

Law Commission Report Summary

Wrongful Prosecution (Miscarriage of Justice): Legal Remedies

- The Law Commission of India (Chair: Justice B.S. Chauhan) submitted its report on ‘Wrongful Prosecution (Miscarriage of Justice): Legal Remedies’ on August 30, 2018. The report follows a Delhi High Court directive in 2016 where the Commission was asked to examine the remedies for wrongful detention. The Commission noted that currently there is no legislative framework to provide relief to those who are wrongfully prosecuted. Key recommendations of the Commission include:
 - **Legal framework:** The Commission recommended amendments to the Code of Criminal Procedure, 1973 (CrPC), to give compensation in cases of miscarriage of justice resulting in wrongful prosecution of persons. Miscarriage of justice refers to wrongful or malicious prosecution, regardless of whether it leads to conviction or detention.
 - **Cause of action:** The cause of action (reason) for the claimant to file a compensation claim would be that he was wrongfully prosecuted in a case which ended in his acquittal. Wrongful prosecution would include: (i) malicious prosecution, i.e. where one files a case against the claimant without belief in his guilt for the crime, and (ii) prosecution without good faith, i.e. where one files a case against the claimant negligently without due care and attention.
 - **Who can apply:** A claim for compensation may be sought for harm caused to body, mind, reputation, or property because of the wrongful prosecution. Such a claim can be filed by the accused person, or his authorised agent, or his heirs or legal representatives (upon his death).
 - **Special Courts:** The Commission observed that claims in relation to wrongful compensation should be settled speedily, keeping in mind the interest of the claimant. Therefore, it recommended setting up of special courts in each district for deciding compensation claims.
- **Nature of proceedings:** The proceedings in the special court will follow summary procedures for speedier disposal of the case. Further, the accused will be required to prove misconduct which lead to his wrongful prosecution. The claim will be decided by weighing the “balance of probabilities”, i.e., the claim will be decided in favour of the party whose claims appear more likely to be true.
- **Compensation:** The Commission observed that it may not be possible at present to lay down a fixed amount of monetary compensation to be paid. It recommended amendments to the CrPC to include guiding principles to be followed by the court while deciding the amount of compensation. These include seriousness of the offence, severity of punishment, length of detention, damage to health, harm to reputation, and loss of opportunities.
- Further, the Commission recommended that compensation under the law should include both pecuniary (monetary) assistance and non-pecuniary assistance (such, as counselling services and vocational skill development). It further emphasised that non-pecuniary assistance should include provisions to remove disqualifications attached to wrongful prosecution. These include disqualifications which affect the person’s chances of finding employment and getting admission in educational institutions.
- The Commission also recommended that a provision for payment of interim compensation be included in the law, for cases where the claimant may require immediate assistance.

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