

## SHORT COMINGS OF CRIMINAL JUSTICE SYSTEM OF PAKISTAN AND ITS EFFECTS ON THE RIGHTS OF ACCUSED PRISONER WRONGFULLY CONVICTED OR IMPRISONED

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\* The title of this piece intentionally draws upon the famous phrase, "justice delayed is justice denied," in that our specific focus is on procedural rules and norms and how the absence of these can lead to a systematic denial in justice. <http://www.innocent.org.uk/cases/>

**Abstract.** The criminal justice system in Pakistan operates imperfectly, although the aim of the Pakistan's Criminal Law system is that no person is being convicted without all the elements but our System is not speedy and fast in disposal of cases then automatically innocent suffers. A failure of the justice system leaves people free but uncompensated. When a case has been decided after a lengthy trial and an individual acquit on merit by the judgment of concerned Court than upon release he did not receive any thing as compensation by the Criminal Justice System of Pakistan because System offers no mechanism for compensation. This article will discuss about wrongfully convicted persons in Pakistan's Criminal Justice System and the reasons for their wrongful imprisonment and mechanism for compensation. In the end, conclusions and recommendations will be given on the same.

**Key words:** Pakistan criminal system, wrongful conviction, imprisonment, innocent prisoners, compensation

### 1. Introduction

A standout amongst the most disregarded parts of Pakistan's criminal equity framework is the postponement brought on in the transfer of cases and detainment of the charged pending trial. These denounced detainees are detents placed in jails predominantly under non safeguard capable offenses. It is consequence of a capture for associated offense not took after by stipend with safeguard. Once in a while they are denied equity for drawn out stretch of time. They are isolated from their family for the best a portion of their life despite the fact that they may be innocent. Indeed, even they clear after a delay time of trial or subdued their feelings on request by the judgment of High Court/Supreme Court; they don't get anything on the name of remuneration by Criminal Justice System of Pakistan. [1] Even they

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acquit after a prolonged period of trial or quashed their convictions on appeal by the judgment of the High Court/Supreme Court, they receive nothing on the name of compensation by the Criminal Justice System of Pakistan.

This study mainly focuses on a prevalent shortcoming of Pakistan's criminal justice system of lengthy trial procedure and poor compensation for innocent individuals who were wrongfully imprisoned. After serving time in prisons both during trial and after conviction for crimes that they did not commit, these individuals often do not have anywhere to go. Familial relationships and friendships have gradually deteriorated, by a criminal record the ability to find decent work has been caught up, and a chance at having a sustainable source of income has been lost. [2]

It's an acknowledged guideline of reasonableness in our general public to repay nationals who have endured misfortunes through no flaw of their own. They get satisfactory reimbursement when a man's property has been seized for open use, in all nations' wrongdoing casualties and their families get budgetary pay. Yet, peculiarly, the wrongfully detained, who lose family, companions, freedom, notoriety, property, employments, life exercises and more don't get remuneration in everywhere throughout the world. [3]

For quite a long time, a few individuals, criminal equity capable included, didn't perceive the degree of blunder in the criminal equity framework or that wrongful detainment or wrongful feelings happened. They put in by and large 13 years and upwards of 31 years, in jail. Numerous more got just an insignificant sum that missed the mark regarding reimbursing their misfortunes or offering them some assistance with getting re-built up in the free world and forty percent of them have not got any pay. [4]

Mental investigation of the wrongfully detainment demonstrates that their years of imprisonment are amazingly terrifying. Numerous experiences the ill effects of sadness, post-traumatic anxiety issue, and some were abused themselves in jail physically, they have matured in front of their companions, and frequently their wellbeing has experienced years of sub-standard jail human services.

