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INVISIBLE VICTIMS OF JUSTICE: A CRITICAL STUDY OF DUAL VICTIMISATION UNDER THE INDIAN CRIMINAL JUSTICE SYSTEM

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Abstract

Dual victimisation defined as the simultaneous systemic harm inflicted upon two distinct groups: the original victims of crime who suffer secondary trauma during legal proceedings, and the wrongfully accused who are victimized by state prosecution³. These two categories the complainant and the wrongfully accused are parallel sufferers of a rigid, offender-centric legal machinery. The core problem addressed is the "invisibility" of the wrongfully accused in traditional victimology and the retraumatization of actual crime victims due to procedural delays and police insensitivity.

The paper asserts that these two groups, conventionally positioned as adversaries, are in fact joint casualties of an offender-centric and procedurally rigid system. By analysing constitutional guarantees, human rights standards, and institutional failures, the paper exposes the absence of effective rehabilitation and compensation mechanisms, particularly for the wrongfully accused. It concludes by advocating for legislative recognition of wrongful prosecution, victim-sensitive procedures, and restorative reforms aimed at creating a genuinely victim-centred justice framework.

Keywords- victimization, wrongfully accused, rehabilitation, compensation, fair trial.

1. Introduction

The concept of "justice" has in the past been dominated by an offender-centric perspective, where the crime is viewed primarily as a wrong against the State rather than against an individual. For centuries, the victim was constrained to a witness, a tool for the prosecution to secure a conviction.³ However, the discipline of victimology has evolved significantly in recent

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³ Nils Christie, Conflicts as Property, 17 British Journal of Criminology, 1, 3-5, (1977).

decades to challenge this notion.⁴

The evolution of victimology marks a paradigm shift from "retributive justice"—focusing on punishing the offender—to "restorative justice"—focusing on healing the victim.⁵ In the international arena, this shift was crystallized by the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).⁶ The changes to India's procedural code in 2009 defined a "victim" and gave them the right to compensation and appeal show how things have changed⁷. The change has been incorporated under the new law⁸. Even with these changes, the evolution is still not over. It has a difficult time dealing with the systemic harm that the justice system itself causes, but it does a good job of dealing with the "primary victimisation" (the harm caused by the crime itself).⁹

1.1 Emergence of Wrongfully Accused as “Invisible Victims”

The occurrence of wrongful prosecution is a significant yet frequently neglected aspect of the criminal justice system.¹⁰ When the state fails, like when police act inappropriately, force confessions, or make up evidence, an innocent person is put in the position of the accused. This study categorizes these individuals as "Invisible Victims."¹¹

They are "invisible" because the law currently lacks a specific vocabulary to address their suffering. Unlike crime victims who have statutory rights to compensation, the wrongfully accused have no automatic recourse to rehabilitation upon acquittal.¹² Their victimization is severe: they lose their liberty, their social standing, and their economic livelihood. Even after being declared innocent by a court, the "stigma of criminality" lingers, making social reintegration nearly impossible. This emergence of the wrongfully accused as a distinct victim category challenges the traditional boundaries of criminology and demands a re-evaluation of

⁴ Hans von Hentig, *The Criminal and His Victim*, 20–24, (Yale University Press, 1948).

⁵ Andrew Ashworth, *Sentencing and Criminal Justice*, 25–28, (Cambridge University Press, 5th ed., 2010).

⁶ United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res. 40/34, UN Doc. A/RES/40/34 (29 Nov. 1985).

⁷ Code of Criminal Procedure, 1973, Ss. 2(wa), 357 & 372, (as amended by the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009)).

⁸ The Bhartiya Nyaya Suraksha Sanhita, 2023

⁹ Joanna Shapland, Victims, The Criminal Justice System and Compensation, 24(2) *British Journal of Criminology*, 131-149 (1984).

¹⁰ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* 1–4 (2018).

¹¹ Edwin M. Schur, *Labeling Deviant Behavior*, 67–70, (Harper & Row, 1971).

¹² Code of Criminal Procedure, 1973, S. 357A; Law Commission of India, *277th Report*, supra note 1, at 42–45, The Bhartiya Nagarik Suraksha Sanhita, 2023, S.396.

who qualifies as a victim in the eyes of the law.¹³

2. Conceptual Framework of Dual Victimization

The term "Dual Victimization" serves as the foundational construct of this study. In the conventional legal terminology, victimization is understood as a singular event—harm inflicted by one individual upon another.¹⁴ However, it defines dual victimisation as the simultaneous and parallel harm inflicted upon two distinct individuals within the same criminal case: the original victim (the complainant) and the wrongfully accused.¹⁵

This framework has two parts. The first part is that the victim is hurt by the system. When things that are supposed to bring about justice, like police investigations, court testimonies, and cross-examinations, instead, make people feel stressed. The second part is the state-sponsored abuse of innocent people. This happens when someone is wrongfully or on purpose brought into the criminal justice system, where they lose their freedom and dignity. Dual victimisation says that the Indian Criminal Justice System (ICJS) is so dysfunctional right now that it can make two victims out of one crime: one victimised by the criminal and the other by the State.

