful prosecution constitutes one of the most severe forms of injustice that a constitutional legal system can inflict upon an individual. Unlike wrongful conviction, which culminates in an erroneous judicial finding of guilt, wrongful prosecution encompasses the entire trajectory of unjust criminalization, false implication, arbitrary arrest, coercive investigation, fabricated evidence, malicious prosecution, prolonged incarceration, procedural abuse, and reputational destruction. It is not merely the outcome of error but the product of systemic dysfunction. In this

sense, wrongful prosecution reflects not a failure of adjudication alone, but a breakdown of institutional integrity across the criminal justice process.¹

In India, the phenomenon of wrongful prosecution is neither rare nor exceptional. The criminal process itself often becomes punitive long before adjudication, with arrest, detention, trial, and social stigmatization functioning as mechanisms of punishment irrespective of eventual acquittal. Yet, despite the prevalence and severity of such harms, the Indian legal system lacks any comprehensive institutional framework to address wrongful prosecution as a structural injustice. There is no statutory compensation regime, no independent review authority, no prosecutorial accountability body, and no structured rehabilitation mechanism for victims. Legal redress remains discretionary, fragmented, and case-specific.

At the same time, Indian constitutional courts have not remained silent. Judicial discourse has increasingly acknowledged the misuse of criminal law, investigative misconduct, abuse of arrest powers, and malicious prosecution as violations of fundamental rights. Courts have recognized that wrongful prosecution erodes personal liberty, dignity, and constitutional governance itself. However, this recognition remains largely symbolic and episodic. Remedies are individualized, ad hoc, and judicially discretionary, rather than institutionalized, systemic, and structural.²

This paper advances the central argument that India is characterized by a paradoxical legal condition, wrongful prosecution is judicially acknowledged but institutionally unremedied. Courts recognize the injustice, but the legal system does not transform that recognition into durable institutional mechanisms. As a result, judicial condemnation coexists with structural continuity. The criminal justice system absorbs critique without reform.

CONCEPTUALISING WRONGFUL PROSECUTION

Wrongful prosecution must be understood as distinct from wrongful conviction. While wrongful conviction refers to the erroneous judicial determination of guilt, wrongful prosecution refers to unjust criminalization itself. It begins at the stage of implication and continues through investigation, arrest, detention, trial, and social consequences, irrespective of the final verdict. A person may be acquitted and yet remain a victim of wrongful prosecution, having already suffered deprivation of liberty, economic loss, psychological trauma, reputational damage, and social exclusion.³

¹ Kent Roach, *Wrongful Convictions, Wrongful Prosecutions and Wrongful Detentions in India*, 35 Nat'l L. Sch. India Rev. 250, (2024), <https://doi.org/10.55496/wwqa3810>.

² *Id.*

³ G.S. Bajpai, *Wrongful Prosecution in Terror Related Cases: A Criminal Law Critique*, 2018 SSRN Elec. J., <https://doi.org/10.2139/ssrn.3182362>.

In the Indian context, this distinction is particularly significant due to the structure of criminal procedure. The criminal process itself operates as punishment. Pre-trial detention, prolonged investigation, judicial delays, media vilification, and trial stigma create a system where acquittal often arrives after irreversible harm has already occurred. Justice becomes retrospective and symbolic, while suffering is immediate and real. Wrongful prosecution therefore represents a form of “processual punishment”, where harm arises not from conviction but from procedure itself. This transforms criminal procedure from a protective framework into a coercive mechanism. The process becomes the penalty.⁴ This conceptualization is critical because it shifts the analytical focus away from judicial error alone and toward systemic design. Wrongful prosecution is not simply a mistake; it is often a product of structural incentives, institutional culture, political influence, and bureaucratic logic. It reflects how power operates within legal institutions.

The Indian Constitution provides a normative framework that should, in principle, prevent wrongful prosecution. Art. 21 guarantees the right to life and personal liberty, which has been judicially expanded to include dignity, autonomy, procedural fairness, and substantive due process. Since the landmark interpretation in *Maneka Gandhi v. Union of India*,⁵ the phrase “procedure established by law” has been transformed into a requirement of just, fair, and reasonable procedure. Liberty can no longer be curtailed through arbitrary or unjust legal mechanisms. Wrongful prosecution directly violates this constitutional guarantee. Arbitrary arrest, coercive investigation, fabricated evidence, and malicious prosecution constitute deprivations of liberty that are neither fair nor reasonable. They represent state action that is incompatible with constitutional morality.