## 2. What is wrongful conviction?

The term 'wrongful conviction' could incorporate circumstances where individuals are:

- Captured and kept yet discharged without being charged.
- Kept and charged however whose charges are dropped before trial.
- Attempted and cleared. Indicted however whose conviction has been subdued on request. [5]

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So a person will begin to lose the approval and support of his law-abiding family and friends when once a man is convicted of an offence, and particularly once he goes to prison. His ties to them will be cut or weakened. [6]

Upon their release, to compensate them for all the time that they spent unjustly incarcerated some of these persons have received considerable amounts of money from the provincial government. The reason why these persons are being compensated for their respective wrongful convictions is because of the unfortunate consequences that a miscarriage of justice wreaks on their lives.

### 3. Effects of the Wrongful Imprisonment upon release

Discharge from jail is not generally a happy event, as it is regularly joined by sentiments of tension about such things as family, funds and job. Investigations of detainee reentry have presumed that the "snippet of discharge," and the hours and days quickly taking after discharge, are basic to the move to life outside of jail.

Notwithstanding money related issues they confront in the wake of being discharged from jail, wrongfully detained people additionally experience a large group of interesting and entangled non-fiscal snags upon their discharge. [7] To date these issues have gone to a great extent unaddressed by existing compensation mechanisms in Criminal Justice System of Pakistan. This is in spite of the way that the effect of jail life on detainees who are really guiltless is significantly more inconvenient than for different detainees.[8] Here study has a diagram of a portion of the adverse effects of detainment on an individual's mental wellbeing, openings for work, lodging, and physical wellbeing. These hardships are as taking after.

### 4. Other effects

Numerous detainees additionally encounter trouble with adapting to social changes and conventional errands because of changes in innovation in the home, work environment, and social environment that may influence ordinary living. [9]

Losses are in respect of the period following wrongful imprisonment & convictions are as follows:

- Non-pecuniary losses:

- Loss of freedom;
- Loss of notoriety;
- Misfortune or interference of family or other individual connections; and
- Mental or enthusiastic damage. [10]

- Pecuniary losses

- Loss of work, including loss of profit, with conformities for money charge and for advantages got while imprisoned;
- Loss of future acquiring capacities;
- Loss of property or other important budgetary misfortunes coming about because

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of confinement or detainment; and

- Expenses caused by or for the benefit of the individual in acquiring an exculpation or vindication. [11]

### 5. What is Miscarriage of justice?

An unnatural birth cycle of equity has been characterized as a blunder of equity which signifies "mistakes in the translation, technique, or execution of the law regularly, blunders that disregard due procedure, frequently bringing about the conviction of blameless individuals." In *Fanjoy v. The Queen* 10 McIntyre J. characterized an unsuccessful labor of equity as take after. "A man accused of the commission of a wrongdoing is qualified for a reasonable trial as indicated by law. Any blunder which happens at trial that denies the blamed for that qualification is an unnatural birth cycle of equity"[12].

### 6. Understanding of Compensation

#### 6.1. Meaning and definition

"Ubi jus, ibi remedium" is the fundamental standard in the tort that expresses that there is no wrong without a cure and the tenet of law requires that wrongs ought not to remain unredressed. In tort law the pay constitutes a vital healing measure and the standards identifying with the determination of harms and remuneration in tort are entrenched. There are a few measurements to the issue of installment of harms and remuneration in the law identifying with torts incorporates the measure of harms, expectation of the wrongdoer, quantum of harms, and closeness of the reason and so on. [13]

#### 6.2. Purposes of Compensation

The fundamental reason for remuneration is reparation. Reparation implies cash that is paid to casualty by a nation with a specific end goal to demonstrating that you are sad for anguish that you have brought on. So Reparation might render equity by removing so as to anticipate and preventing infringement and or changing the results of the wrongful demonstrations. Reparations should be proportionate to the gravity of the infringement and the subsequent harm and might incorporate compensation, restoration, fulfillment, pay, and ensures of non-redundancy. [14]

#### 6.3. Types of compensation

There are four classifications of compensation, split into two pairings; remedial and redistributive pay on one hand and identical and substitute/comfort pay on the other.