2.1 Primary vs. Secondary vs. Tertiary Victimization

To fully understand the scope of dual victimisation, it is important to know the different levels of harm that victimology recognises:

Primary Victimization: This is the harm that happens directly because of the crime itself.¹⁶ For the original victim, this means the physical harm, loss of money, or emotional pain that was caused.

Secondary Victimization: This harm happens not because of the criminal, but because of how institutions and people treat the victim.¹⁷ For the crime victim, this means that the police ask questions that are rude, the defence uses aggressive tactics, and the process takes too long. For the wrongfully accused, the entire experience of arrest and detention represents a significant

¹³ Ezzat A. Fattah, *Victimology: Past, Present and Future*, 33 Criminal Law Bulletin, 45, 52–55, (1997).

¹⁴ Ezzat A. Fattah, *Understanding Criminal Victimization*, 3–6, (Prentice Hall, 1991).

¹⁵ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 5–8, (2018).

¹⁶ Hans von Hentig, *The Criminal and His Victim*, 23–26, (Yale University Press, 1948).

¹⁷ Andrew Ashworth, *Sentencing and Criminal Justice*, 290–294, (Cambridge University Press, 5th ed., 2010).

form of secondary victimisation, wherein the "system" assumes the role of the aggressor.¹⁸

Tertiary Victimisation: The person's community or the person themselves will suffer long-term, widespread harm, or that the person will be permanently stigmatised in society. For wrongfully accused, tertiary victimisation is very serious. Even after being not guilty, they often face social death and unemployment. When society blames the original victim for the crime, like in sexual assault cases where the victim is subjected to moral judgment.¹⁹

2.3 Intersection between Crime Victims and Wrongfully Accused

The most novel aspect of this conceptual framework is the intersection between these two groups. Traditionally, the "victim" and the "accused" are viewed as adversarial opposites—where helping one harms the other. This study challenges that binary. The State's huge machinery makes it impossible for crime victims and people who are wrongfully accused to fight back. Both of them have the same problems with procedures.

In case of investigation, malafide police work hurts innocent people by making the wrong arrest and fails the victim by not catching the real criminal and evading their accountability. As far as delay is concerned, one effect of delays in the judicial system is that innocent people stay in jail and victims don't get closure and effective remedy. Also, dignity is shared experience of the parties and it is eroded when there isn't accused and victim centric safeguards. They are therefore fellow victims of a flawed process rather than adversaries.

3. Victimisation of the Original Victims of Crime

3.1 Secondary Victimisation by Police and Courts

The journey of the original victim through the ICJS often begins with secondary victimization from the police. The police station, which is meant to be a place of refuge for the victims, is often a place where the victims are intimidated and harassed. In a lot of cases, the victims are told they can't file a First Information Report (FIR) and are offered bribes, and their claims are often doubted.²⁰

¹⁸ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 10–15, (2018).

¹⁹ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

²⁰ *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1; Law Commission of India, *154th Report on the Code of Criminal Procedure*, 34–36, (1996).

The legal process in India is adversarial. During cross-examination, often they attack the victim's character, especially in cases of sexual violence.²¹ The physical location of the court also helps with this because the victim often stands right next to the accused with little or no protection from them.²² Instead of being a safe place for everyone to get justice, the courtroom becomes a place for psychological warfare.²³

3.2 Procedural Delays and Retraumatization

Although "justice delayed is justice denied" is a legal phrase, the victim experiences retraumatization on a daily basis.²⁴ Due to the huge backlog of cases pending in the judiciary, trials can take years or even decades to complete.²⁵

The victim needs to narrate the events time and again. They have to tell the police, the magistrate, the trial, and maybe even the appeal courts about the traumatic event over and over again.²⁶ This constant reliving of the trauma makes it harder for the mind to heal. Because court dates are so hard to predict, victims have to put their lives on hold, missing work and paying for travel, which makes their emotional and financial pain worse. When victims become hostile or give up on the case completely because they are tired of the process, the state is not doing its job to protect them.²⁷

3.3 Socio-Economic Vulnerabilities

The impact of systemic victimization is not uniform; it is heavily stratified by socio-economic vulnerabilities.²⁸ Scheduled Castes, Scheduled Tribes, and economically disadvantaged groups are among the marginalized communities whose victims bear a "double burden" of marginalisation and harm.²⁹

²¹ State of Punjab v. Gurmit Singh, (1996) 2 SCC 384.

²² Sakshi v. Union of India, (2004) 5 SCC 518.

²³ Law Commission of India, *172nd Report on Review of Rape Laws*, 38–41, (2000).

²⁴ Hussainara Khatoon (I) v. State of Bihar, (1980) 1 SCC 81.

²⁵ Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (Wo) manpower*, 3–6 (2014); National Crime Records Bureau, *Crime in India, 2022*, 62–65 (Ministry of Home Affairs, Govt. of India, 2023).

²⁶ Law Commission of India, *154th Report on the Code of Criminal Procedure*, 45–48, (1996).

²⁷ Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158; Law Commission of India, *172nd Report on Review of Rape Laws*, 40–43, (2000).

²⁸ Upendra Baxi, *The Crisis of the Indian Legal System*, 52–55 (Oxford University Press, 1982).

²⁹ Law Commission of India, *154th Report on the Code of Criminal Procedure*, 14–18, (1996); National Crime Records Bureau, *Crime in India, 2022*, 98–102 (Ministry of Home Affairs, Govt. of India, 2023).

