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## Law Commission's Report on Wrongful Prosecution

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The Law Commission has submitted to the government a report titled “**Wrongful Prosecution (Miscarriage of Justice): Legal Remedies**” on the issue of “**wrongful prosecution**” of innocents and the remedies that can be made available to compensate them.

- Earlier in May, 2017 the Delhi High Court in the case of **Babloo Chauhan @ Dabloo vs. State Govt. of NCT of Delhi**, expressed grave concern about the state of innocent persons being wrongfully prosecuted and asked the Law Commission to undertake a comprehensive examination of the issue and make a recommendation to the Government of India.
- Reviewing the issue in the context of the Indian Criminal Justice system, it recommends “**wrongful prosecution**” as the **measure for miscarriage of justice**, NOT wrongful conviction and wrongful incarceration.
- **Wrongful prosecution** refers to the cases where the accused was not guilty of the offence, and the police and/or prosecution engaged in some form of misconduct in investigating and/or prosecuting the person.
- The **International Covenant on Civil and Political Rights (ICCPR)**, which is ratified by India creates an obligation on the State parties to enact a law to compensate the victims of such miscarriage of justice.

### **International Covenant on Civil and Political Rights (ICCPR)**

- The International Covenant on Civil and Political Rights (ICCPR) is one of three documents that make up the International Bill of Rights, together with the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- The ICCPR was adopted by the United Nations General Assembly in 1966 and it came into force in 1976.
- It attempts to ensure the protection of civil and political rights. It recognizes the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights.

## Background

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- According to the National Crime Records Bureau's (NCRB) annual statistical report called the '**Prison Statistics India (PSI-2015)**', out of total prisoners in the country, **67.2% were undertrials** (i.e. people who have been committed to judicial custody pending investigation or trial by a competent authority); substantially higher than the convict population (32.0%).
- The data shows that 25.1% of the total undertrials spent more than a year in prison; 17.8% spend up to 1 year in prison as undertrials, 21.9% of the undertrials were in prison for 3 to 6 months, and 35.2% undertrials spent up to 3 months in prison.
- Such large number of undertrials (more than the number of convicts) year after year and their long detention periods show that undertrials spent a substantial period of time awaiting trials/ judicial determination of their case.
- This delay and waiting becomes a graver miscarriage of justice when the person is wrongfully accused and incarcerated pending trial/proceedings, which he should not have been subjected to in the first place.
- In such cases, it is the **violation of fundamental rights under Article 21** (the right to life and liberty), and **Article 22** (protection against arbitrary arrests and illegal detention etc.) that invokes the writ jurisdiction of the Supreme Court and the High Courts under **Articles 32 and 226** of the Constitution respectively.

## Recommendations

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- Enactment of **specific legal provision** for redressal of cases of miscarriage of justice resulting in wrongful prosecution.
- Designation of **special courts in each district** for adjudicating upon the claims of compensation for wrongful prosecution.
- The **claim for compensation** can be brought by the accused person so injured; or by any agent duly authorized by the said accused person; or where the accused person died after the termination of the wrongful prosecution, by all or any of the heirs or legal representatives of the deceased.
- The legal provision should include the **guiding principles/factors** that a Special Court will be required to consider while determining the compensation including the amount of monetary compensation.
- Compensation under this framework will include **both pecuniary and non-pecuniary assistance** (form of services such as counselling, mental health services, vocational/employment skills development, and such other similar services).