Art. 14 further reinforces this protection by prohibiting arbitrariness and ensuring equality before law. Selective prosecution, targeted criminalization, and discriminatory enforcement convert law into a tool of domination rather than governance. When criminal law is deployed selectively, equality collapses into hierarchy. Art. 19 is also implicated, particularly in cases involving dissent, protest, journalism, and political expression. Wrongful prosecution produces a chilling effect, suppressing speech, assembly, and association through fear of criminalization. The criminal process becomes a tool of pre-emptive censorship, enforcing conformity without formal prohibition.

STRUCTURAL VULNERABILITIES IN THE INDIAN CRIMINAL JUSTICE SYSTEM

The persistence of wrongful prosecution in India is not accidental. It is structurally enabled by the design of criminal institutions. The investigative process is police-centric and executive-controlled, creating susceptibility to political influence, pressure-based policing, and target-driven

⁴ Rashaan A. DeShay & John L. Worrall, *Prosecution and Wrongful Convictions*, in *Encyclopedia of Criminology and Criminal Justice* 4070, (2014), https://doi.org/10.1007/978-1-4614-5690-2_36.

⁵ (1978) 1 SCC 248.

enforcement. Investigation becomes responsive to power rather than law. Prosecutorial independence is institutionally weak. Public prosecutors function under executive control, limiting their capacity to act as neutral ministers of justice. The prosecutorial role becomes aligned with state interest rather than truth-seeking. Judicial delays further exacerbate harm. Prolonged trials transform procedure into punishment. Even eventually acquittal cannot restore lost years, dignity, or social standing. Justice delayed becomes injustice multiplied.

The media ecosystem compounds these harms through narrative criminalization, trial by media, and reputational destruction. Public perception often treats accusation as guilt, eroding the presumption of innocence. Together, these structural conditions produce an environment where wrongful prosecution is not an aberration but a predictable outcome. Wrongful prosecution must therefore be understood not merely as a legal wrong but as a constitutional crisis. It represents the breakdown of the social contract between citizens and state. When the state weaponizes law against individuals without institutional accountability, the rule of law transforms into rule by law. This produces a legitimacy crisis. Law loses its normative authority and becomes an instrument of fear. Constitutionalism collapses into formalism, where rights exist textually but not institutionally. In such a system, judicial recognition alone cannot produce justice. Courts may condemn, criticize, and compensate, but without institutional transformation, injustice remains structurally embedded. This sets the stage for the central paradox of the Indian legal system, courts increasingly recognize wrongful prosecution, but the state has not constructed institutional remedies to address it.⁶

JUDICIAL RECOGNITION OF WRONGFUL PROSECUTION IN INDIAN JURISPRUDENCE

Indian constitutional courts have progressively acknowledged wrongful prosecution as a serious violation of fundamental rights. Judicial language has evolved from procedural neutrality to explicit moral condemnation of state abuse of criminal process. Courts now recognize that arbitrary arrests, malicious investigations, fabricated evidence, and politically motivated prosecutions undermine constitutional governance and erode the legitimacy of state authority. Court has repeatedly affirmed that liberty cannot be reduced to formal legality. In its evolving Art. 21's jurisprudence, the Court has recognized that unlawful deprivation of liberty violates not only procedural norms but the dignity of the individual. Judicial pronouncements increasingly characterize wrongful prosecution as a constitutional injury rather than a mere procedural irregularity. The language of rights has replaced the language of discretion.⁷

⁶ Dianne L. Martin, *Distorting the Prosecution Process: Informers, Mandatory Minimum Sentences, and Wrongful Convictions*, 39 Osgoode Hall L.J. 513, (2001), <https://doi.org/10.60082/2817-5069.1472>.

⁷ INDIA CONST., Art. 21.

However, this recognition remains primarily rhetorical and case bound. Courts acknowledge injustice in individual cases without transforming that recognition into general institutional doctrine. Wrongful prosecution is treated as an exceptional deviation rather than a systemic pathology. This judicial approach produces a paradoxical outcome. The legal system recognizes harm but refuses to reconceptualize its own structure. Judicial discourse condemns abuse, but institutional design remains unchanged.

The principal remedial mechanism developed by Indian courts for addressing wrongful prosecution has been judicial compensation under public law. Through constitutional tort jurisprudence, courts have awarded monetary compensation for violations of fundamental rights, particularly under Art. 21. This doctrine emerged as an innovation to provide immediate relief where civil remedies were inadequate or ineffective.⁸ Cases involving illegal detention, custodial violence, false implication, and malicious prosecution have resulted in compensation orders. Courts have framed such compensation not as damages in tort but as constitutional remedies for state wrongdoing. This represents a significant jurisprudential development, recognizing that the state bears responsibility for institutional harm inflicted through its agents.