To help the public prosecutor and make sure their voice is heard, and negotiate the intricacies of the system, an affluent victim might be able to afford to retain private legal counsel. A poor victim, on the other hand, is totally reliant on an overworked public prosecution system.³⁰ They don't have the means to endure endless trials. The lengthy procedure is frequently used by the accused to intimidate or buy off the defenseless victim. As a result, the legal system incorporates social injustices by guaranteeing that the impoverished suffer not only from the crime but also from their incapacity to obtain adequate justice.³¹

3.4 Lack of Support Systems

One of the biggest problems with the ICJS is that it doesn't have any support networks for victims. The 2009 CrPC amendment³² made the Victim Compensation Scheme possible, but it is not always easy to use and is often slow. Instead of being given as temporary help when the victim needs it most (like for medical bills or rehabilitation), compensation is often handled as an afterthought and only given at the end of a trial.³³

Also, the system doesn't have any support systems that are not monetary.³⁴ There aren't enough functional "One Stop Centres," trained victim counsellors, or witness protection programs.³⁵ Without witness protection, victims are open to threats and coercion from the person who hurt them.³⁶ The state doesn't care that the victim needs mental, financial, and physical safety during the legal process. It thinks its job is done when it files a charge sheet.³⁷ This systemic abandonment is the worst form of secondary victimisation.

4. Victimisation of the Wrongfully Accused

The criminal justice system is based on the principle: *"It is better that ten guilty persons escape than that one innocent suffer."*³⁸ Yet, in practice, the Indian Criminal Justice System frequently

³⁰ Centre for Social Justice v. State of Gujarat, (2004) 1 SCC 356; Law Commission of India, 268th Report on Amendments to Criminal Procedure Code, 33–36, (2017).

³¹ State of Karnataka v. Appa Balu Ingale, (1995) 2 SCC 273; Law Commission of India, 277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies, 52–56, (2018).

³² The Code of Criminal Procedure, 1973.

³³ Suresh v. State of Haryana, (2015) 2 SCC 227; Law Commission of India, 154th Report on the Code of Criminal Procedure, 68–71 (1996).

³⁴ Law Commission of India, 221st Report on the Need for Speedy Justice, 41–44, (2009).

³⁵ Ministry of Women and Child Development, One Stop Centre Scheme (Sakhi): Operational Guidelines, 5–9, (2015).

³⁶ Mahender Chawla v. Union of India, (2019) 14 SCC 615.

³⁷ Law Commission of India, 277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies, 21–24, (2018).

³⁸ William Blackstone, Commentaries on the Laws of England vol. 4, 358, (Clarendon Press, 1769).

inverts this maxim. Unlike the original victim of crime, whose suffering is caused by a private individual, the suffering of the wrongfully accused is state-sponsored, systemic, and often irreversible.³⁹

4.1 Wrongful Arrest and Detention

The process of victimization for an innocent individual typically begins with wrongful arrest and detention.⁴⁰ In India, the power to arrest is vast and often exercised arbitrarily. Despite the safeguards laid down in *D.K. Basu v. State of West Bengal*⁴¹ and the recent amendments made in the *Bhartiya Nagarik Suraksha Sanhita, 2023*, unnecessary arrests have been made in a routinely manner.

For people who are wrongfully accused, the arrest is a traumatic break from normal life. Police brutality often includes things like verbal abuse, physical abuse, and the intentional public humiliation of being handcuffed and paraded.⁴² This first act of state aggression takes away the person's presumption of innocence in the eyes of society long before the trial even starts.⁴³

The detention phase makes this harm worse. In many cases, people are held without enough evidence, coerced confessions, or false complaints.⁴⁴ The magistrate's job is to keep people from being detained illegally, but it often turns into a routine process of extending remand.⁴⁵ Because of this, the innocent person is stuck in a nightmare of pre-trial detention that can last for years.⁴⁶ This time is not just a "waiting room" for justice; it is a time when the person loses their job, their family relationships are strained, and their reputation is forever damaged.⁴⁷ The state makes a new victim by taking away an innocent person's right to freedom under Article 21⁴⁸ in its eagerness to solve a crime.

³⁹ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746; D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

⁴⁰ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 9–12, (2018).

⁴¹ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

⁴² Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

⁴³ Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

⁴⁴ Law Commission of India, *154th Report on the Code of Criminal Procedure*, 45–48, (1996).

⁴⁵ Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

⁴⁶ Hussainara Khatoon (I) v. State of Bihar, (1980) 1 SCC 81.

⁴⁷ Edwin M. Schur, *Labeling Deviant Behaviour*, 67–71, (Harper & Row, 1971).

⁴⁸ The Constitution of India, 1950.