- *Restorative pay*; speaks to the demonstration of returning a petitioner to the

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position they were in preceding the demonstration whined of;

- *Redistributive pay*; expects to take the petitioner back to the position delighted in by other individuals, e.g. Government managed savings reserves.
- *Equivalent pay*; Equivalent remuneration additionally incorporates forward-attempting so as to look change to represent future misfortunes.
- *Substitute/comfort pay*; are utilized as gadgets to monetarily remunerate a non-monetary misfortune. Substitute pay is focused at supplanting fulfillment precluded by a misfortune from securing enhancement, comfort remuneration at giving the inquirer with solace to disagreeable encounters which don't really bring about lost luxury. [15]

## 7. Laws of compensation in Pakistan

The center of the study is essentially to cover the object of "Remuneration" for cleared or Exonerees in Criminal Justice System of Pakistan. This Chapter with a specific end goal to look at the current Provisions/Statutes/Acts as remuneration for wrongful conviction and posing the questions: 1) Are existing procurements a suitable solution for Acquitted and exonerees? 2) Does the Justice System have a commitment to exonerees to give review to the harm or misfortune they encounter from their detainment? 3) If existing pay under segment 250 CRPC is not a satisfactory measure, why may this be the situation? 4) What might Pakistan do to address the needs of the wrongfully detained and sentenced post-absolution?

The meaning of a 'wrongful detainment' may cover numerous circumstances, it is utilized as a part of this section to allude to situations where persons have been absolved after extensive trial by Court of First Instance, sentenced to a term of detainment and have had their sentences subdued on request; were cleared at retrial.[16]

### 7.1. Existing Compensation Statutes/Provisions/Acts in Pakistan

Compensation for wrongful convictions in Pakistan is a legal issue that is uncertain and complex. Unfortunately, to provide an efficient response to this matter our legal system does not contain any mechanism and therefore, in our legal framing documents the principles set out are not complied with as expected.

A significant portion of the Constitution of 1973 is devoted to protecting the general legal rights of Pakistan's citizens and the specific procedural rights of accused persons.

In the following section study will analyze the particular relevance of the main sources of law of our legal system with respect to the recognition and development of compensation for the wrongfully convicted.

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## 7.2. Legal Framing Documents

In Pakistan, Acquitted after lengthy trial & wrongfully convicted individuals do not have a statutory right to compensation. There are three legal documents that are worth mentioning to this topic: the 250 of CRPC and the Constitution of Pakistan 1973 and filing a tortious claim against liable parties under law of torts. These documents are relevant because each of them has recognized the importance of compensating the victims of a miscarriage of justice.

## 7.3. Constitution of Islamic Republic of Pakistan of 1973

The first 'legal framing document' is the Constitution of 1973. Constitution contained provisions in its articles 8 to 28 are intended to preserve the most fundamental rights and freedoms of every person in Pakistan from illegal actions of the government. Particularly, criminal law is an area where these provisions are imaginary to have strict application.

Article 4 & 10 of the Constitution of the Islamic Republic of Pakistan are relevant:

## 7.4. Article 4 of the Constitution

### 7.4.1. Right of Individuals to be dealt with in accordance with law, etc

(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) No person shall be prevented from or to be hindered in doing that which is not prohibited by law; and

(c) No person shall be compelled to do that which the law does not require him to do.

**7.4.2. Article 10: Safeguard as to arrest and detention** No person who is arrested shall be detained in custody without being informed, as soon as maybe, of the grounds for such neither arrest, nor shall he is denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the nearest magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention.[17]



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From the provisions of the Constitution we can appreciate that it is intended that every sentence convicting a person is guaranteed by enough evidence to support the verdict of guilty, and that no violations are made in prejudice of the accused. But these provisions only cover the subject of prohibitory arrest; that no person can be deprived from liberty, life and freedom on the basis of suspicion. But when person is once arrested and later on acquitted or quashed his sentence in appeal and declared innocent than what will be the plan for his compensation to reduce his injury/ loss which he has suffered/ caused due to Criminal Justice Systems' errors? Who will responsible for his loss/injury? Because a person who has spent years of his life behind bars or whose reputation and name has been affected for being convicted of a crime of which he was not responsible, the sour experiences are not finished yet. These people who have been socially, emotionally and economically affected by the accusations that they faced, the imprisonment, the judicial procedures, pursuing the procedures proving their innocence, they now will have to seek compensation for all the damages that these events have brought to their lives. But on what basis he claim compensation from his system? Because Constitution provides nothing for compensation of miscarriage of justice, Studied analyzed above that it is totally mute on the concerned issue.