Yet this compensation framework remains fundamentally limited. It is discretionary, inconsistent, and unpredictable. There is no statutory structure governing eligibility, quantum, procedure, or rehabilitation. Compensation depends on judicial sympathy, narrative framing, and case-specific factors rather than principled institutional criteria. Compensation functions as symbolic recognition rather than structural correction. Monetary relief does not address the systemic causes of wrongful prosecution. It does not create accountability mechanisms, disciplinary structures, or institutional reform. The same institutional conditions that produced the harm remain intact. Judicial compensation thus operates as moral acknowledgment rather than institutional remedy. It individualizes injustice instead of addressing its systemic roots.

INDIVIDUALISATION OF STRUCTURAL HARM

Indian courts conceptualize wrongful prosecution primarily as individual harm rather than institutional failure. Each case is treated as an isolated deviation from normal functioning, rather than as evidence of structural dysfunction. This framing prevents the emergence of systemic solutions. By focusing on individual relief, the judiciary avoids confronting deeper questions of institutional design. The criminal justice system itself is not interrogated as a site of structural violence. Instead, responsibility is localized in specific officers, investigators, or prosecutors, while institutional architecture remains unchallenged.⁹

⁸ *Id.*

⁹ Jixi Zhang, *Fair Trial Rights in ICCPR*, 2 J. Pol. & L., (2009), <https://doi.org/10.5539/jpl.v2n4p39>.

ABSENCE OF PROSECUTORIAL ACCOUNTABILITY STRUCTURES

One of the most significant institutional absences in India is the lack of prosecutorial accountability mechanisms. Prosecutors are not structurally independent constitutional actors. They function under executive control, limiting their capacity to act as neutral guardians of justice. There are no independent prosecutorial review boards, disciplinary oversight authorities, or accountability commissions. Decisions to prosecute are rarely subject to independent scrutiny. Malicious or politically motivated prosecutions face little institutional resistance. This absence creates structural impunity. Prosecutorial power operates without meaningful external accountability. Wrongful prosecution becomes institutionally invisible. Judicial criticism alone cannot fill this void. Courts can condemn misconduct, but they cannot create institutional oversight structures through adjudication alone.¹⁰

Investigative agencies exercise enormous coercive power, including arrest, detention, search, seizure, and evidence collection. Yet institutional accountability remains weak. Internal disciplinary mechanisms lack independence and transparency. External oversight is limited and fragmented. This creates a culture of impunity. Investigative misconduct rarely results in institutional consequences. The system protects itself. Wrongful prosecution thus becomes structurally normalized. Institutional incentives favor enforcement over justice, control over rights, and efficiency over fairness. Judicial intervention occurs post-facto, after harm has already been inflicted. Courts operate as sites of retrospective correction rather than preventive governance.¹¹

The cumulative effect of these dynamics is the transformation of judicial remedies into symbolic justice. Courts recognize harm, condemn abuse, and occasionally compensate victims, but the system itself remains unchanged. Symbolic justice satisfies constitutional morality without institutional transformation. It allows the system to appear responsive while remaining structurally static. This produces a legitimacy illusion. The legal system appears self-correcting, while structural injustice persists. Judicial recognition without institutional reform becomes a form of constitutional theatre. Rights are affirmed rhetorically but denied structurally. Courts are institutionally constrained. Adjudication is reactive, case-bound, and limited by jurisdictional boundaries. Structural reform requires legislative and institutional action.¹²

¹⁰ *Damages for wrongful arrest, detention and malicious prosecution - Liability issues*, 43 J. for Jurid. Sci., (2018), <https://doi.org/10.18820/24150517/jjs43.v1.4>.

¹¹ *Id.*

¹² G.S. Bajpai, *Wrongful Prosecution in Terror Related Cases: A Criminal Law Critique*, 2018 SSRN Elec. J., <https://doi.org/10.2139/ssrn.3182362>.