4.2 Effects of Detention

When someone is wrongfully accused and sent to prison, they go through the process of imprisonment, which is a sociological phenomenon in which they adjust to the prison subculture to stay alive.⁴⁹ The Indian prison system is very crowded, and more than 75% of the people in jail are still awaiting trial.⁵⁰

This is a shock to the mind for someone who has never been in trouble with the law before. They live with hardened criminals, which means they are always in danger of being hurt, robbed, or sexually assaulted. People lose their freedom when they go to prison.⁵¹ They turn into just a number, their daily lives are tightly controlled, and their sense of who they are is slowly taken away.⁵²

The "prisonization effect" is more than just pain in the body. It makes people mentally dependent on the institution.⁵³ To protect themselves, the prisoner learns to hide their true feelings and see the world through the eyes of a "criminal."⁵⁴ This is a form of deep psychological damage for people who are wrongfully accused. They have to "institutionalise" themselves in order to get through their trial.⁵⁵ It's going to be very hard for them to go back to living freely after this change.⁵⁶ The state breaks their spirit and changes who they are by keeping them for long periods of time, which is a punishment that no acquittal can undo.⁵⁷

4.3 Social Stigma and Psychological Harm

The victimization of the wrongfully accused does not end at the prison gates; it follows them home.⁵⁸ The most lasting effect of wrongful prosecution may be social stigma.⁵⁹ Individuals, in the court of public opinion, think that an arrest means someone is guilty. Media trials often

⁴⁹ Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*, 13–18, (Anchor Books, 1961).

⁵⁰ National Crime Records Bureau, *Prison Statistics India, 2022*, 25–29, (Ministry of Home Affairs, Govt. of India, 2023).

⁵¹ Sunil Batra v. Delhi Administration, (1978) 4 SCC 494; Law Commission of India, *268th Report on Amendments to the Prisons Act, 1894*, 17–20, (2017).

⁵² Gresham M. Sykes, *The Society of Captives*, 63–68, (Princeton University Press, 1958).

⁵³ Donald Clemmer, *The Prison Community*, 299–302, (Holt, Rinehart & Winston, 1940)

⁵⁴ Edwin M. Schur, *Labeling Deviant Behaviour*, 72–75, (Harper & Row, 1971).

⁵⁵ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 18–22, (2018).

⁵⁶ Hussainara Khatoon (I) v. State of Bihar, (1980) 1 SCC 81.

⁵⁷ Constitution of India, art. 21; Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

⁵⁸ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 18–22, (2018).

⁵⁹ Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity*, 12–16, (Prentice-Hall, 1963).

make the arrest seem like a big deal and make the accused look like a monster, but they don't always give the same attention to the person's eventual acquittal⁶⁰.

This leaves behind a "residue of suspicion."⁶¹ Even though a court found the person not guilty, they still have the "taint" of having been in jail. They are going through "social death" because their family members stay away from them, their neighbours look at them with suspicion, and they are often left out of community events.⁶²

Studies show that people who are falsely accused suffer from Post-Traumatic Stress Disorder similar to that of veterans of war.⁶³ They have long-term anxiety, depression, insomnia, and a strong sense of injustice.⁶⁴ Being able to scream the truth but not being heard by the police or the courts makes people feel very bad.⁶⁵ Many people have acquittal anxiety, which is the fear that the police could take them away again at any time.⁶⁶ This mental breakdown is a direct result of the state's failure to handle the investigation fairly and carefully.⁶⁷

4.4 Absence of Rehabilitation and Compensation

The final and perhaps most egregious layer of victimization is the total absence of rehabilitation and compensation.⁶⁸ The Indian legal framework currently operates on a "winner-takes-all" logic: if you are acquitted, the system believes it has done its job, and you are free to go. There is no acknowledgment of the years stolen from the individual had value.⁶⁹

Unlike the original victims of crime, who have recourse to the Victim Compensation Scheme under Section 357A⁷⁰, the wrongfully accused have no statutory right to compensation. They are left to navigate for themselves in a hostile world.

⁶⁰ *Zahira Habibullah Sheikh v State of Gujarat*, (2004) 4 SCC 158; *Romila Thapar v. Union of India*, (2018) 10 SCC 753.

⁶¹ Edwin M. Schur, *Labeling Deviant Behaviour*, 67–70, (Harper & Row, 1971).

⁶² Gresham M. Sykes, *The Society of Captives*, 141–145, (Princeton University Press, 1958).

⁶³ Adrian Grounds, *Psychological Consequences of Wrongful Conviction and Imprisonment*, 46 *Canadian Journal of Criminology*, 165, 170–174, (2004).

⁶⁴ Judith Lewis Herman, *Trauma and Recovery*, 33–38, (Basic Books, 1992).

⁶⁵ *Hussainara Khatoon (I) v. State of Bihar*, (1980) 1 SCC 81.

⁶⁶ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 52–55 (2018).

⁶⁷ Constitution of India, Art. 21; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁶⁸ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* 22–26 (2018).

⁶⁹ Upendra Baxi, *The Crisis of the Indian Legal System*, 119–123, (Oxford University Press, 1982).

⁷⁰ The Code of Criminal procedure, 1973.

The consequences though are devastating. Wrongful incarceration frequently results in economic loss, mostly emerge from prison financially destroyed. They have lost their jobs, their businesses have collapsed, and their families have often sold assets to pay for legal fees. Secondly, there are no state-sponsored programs to help them find employment, receive psychological counseling, or rebuild their lives. The stigma of a "gap in employment" due to imprisonment makes them unemployable in the formal sector.⁷¹

While a few individuals have successfully sued the state for compensation under public law remedies (writ jurisdiction), these are rare exceptions dependent on judicial discretion, not a statutory right.⁷² The vast majority of "invisible victims" are released with nothing but a copy of the judgment, expected to pick up the pieces of a life that the state shattered. This lack of restorative justice for the wrongfully accused highlights a gaping hole in India's human rights commitments⁷³.