Since the present study's objective and centre of this research work is to find a legal alternative to which compensation has been denied, and to the persons who have been wrongfully convicted, study will also analyze the perspectives of the tort law for the victims of a miscarriage of justice to find out a suitable structure of a remedy.

### **7.5. Compensation for Wrongful Conviction as a matter of Tort Law**

As we have discussed in the previous paragraph of this chapter there is no legal formation or precedent to enlighten us on how to give life to the provision of our legal framing documents that invoke compensation of victims of miscarriages of justice. Consequently, if the persons who have been wrongfully convicted decide to pursue the payment of compensation they would have to seek a remedy under tort law for possible liability suing the public authorities.

For the wrongfully convicted this new challenge is complex because notwithstanding the fact that to achieve their goal of obtaining compensation tort law represents a legally viable resource; to successfully obtain a verdict consistent with their interests there is a lot of work to do.

*"The purpose of the tort law is to adjust these losses and to afford compensation for injuries sustained by one person as the result of the conduct of another. Such statement of the problem indicates that the law of torts must constantly be in a state of flux, since it must be ready to recognize and consider new losses arising in novel ways".*

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For wrongful conviction cases advantages of filing a tort law lawsuit are difficult to assess. Since there has not been a court decision in Pakistan's Criminal Justice System in the cases where a wrongful conviction is argued, however, after filing a lawsuit we now know that, out of court settlements have been reached and for wrongful convictions the plaintiffs have received compensation.

On the other hand, the disadvantages of a tort law lawsuit are more difficult to manage or to overcome. To retain a lawyer to work on the case from the financial commitment, to the considerations with respect to policy reasons that have been invoked by the courts when deciding on liability of public authorities, the possibilities to succeed in litigation against the government are very limited. However, seeking for a remedy of the damages plaintiffs have suffered and therefore, their approach when initiating a legal action is very sensitive.

For example, in malicious prosecution cases in order to avoid the criteria that has prevailed the plaintiffs have filed their lawsuits on the grounds of a series of different torts that are related to the damages they claim they have suffered. Accordingly, in a malicious prosecution lawsuit, torts such as negligent conduct, defamation and conspiracy are addressed.

## **8. Suit for malicious prosecution under Law of damages**

What is malicious prosecution??

Malicious arrest is willfully putting the law in motion to effect arrest of a person without reasonable cause [PLD 1964 Dacca 618].

### **8.1. Malicious prosecution where damages would be granted;**

The establishment of an activity for malignant arraignment in misuse of the procedure of the court by wrongfully getting the law under way and it is intended to demoralize the procurement of the apparatus of equity for an uncalled for reason. The offended party must demonstrate the procedures organized against him were malignant, without sensible and reasonable justification that they ended to support him (if that be conceivable), and that he has endured harm. Harms may be asserted in such an activity under three heads;

- Harm to the individual,
- Harm to property,
- Harm to notoriety.

### **8.2. False imprisonment under law of damages**

#### **• Illegal arrest;**

Government liable for the damages substantial damages must be granted.

*Held:* substantial damages must be awarded in every case where a person has wrongfully deprived another person his liberty. The reasoning of this view is that



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the person detained necessarily suffers discomfort and inconvenience as a result of his loss of liberty and any wrongful deprivation of the liberty of person in any case is a most serious affair and pressure of work or negligence cannot be any excuse for detaining any person without observing the law in the strictest manner and should be adequately compensated [PLD 1965 Karachi 1].[18]

- **Section 250 of Criminal Procedure Code**

Section 250, CR.P.C empowers the Magistrates by whom the case is heard to grant compensation for false, frivolous, or vexatious accusation.