COMPARATIVE APPROACHES TO WRONGFUL PROSECUTION

In comparative constitutional systems, wrongful prosecution is increasingly recognized as a structural failure requiring institutional remedies rather than merely judicial sympathy. Several jurisdictions have moved beyond case-specific compensation toward systemic frameworks that institutionalize accountability, review, and rehabilitation.¹³ In UK, wrongful prosecution and wrongful conviction are addressed through structured statutory mechanisms that provide compensation schemes, independent review bodies, and oversight institutions. The existence of independent prosecutorial authorities & review commissions reflects an institutional commitment to correcting systemic failure rather than merely acknowledging individual injustice. In US, despite fragmentation across states, the emergence of innocence projects, conviction integrity units, and independent prosecutorial review structures reflects a growing recognition that wrongful prosecution is not simply an error but an institutional pathology. Compensation statutes in multiple jurisdictions provide structured remedies, signaling legislative recognition of state responsibility. In Canada, institutional responses integrate judicial remedies with administrative structures that enable review, accountability, and compensation. The emphasis is on systemic correction rather than episodic relief. These models reflect a fundamental conceptual shift. Wrongful prosecution is treated as a governance failure requiring institutional architecture, not merely as a legal mistake requiring judicial correction.¹⁴

India's legal system exhibits a profound structural deficit in addressing wrongful prosecution. There is no national compensation framework, no independent review authority, no prosecutorial oversight body, and no investigative accountability commission. There is no institutional mechanism for identifying patterns of wrongful prosecution or for systemic reform. Judicial remedies exist, but they operate in isolation. There is no integration between judicial findings and institutional reform processes. Court judgments do not trigger structural review mechanisms. The system absorbs critique without transformation. This deficit reflects a deeper governance problem. The Indian state conceptualizes criminal justice primarily as enforcement rather than rights protection. Institutional design prioritizes control over accountability.

The persistence of wrongful prosecution in India cannot be understood without examining the political economy of criminal justice. Criminal law operates as an instrument of governance, not merely adjudication. It is used to manage dissent, regulate social order, and enforce political authority. This creates structural incentives for misuse. Enforcement institutions are rewarded for control, not for rights protection. Accountability mechanisms threaten power structures and are therefore institutionally resisted. Wrongful prosecution becomes politically functional. It

¹³ *Id.*

¹⁴ *Malicious Prosecution. Basis and Requisites of Action. Wrongful Institution of Patent Interference Proceedings*, 22 Harv. L. Rev. 230, (1909), <https://doi.org/10.2307/1324208>.

disciplines populations, deters dissent, and reinforces authority. In such a context, institutional reform becomes politically inconvenient. Judicial recognition alone cannot overcome these structural incentives. Courts operate within the same political ecosystem. Without political will and legislative action, institutional reform remains aspirational.¹⁵

Over time, wrongful prosecution becomes normalized within institutional culture. It is treated as an unfortunate but acceptable cost of enforcement. Procedural abuse becomes routine. Liberty becomes negotiable. This normalization erodes constitutional culture. Rights lose their moral force and become technical claims. Justice becomes procedural rather than substantive. In such a system, judicial recognition functions as symbolic repair. It addresses moral discomfort without altering institutional behaviour. Wrongful prosecution must therefore be reconceptualized as a governance failure rather than a legal anomaly. It reflects the collapse of accountability mechanisms, the distortion of institutional incentives, & erosion of constitutional culture. This reframing is essential for reform. Without recognizing wrongful prosecution as structural injustice, remedies will remain fragmented and symbolic.

While comparative models offer valuable insights, institutional transplantation must be context sensitive. Indian reforms cannot simply replicate foreign institutions. They must account for political structure, administrative culture, and constitutional design. However, the underlying principle remains universal, wrongful prosecution requires institutional remedies. Judicial recognition alone is insufficient.

REFRAMING WRONGFUL PROSECUTION AS STRUCTURAL INJUSTICE

For meaningful reform to occur, wrongful prosecution must be reconceptualized within Indian constitutional discourse not as episodic injustice but as structural harm. This requires a shift from individualized narratives of error to systemic analyses of institutional failure. The current legal imagination treats wrongful prosecution as an unfortunate deviation from normal functioning. These framing preserves legitimacy of institutions while isolating blame within individual misconduct.¹⁶ A structural framing, by contrast, recognizes wrongful prosecution as an emergent property of institutional design. It arises from the interaction of executive control over investigation, weak prosecutorial independence, absence of oversight, political incentives, procedural delays, and enforcement-driven governance. In this sense, wrongful prosecution is not an accident but a predictable outcome of institutional architecture.

¹⁵ Rashaan A. DeShay & John L. Worrall, *Prosecution and Wrongful Convictions*, in *Encyclopedia of Criminology and Criminal Justice* 4070, (2014), https://doi.org/10.1007/978-1-4614-5690-2_36.