5. Constitutional and Human Rights Dimensions

Any system does not operate in a vacuum, it is anchored in the Constitution of India, which serves as the "sentinel on the qui vive" for the protection of fundamental rights.⁷⁴ But the problem of dual victimisation, in which both the crime victim and the wrongfully accused suffer systemic harm, makes these constitutional protections much less effective.⁷⁵ This section critically assesses the current operational realities of the system in relation to the violations of Articles 14, 20, 21, and 39A⁷⁶, while also scrutinising India's obligations under international human rights treaties.⁷⁷

5.1 Articles 14, 20, 21 and 39A

The Indian Constitution offers a strong framework for safeguarding individuals rights in the legal system; however, the inconsistency in its application results in "invisible victims."⁷⁸

⁷¹ Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity*, 12–16, (Prentice-Hall, 1963).

⁷² Nilabati Behera v. State of Orissa, (1993) 2 SCC 746; Rudal Sah v. State of Bihar, (1983) 4 SCC 141.

⁷³ Constitution of India, Art. 21; International Covenant on Civil and Political Rights, 1966, Art. 14(6).

⁷⁴ State of Madras v. V.G. Row, AIR 1952 SC 196; I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.

⁷⁵ R. Deb, *Victimology and the Criminal Justice System in India*, 120–123, (Oxford University Press, 2014).

⁷⁶ The Constitution of India, 1950.

⁷⁷ International Covenant on Civil and Political Rights, 1966, Arts. 2, 9 & 14; Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 63–67, (2018).

⁷⁸ R. Deb, *Victimology and the Criminal Justice System in India*, 120–123, (Oxford University Press, 2014).

Article 14 (Right to Equality): Article 14⁷⁹ says that the law treats everyone the same and protects everyone. However, dual victimisation exposes a systemic classification that may be arbitrary.⁸⁰ The law says that a "victim of crime" can get money under Section 357A CrPC⁸¹, but a "victim of the state/wrongful prosecution" cannot. This is an unfair way to separate two groups of innocent people who have been hurt, which goes against the spirit of Article 14. The socio-economic barrier also prevents equality of arms.⁸² Affluent persons can get bail and the best legal representation, while a poor victim or an innocent person who is wrongfully accused suffers because they have financial constraints.⁸³

Article 20 (Protection in respect of conviction): It acts as a shield against *ex post facto* laws, double jeopardy, and self-incrimination. For the wrongfully accused, the spirit of Article 20⁸⁴ is often violated during the investigation phase. Coerced confessions and "third-degree" methods used by police to manufacture evidence are a direct assault on the right against self-incrimination.⁸⁵ When the state fabricates evidence to secure a conviction, it turns a constitutional shield into a weapon of oppression.

Article 21 (Protection of Life and Personal Liberty): This article is the heart of human rights jurisprudence. The Supreme Court has expanded the scope of "life" to mean "life with dignity," not merely animal existence⁸⁶. Article 21 encompasses the right to a speedy trial and a fair investigation.⁸⁷ When investigations are botched or trials dragged on for decades, the victim's right to live with dignity and closure is violated.⁸⁸ Article 21 is the primary cause of concern in case of wrongfully accused and most compromised constitutional right.⁸⁹ Every day of wrongful incarceration is a deprivation of personal liberty without the "due process of law" as established in *Maneka Gandhi v. Union of India*⁹⁰. The mental agony, loss of reputation, and physical confinement strip the individual of the very essence of life guaranteed by the

⁷⁹ The Constitution of India, 1950.

⁸⁰ E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

⁸¹ The Code of Criminal Procedure, 1973.

⁸² Upendra Baxi, *The Crisis of the Indian Legal System*, 54–58, (Oxford University Press, 1982).

⁸³ Hussainara Khatoon (I) v. State of Bihar, (1980) 1 SCC 81; Moti Ram v. State of M.P., (1978) 4 SCC 47.

⁸⁴ The Constitution of India, 1950.

⁸⁵ D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

⁸⁶ Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

⁸⁷ Hussainara Khatoon (I) v. State of Bihar, (1980) 1 SCC 81.

⁸⁸ Zahira Habibullah Sheikh v State of Gujarat, (2004) 4 SCC 158.

⁸⁹ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 17–21, (2018).

⁹⁰ (1978) 1 SCC 248.

Constitution.⁹¹

Article 39A (Equal Justice and Free Legal Aid): Article 39A⁹² mandates the state to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. In the context of dual victimisation, the failure of the state-sponsored legal aid system is glaring.⁹³ Poor victims often lack effective representation to assist the prosecution, while the wrongfully accused are often represented by overworked and underpaid legal aid lawyers, leading to ineffective defense and eventual wrongful conviction.⁹⁴

5.2 ICCPR & UN Victim Justice Principles

India's domestic failures are further highlighted when viewed against international standards².