- **Ingredients of section**

The ingredients of section 250, CR.P.C are:

- The case should be instituted upon complaint or upon information given to police officer or to Magistrates,
- Against one or more persons,
- Making the alleged persons accused before magistrate of any offence triable by magistrate,
- The magistrate who hears the case discharges or acquits the accused,
- The magistrates while discharging or acquitting the accused is of the opinion that the accusation was false and either frivolous or vexatious,
- And if the complaint is present and the accused calls upon him forthwith to show-cause why he should not pay compensation.[19]

The section reserved the power to award compensation to the magistrates who has heard the case. On setting aside the conviction and sentence against the accused person Appellate Court acting in revision has no power under this section to make an order awarding compensation to the accused as against the complaint.

## **9. International law about compensation for miscarriage of justice**

If there should arise an occurrence of wrongful feelings a few worldwide instruments will give the right to pay. All inclusive Declaration on Human Rights ensure right of pay. In like manner, it is required by The International Covenant on Civil and Political Rights, that states must remunerate wrongfully sentenced people under article 14(6). Article 3 of the European Convention on Human Rights and Article 10 of the American Convention on Human Rights comparatively require remuneration. Moreover, in Africa the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance supported by the African Commission on Human and People's Rights require that casualties of wrongful feelings be adjusted.[20]

### **9.1. According to Universal Declaration of Human Rights**

#### **9.1.1. Article 8 says that;**

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

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From the above provisions it comes clear that international Law fully protect the right of compensation for miscarriage of justice."

### 9.1.2. International covenant on civil and political rights (ICCPR)

The ICCPR is an international agreement focused on the protection of human rights and as such, it acknowledges the importance of including provisions to assure that the persons whose legal rights have been violated are entitled to compensation, e.g. **Article 9(5)**: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

**Article 14(6)**: "When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him." [21]

It is particularly interesting to see that the aim in protecting the rights of the victims of a miscarriage of justice is such that the relevant provisions of the ICCPR cover from the moment of arrest or detention to the overturning of their convictions.

But these provisions are only applicable in those countries who are signatory to ICCPR. Pakistan is not signatory of ICCPR yet. So Pakistan cannot follow these provisions.

### 9.1.3. European Convention on Human Rights

The European Convention on Human Rights (ECHR) contains provisions of apparent relevance for miscarriage of justice to compensation.

**Article 5(1)** provides that: "No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law".

One of the permitted reasons for deprivation of liberty is conviction by a competent court. For those who are unlawfully deprived of their liberty.

**Article 5(5)** provides a right to compensation: "Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."

Any imprisonment which is unlawful under national law will automatically be unlawful under Article 5, and lead to a right of compensation. [22]

## 10. Right of compensation in Common Law Jurisdictions

Numerous national laws furnish subjects with the privilege to pay for the harms they endured and to look for audit of unjustifiable feelings, albeit the greater parts of the nations that have passed such enactment no more apply capital punishment.

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In a few nations, in the Constitution these rights are explicitly cherished. Constitution of Italy, workmanship 24; Constitution of Brazil, craftsmanship 5(LXXV). It's obvious, e.g., Constitution of Portugal, workmanship. 29(6); Constitution of Spain, sec. 121, 1978. The Constitution of Spain, for instance, ensures pay if harms emerge from legal blunders. It couldn't be any more obvious, e.g., in others, similar to the United Kingdom, the rights are revered in particular acts. Obviously, e.g., U.K's Criminal Justice Act, sec.133. The terms and states of the modification and the remuneration are frequently laid out in the Codes of Criminal Procedure or in particular statutes. Particular commissions in couple of nations have organized that have the ability to explore and cases of wrongful feelings are allude to a court. Britain, Scotland, Northern Island, Wales, and Norway, for instance, a Criminal Cases Review Commission has set up. The Criminal Cases Review Commission of Scotland has alluded 122 cases from its origin in 1999. To give remuneration to the wrongfully indicted the United States has neglected to embrace government enactment. Still, remuneration laws have been embraced by a few states, and through state laws or common claims excused individuals are some of the time ready to get compensation. [23]