¹⁶ *Supra* note 14.

This reframing is constitutionally significant. If wrongful prosecution is structural, then constitutional responsibility extends beyond individual actors to institutional design itself. The Constitution becomes not merely a source of rights but a mandate for institutional reform. The Indian Constitution provides a normative foundation for institutional remedies. Art. 21 imposes a positive obligation on the state to protect life and liberty, not merely to refrain from direct violation. This includes a duty to construct institutional frameworks that prevent arbitrary deprivation of liberty. Art. 14's guarantee of non-arbitrariness requires institutional accountability mechanisms that prevent selective and discriminatory enforcement. Equality before law cannot exist in the absence of oversight structures. Art. 19's protection of speech, association, and assembly imposes a constitutional duty to prevent the criminalization of dissent through misuse of prosecutorial power.

Transformative justice requires the creation of institutional mechanisms that operate independently of case-by-case adjudication. This includes independent review bodies to examine claims of wrongful prosecution, prosecutorial accountability structures insulated from executive control, investigative oversight authorities with disciplinary powers, statutory compensation frameworks with uniform criteria, and rehabilitation mechanisms addressing social, psychological, and economic harm.

Such institutions must possess continuity, autonomy, transparency, and enforceability. They must convert judicial recognition into institutional practice. Without such architecture, judicial remedies remain symbolic and episodic. A central transformation required is the shift from discretionary relief to legal entitlement. Victims of wrongful prosecution must not depend on judicial sympathy or narrative framing for relief. Remedies must be rights-based, structured, and enforceable.¹⁷

Compensation must be statutory, not discretionary. Accountability must be institutional, not rhetorical. Rehabilitation must be systemic, not symbolic. This shift transforms justice from benevolence to obligation. Institutional remedies must also incorporate restorative justice principles. Wrongful prosecution inflicts social death, not merely legal harm. Victims suffer exclusion, stigma, trauma, and disintegration of identity.

Rehabilitation must therefore extend beyond compensation to include reintegration, dignity restoration, and social repair. Justice must be reconstructive, not merely corrective. This dimension is largely absent in Indian jurisprudence, which treats relief as monetary rather than human.¹⁸ Institutional reform cannot occur without political will. However, political will itself is shaped by constitutional culture. When constitutional discourse normalizes institutional injustice, reform

¹⁷ Dianne L. Martin, *Distorting the Prosecution Process: Informers, Mandatory Minimum Sentences, and Wrongful Convictions*, 39 Osgoode Hall L.J. 513, (2001), <https://doi.org/10.60082/2817-5069.1472>.

¹⁸ *Id.*

becomes politically invisible. Judicial narratives play a crucial role in shaping this culture. Courts must move beyond moral condemnation to structural articulation. Wrongful prosecution must be framed as constitutional failure, not administrative error. Only then can reform acquire constitutional legitimacy.

The central crisis of the Indian response to wrongful prosecution lies in the transformation of justice into symbolism. Courts speak the language of rights, but institutions speak the language of power. Structural justice requires alignment between constitutional discourse and institutional design. Recognition must be translated into reform. Condemnation must be translated into accountability. Compensation must be translated into institutional learning. Without this transformation, constitutional justice remains performative.¹⁹

CONCLUSION & A WAY FORWARD

Wrongful prosecution in India reveals a deep contradiction within constitutional governance. The judiciary increasingly recognizes the injustice of arbitrary criminalization, investigative abuse, and malicious prosecution. Constitutional discourse affirms dignity, liberty, and due process. Yet institutional reality remains unchanged. This disjunction produces a system of judicial acknowledgment without institutional remedy. Recognition exists without reform. Condemnation exists without accountability. Compensation exists without transformation.

As a result, justice becomes symbolic rather than structural. The system appears responsive while remaining unchanged. Constitutional morality coexists with institutional inertia. This paper has argued that wrongful prosecution must be reconceptualized as a constitutional failure of governance rather than an episodic legal error. Without institutional remedies, judicial recognition becomes performative rather than transformative. True constitutional justice requires more than judicial speech. It requires institutional architecture, structural accountability, and systemic reform. Until such mechanisms are created, wrongful prosecution will remain not merely a legal injustice, but a constitutional betrayal.

¹⁹ *Damages for wrongful arrest, detention and malicious prosecution - Liability issues*, 43 J. for Jurid. Sci., (2018), <https://doi.org/10.18820/24150517/jjs43.v1.4>.