ICCPR (International Covenant on Civil and Political Rights): India is a signatory to the ICCPR. Article 14(6) explicitly states that if a person has been convicted of a criminal offense and acts as a result of a miscarriage of justice, they shall be compensated according to the law. However, India has made a specific reservation to this clause, arguing that compensation for wrongful arrest is not an enforceable right in India.⁹⁵ This reservation stands in direct contradiction to the global human rights consensus and leaves the "invisible victim" (the wrongfully accused) without a remedy under international law.⁹⁶

UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985):⁹⁷ The wrongfully accused fall squarely into the second category. The Declaration mandates that states should provide remedies, including restitution and compensation, to both victims of crime and victims of abuse of power.⁹⁸ By focusing only on victims of crime (through the 2009 CrPC amendments) and ignoring victims of abuse of power (wrongful

⁹¹ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

⁹² The Constitution of India, 1950.

⁹³ Law Commission of India, *234th Report on Legal Aid*, 5–9, (2010).

⁹⁴ Hussainara Khatoon (VI) v. State of Bihar, (1980) 1 SCC 98; M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544.

⁹⁵ United Nations Treaty Collection, *Declarations and Reservations to the International Covenant on Civil and Political Rights: India*. Also available, <https://blogs.lse.ac.uk/humanrights/2023/05/04/wrongful-imprisonment-in-india-need-for-an-enforceable-right-to-compensation/> (last visited on January 30, 2026)

⁹⁶ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 67–70, (2018).

⁹⁷ United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res. 40/34 (29 Nov. 1985).

⁹⁸ UN Declaration, pp. 8 & 19.

prosecution), India is in partial non-compliance with these UN principles.⁹⁹

5.3 Right to Dignity and Fair Trial

The "Right to a Fair Trial" is a triangular concept involving the interests of the accused, the victim, and society.¹⁰⁰ Justice cannot be "one-sided." The dignity of the original victim is routinely compromised in courtrooms. The scandalous questions put forth during cross-examination violate the victim's constitutional right to dignity.¹⁰¹ A fair trial for a victim means a trial where they are not re-victimized by the process. The presumption of innocence is the golden thread of criminal jurisprudence.¹⁰² But media trials go against this idea.¹⁰³ Even if they are acquitted, their reputation will never be the same. In *Nambi Narayanan v. Siby Mathews*¹⁰⁴ stressed that the dignity of a person who was wrongfully accused must be restored. However, without a legal framework for compensation, this restoration is just symbolic rather than substantive.¹⁰⁵

6. Systemic Failures of the System

The institutional failure in the system is often recognized across the three main pillars of the justice system—the police, the prosecution, and the judiciary—along with the fourth pillar ie media.¹⁰⁶

6.1 Police Misconduct

The police are the gatekeepers of the criminal justice system, they determine who enters the legal process and who is excluded.¹⁰⁷ Consequently, they are the primary architects of dual victimisation.¹⁰⁸

⁹⁹ Code of Criminal Procedure, 1973, S. 357A (inserted by the Code of Criminal Procedure (Amendment) Act, 2008, (Act 5 of 2009)).

¹⁰⁰ *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

¹⁰¹ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384; *Sakshi v. Union of India*, (2004) 5 SCC 518.

¹⁰² *Woolmington v. Director of Public Prosecutions*, (1935) AC 462 (HL); followed in *Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808.

¹⁰³ *Romila Thapar v. Union of India*, (2018) 10 SCC 753.

¹⁰⁴ *Nambi Narayanan v. Siby Mathews*, (2018) 10 SCC 804.

¹⁰⁵ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 52–55, (2018).

¹⁰⁶ Law Commission of India, *154th Report on the Code of Criminal Procedure*, 7–12, (1996); Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 6–9, (2018).

¹⁰⁷ R. Deb, *Victimology and the Criminal Justice System in India*, 60–63, (Oxford University Press, 2014).

¹⁰⁸ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 9–12, (2018).

Investigative Incompetence and Malice: The core failure lies in the quality of investigation. Indian police investigations are often characterized by a lack of scientific methods and an over-reliance on oral testimony and confessions.¹⁰⁹ When the police are under pressure to "solve" a high-profile case, they may resort to scapegoating.¹¹⁰ By arresting an innocent individual to pacify public outcry, they commit a double wrong: one of the innocent accused (wrongful arrest) and justice denial to the original victim (since the actual perpetrator remains free).¹¹¹

Custodial Violence and Fabrication: To secure convictions in the absence of forensic evidence, police misconduct often escalates to custodial torture and the fabrication of evidence.¹¹² For the wrongfully accused, the police station becomes a site of terror. Coerced confessions are extracted to build a strong case against the accused.¹¹³ This malicious prosecution is often driven by corruption, political pressure, or a quota-driven approach to crime statistics.

Refusal to Register Cases: Conversely, for the original victim, police misconduct manifests as apathy. The refusal to register FIRs forces victims to run from pillar to post, often requiring judicial intervention just to get a case filed.¹¹⁴ This initial hurdle signals to the victim that the state is not on their side.

6.2 Prosecutorial Lapses

The Public Prosecutor is theoretically a "Minister of Justice," expected to act impartially to bring the truth to light, not merely to secure a conviction.¹¹⁵ In practice, however, the prosecution system is plagued by severe lapses that contribute to dual victimisation.