## 11. Conclusion

Now the above Study confirmed and concluded that the criminal justice system in Pakistan operates imperfectly, although the aim of the Pakistan's Criminal Law system is that no person is being convicted without all the elements to guarantee the legitimacy of the court's decision, no system is perfect and mistakes happen, but accepting these convictions as the inevitable failures of the justice system leaves people "free but uncompensated." because system offers only one single provision of 250 Crpc in which is only remedy for acquitted person by court of First Instance. For wrongfully convicted person in Pakistan's Criminal Justice System there is no any single provision existed. And remedy under Law of Torts for malicious prosecution is also not available because law of torts is not applicable in Pakistan. Than what remedy for wrongfully imprisoned & convicted prisoners in Pakistan criminal justice System is existed? Nothing? While a man's suffering is not only violation of his fundamental rights granted by Constitution of 1973 under Article 9 "**right to life and liberty**"; but he suffered from so many aspects e.g. They lose family, friends, freedom, property, jobs, reputation, and more do not receive compensation in Pakistan's Criminal Justice System.

Another thing we have studied that Common Law offers a proper mechanism for wrongfully convicted prisoners while in Pakistan's Criminal Justice System there is no any compensatory statute/provision/act, while we are the followers of the Common Law since the time of the partition of Pakistan. But we did not adopt anything as like from the Common Law for our Innocent victims of miscarriage of

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Justice. In Pakistan's Criminal Justice System we have studied that there is no statutory compensation scheme for innocent prisoners except 250 CRPC and the wrongfully convicted in Pakistan bear a tougher problems upon release when they have no mechanism for getting the relief for their stolen years.

## 12. Suggestion and recommendations

### 12.1. How Pakistan can make reliable the mechanism of compensation?

Pakistan can step toward enhancing the circumstance for the wrongfully sentenced by:

- Making suitable remuneration enactment that addresses financial and non-monetary misfortune as an after effect of the wrongful conviction; in light of the fact that Pakistan does not have any pay statutes so it must pass them and ensure pay just as feasible and sufficient for the wrongfully detained and indicted.
- revising so as to expand open doors for exemption the investigative survey procedure to oblige circumstances where crisp confirmation is found post-offer; and
- For every year spent in jail Statutes ought to incorporate either a settled total or a scope of recuperation in procurements.
- To encourage the fruitful modifying of the lives of the wrongfully sentenced people, Statutes ought to be incorporated the quick procurement of subsistence supports and access to benefits basic to an effective come back to society, sustenance, including lodging, medicinal and dental consideration, work abilities preparing, training, mental advising and other important help required.
- Lawful administrations to acquire open advantages recapture care of youngsters and cancel criminal records.
- Going for the commitment to give the pay to unnatural birth cycles of equity to wind up gathering to the ICCPR, then to the Second Optional Protocol to the ICCPR.
- Upon discharge non-fiscal "pay" ought to incorporate reentry arranging administrations quickly.

### Notes

[1] In Pakistan the violation of the basic human rights of the suspect or the accused is most prevalent at the under trial stage. See the Protection Of Human Criminal Justice Administration (1989), P.90. The 78th Report of the Law commission (1979), says that on January 1, 1975 out of 220146 Prisoners 126772 (57.6 percent) were under trials.

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[19] Ibid. p-24

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[21] Layne, D. (2010). Compensation for Miscarriage of Justice; *Internet Journal of Criminology*, p-5 Retrieve from: [www.internetjournalofcriminology.com](http://www.internetjournalofcriminology.com)

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