Lack of Independence: The prosecution often functions as a mere extension of the police rather than an independent check on them. Prosecutors rarely scrutinize the evidence collected by police before filing charges.¹¹⁶ This lack of filtration means that weak, fabricated, or malicious cases proceed to trial, clogging the courts and tormenting the innocent accused for

¹⁰⁹ Malimath Committee, *Report on Reforms of the Criminal Justice System*, 79–82, (2003).

¹¹⁰ *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260

¹¹¹ Law Commission of India, *277th Report*, at 13–17.

¹¹² *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

¹¹³ *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

¹¹⁴ *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1.

¹¹⁵ *Shiv Kumar v. Hukam Chand*, (1999) 7 SCC 467.

¹¹⁶ Malimath Committee, *Report on Reforms of the Criminal Justice System*, 93–96, (2003).

years.

Inefficiency and Adjournments: Public prosecutors are overburdened with work, resulting in frequent requests for adjournments.¹¹⁷ For the crime victim, this means seeing their quest for justice delayed indefinitely. For the undertrial prisoner (the potentially wrongfully accused), every adjournment by the prosecutor turns into more incarceration and prolonged delay in deprivation of liberty.

Hostile Witnesses: A major prosecutorial failure is the inability to protect witnesses.¹¹⁸ When key witnesses turn hostile due to threats or bribery, the case collapses.¹¹⁹ This is a direct failure of the state to shield the victim and the evidence, rendering the entire trial futile and denying justice to the complainant.¹²⁰

6.3 Judicial Delays

The judiciary faces a crisis of pendency that has normalized the maxim "the process is the punishment".¹²¹ With millions of cases pending, the timeline for justice has stretched beyond reasonable limits.¹²² The most visible symptom of judicial failure is the staggering number of undertrial prisoners.¹²³ Individuals are often incarcerated for periods longer than the maximum sentence for the crime, only to be acquitted later due to lack of evidence.¹²⁴ The judiciary's reluctance to grant bail in non-bailable offenses, coupled with the slow pace of trials, turns the presumption of innocence into a cruel joke.¹²⁵ Also, for the original victim, judicial delay is a form of emotional attrition. The legal process forces them to keep the wound fresh.¹²⁶ The victim must relive the trauma every time a hearing is scheduled, only to encounter procedural impediments.¹²⁷ The intricate procedural technicalities—summons not served, judge on leave, files missing—create a sense of hopelessness. There is rarely any judicial accountability for

¹¹⁷ Babu Singh v. State of Uttar Pradesh, (1978) 1 SCC 579.

¹¹⁸ Law Commission of India, *198th Report on Witness Identity Protection*, 5–9, (2006).

¹¹⁹ Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158.

¹²⁰ Mahender Chawla v. Union of India, (2019) 14 SCC 615.

¹²¹ Malcolm Feeley, *The Process Is the Punishment*, 1–5, (Russell Sage Foundation, 1979).

¹²² Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 1–6, (2014).

¹²³ National Crime Records Bureau, *Prison Statistics India, 2022*, 28–32, (Ministry of Home Affairs, Govt. of India, 2023).

¹²⁴ Hussainara Khatoon (I) v. State of Bihar, (1980) 1 SCC 81.

¹²⁵ Moti Ram v. State of M.P., (1978) 4 SCC 47; Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

¹²⁶ Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158.

¹²⁷ Law Commission of India, *154th Report on the Code of Criminal Procedure*, 45–48, (1996).

wrongful convictions or prolonged detentions.¹²⁸ When an appellate court acquits a person after years, the lower court that convicted them on flimsy grounds faces no repercussions.¹²⁹ This lack of internal correction perpetuates the cycle of error.¹³⁰

6.4 Media Trials and Public Shaming

In the digital age, the media has emerged as a powerful parallel court, often wreaking havoc on the sanctity of the justice process.¹³¹

Presumption of Guilt: "Breaking news" culture demands instant identification of culprits.¹³² The media often declares an accused person "guilty" moments after their arrest, broadcasting their photos and personal details.¹³³ This media trial creates immense pressure on the police to arrest *someone* quickly, increasing the likelihood of wrongful arrests.¹³⁴ Even if the court later acquits the individual, the verdict on the digital platform remains forever.¹³⁵ The digital footprint of the accusation destroys their reputation permanently.

Victimisation of the Complainant: The media can also be hostile to crime victims. In sensitive cases, relentless media coverage invades the privacy of the victim and their family.¹³⁶ Speculative reporting and victim-blaming narratives in prime-time debates amount to public shaming, adding a layer of tertiary victimization that the legal system is ill-equipped to control. In short, the systemic failures are interconnected. A corrupt investigation leads to a weak prosecution; a weak prosecution relies on delays to mask its meaningful gaps; and an impatient media pressures the system to bypass due process.¹³⁷ The result is a broken machine that grinds down both the victim seeking justice and the innocent crying for mercy.

¹²⁸ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 55–59, (2018).

¹²⁹ *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627.

¹³⁰ Upendra Baxi, Structural Violence and the Legal System, in *Law and Poverty*, 45, 48–52, (Oxford University Press, 1988).

¹³¹ Upendra Baxi, *The Crisis of the Indian Legal System*, 87–90, (Oxford University Press, 1982).

¹³² *Romila Thapar v. Union of India*, (2018) 10 SCC 753.

¹³³ *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

¹³⁴ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 31–34, (2018).

¹³⁵ Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity*, 12–16, (Prentice-Hall, 1963).

¹³⁶ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

¹³⁷ Law Commission of India, *154th Report on the Code of Criminal Procedure*, 7–12, (1996).

7. Need for Legislative & Policy Reforms

It is established that "dual victimisation" is not merely an unfortunate anomaly but a systemic feature of the system. The status quo relies heavily on judicial activism to fill the gaps, but ad-hoc judgments cannot replace statutory certainty. To dismantle the structures that create "invisible victims" and retraumatize original complainants, India requires a comprehensive overhaul of its legal framework.

7.1 Statutory Recognition of Wrongful Prosecution

The most urgent legislative gap is the absence of a specific law governing wrongful prosecution. Currently, the law recognizes "acquittal," but it does not distinguish between an acquittal due to "benefit of doubt" and an acquittal due to "proven innocence" or "malicious framing." 277th report of Law Commission¹³⁸ recommended amendments to the Code of Criminal Procedure (CrPC) to include specific provisions for "wrongful prosecution." This recommendation must be enacted into law. The proposed legislation should define "wrongful prosecution" to include cases where the investigation was malicious, negligent, or devoid of due diligence¹. A crucial aspect of statutory recognition is the management of criminal records. Even after acquittal, the digital and police records of the accused remain. Reform is needed to mandate the automatic expungement of records for those declared innocent, ensuring their "Right to be Forgotten" and preventing future harassment.

7.2 Mandatory Compensation Scheme

Compensation for the wrongfully accused is currently a matter of judicial charity (ex-gratia) rather than a legal right. This must change to a mandatory statutory scheme. A new section should be added which must explicitly state that the State is liable to compensate any individual incarcerated for a crime they did not commit. It should cover loss of income, legal fees, and medical costs incurred during incarceration. It must account for loss of liberty, reputation, and family life. A hybrid model, combining a fixed base amount for every day of incarceration with variable amounts for specific harms (like torture), would ensure fairness.

7.3 Independent Review Boards

A major structural flaw in the ICJS is that the police investigate themselves, and the appellate

¹³⁸ Law Commission of India, *277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 12–18, (2018).

courts only review the "record" rather than re-investigating the facts. This creates a closed loop where errors are perpetuated. "Independent Review Board" may be created which would not be part of the system rather in charge of taking applications from people who say they were wrongly convicted, looking into them again, and sending them back to the High Courts if new evidence comes to light that shows they are innocent. This would be a safety net for the system, making sure that an innocent person doesn't have to stay in jail just because they can't find any other ways to appeal.

7.4 Victim Counselling and Rehabilitation

Legal victories are often pointless without full support. Reforms must prioritise the psychological and social rehabilitation of both groups of victims. The "One Stop Centre" plan must be revived with more money and trained workers. Witness protection programs should not be run by the police. Instead, they should be run by an independent group led by the courts. To protect victims from being traumatised again during the trial, every district should have "Vulnerable Witness Deposition Centres." The state's responsibility does not end with opening the prison gates. A "Post-Release Rehabilitation Program" is essential which would include skill development training to help them regain their lives, as their previous careers are often destroyed. Psychological counseling must be provided free of cost to treat the prison trauma.

7.5 Accountability for Police and Prosecution

Finally, there can be no reform without accountability. The culture of impunity within the police force is the root cause of dual victimisation. Section 248 of The Bhartiya Nyaya Sanhita, 2023¹³⁹ punishes false charges of offense, but it is rarely invoked against police officers. Legislative reform should make it mandatory for courts to initiate proceedings against investigating officers whenever a judgment explicitly notes malicious investigation or fabrication of evidence. To improve the quality of investigation and reduce the pressure to scapegoat, the investigative wing of the police must be structurally separated from the law-and-order wing. Dedicated investigators, insulated from political pressure, are less likely to frame innocent individuals or botch the cases of genuine victims.

¹³⁹ The Bhartiya Nyaya Sanhita, 2023.

8. Conclusion

Through the conceptual framework it has exposed a systemic paradox where the machinery of justice operates as a double-edged sword, simultaneously retraumatizing the original victim of crime and creating a new class of "invisible victims"—the wrongfully accused.

These two groups, though positioned on opposite sides of the courtroom, share a common tragedy: they are both casualties of state failure. The original victim suffers from "secondary victimisation" due to procedural delays, insensitive investigations, and a lack of support systems, which often makes the process more punishing than the crime itself. Parallel to this, the wrongfully accused suffers "state-sponsored victimisation," stripped of liberty and dignity by a system that prioritizes "solving cases" over finding the truth.

While Articles 14 and 21 promise equality and dignity, the absence of statutory compensation for wrongful prosecution and the lack of independent review mechanisms render these promises hollow for the innocent. The state's current approach—viewing acquittal as the end of justice—ignores the irreversible damage inflicted by years of wrongful incarceration.

The study is not a critique but a call for structural reform. An effective system must be capable of distinguishing between the offender and the innocent with precision. It must possess the humility to acknowledge its errors through mandatory compensation and the compassion to rehabilitate those it has broken. Until the "invisible victims" are recognized by statute and the "silenced victims" are empowered by support, the Indian Criminal Justice System will remain an incomplete project of democracy.