

AN ANALYSIS OF THE RIGHT OF THE DEFENDANT FOR COMPENSATION AFTER ACQUITTAL

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Abstract

One of the four important pillars of a state includes; population, territory, sovereignty and most importantly, government. India which is widely known and respected for its largest democracy in the world has, in fact, constitutional supremacy. There are rights and privileges for every individual irrespective of age, gender or place of birth. There are rights for the critics as well as for the felons, convicted of the crimes. But this paper tries to focus on the right of the defendant or the compensation after his/her acquittal.

Keywords: felon, trial procedure, defence compensation, inter-alia expenses.

Introduction:

The process of filing a suit in India is quite simple, as compared to other countries. A person may file a suit for both civil as well as criminal nature. While civil suits include the plaintiff submitting the legal documents involving all the required information to the district magistrate whereas criminal cases it is filed in the court of the lowest rank, it must be in a place where the defendant resides or a place where the crime took place. Once the court accepts the plaint, they are called to the court which is called summoning, then the case proceeds and the court gives the chance to both parties to be heard. After the session/s, the court would pronounce its judgement.

The focus of this paper is after the judgement has been pronounced, because more than once it may not be in favour of the plaintiff or the prosecution the defendant may be acquitted of the charges. In this case, the advocate of the defendant can ask for the compensation incurred by the defendant during the course of the trial.

Objective:

The main purpose of this paper is to indulge:

1. If the remuneration should be paid before or after the acquittal of the defendant.
2. Should the reason for the acquittal have an impact on the question of compensation?
3. Should the doubt of malicious prosecution hinder compensation?
4. How much remuneration should be provided by the court?

The Defence Compensation System, in the international organisation; UN:

1. As mentioned in Article 14(6) of the International Covenant on Civil and Political Rights⁵,
 - when a person has by the final judgement been convicted of a criminal offence and subsequently, by appeal his/her conviction has been reversed and the person is acquitted because of the discovery of new pieces of evidence that prove the person not guilty.
 - the person who has suffered as a result of such conviction shall be compensated according to law
 - unless it is proved that the defendant has a hand either wholly or partly in the nondisclosure of the unknown fact.
2. The U.N. Human Rights Council has held that one of the conditions that must be met for a defendant to be entitled to compensation is that he must have suffered from the punishment imposed

⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>, page 24.

on him because of the wrongful conviction.

3. It was held that a defendant who has been convicted but whose conviction was overturned by an appellate court before the defendant began to serve his sentence is not entitled to compensation.⁶
4. This would also be the case, a fortiori, if a defendant has been acquitted and no punishment has been imposed at all.

The process and the eligibility to claim the compensation in India and the Inter-Alia expenses:

The trial procedure in India begins with the filing of the report in the local police station of jurisprudence, where the civil or criminal crime has been committed, where, the police files an FIR (First Information Report), which include the first-hand information about the incident and can be used as evidence during the trial. With the filing of the FIR commences the duty of the police is to conduct the investigation which includes gathering shreds of evidence, questioning witnesses and inspecting the crime scene. A proceeding in which the defendant is arrested and a chargesheet is filed. The filing of the chargesheet may take up to 60 days, for the cases triable by the lower court and may take up to 90 days for the cases triable by the court of sessions, and only after which the defendant has been given the right to default bail. After the complaint is accepted by the court, the trial begins which may extend for time unlimited. The case may exceed as long as eight months before which the court recognises the defendant's claim that their right to a speedy trial is being denied. After which, when the judgement is provided then only, the defendant can apply for the defence compensation which is dependent on the judge's discretion. The defendant's compensation includes the bare minimum of the overall costs and does not include the inter alia expenses incurred by the defendant, which include the fees of the

attorney and for experts or witnesses, the loss of the working days of the job of the defendant and the loss of income, damage experienced due to loss of reputation in business, and so forth.

Wrongful prosecution, the acquittal of the defendant and defendant compensation:

The "Right to a free and fair trial" has been enumerated in article 21 of the Indian constitution's "Right to life and personal liberty". The wrongful prosecution abrogates this provision which has been enamoured in the "Maneka Gandhi case; S. Nambi Narayan v. Siby Mathews & others⁷." In this particular case the police arrested an ISRO scientist on alleged grounds of leak of confidential ISRO information outside the country. The appellant was detained for a period of over one year, during which Mr Siby Mathews conducted the investigation, even after the year when no new proofs of the case arise, only then the appellant was proven not guilty during which also the prosecution kept on pressing against it. Throughout this, the defendant had attained a loss of about one crore rupees but the defence only attained the compensation of ten thousand rupees which is one-fourth of the loss.

While in the case of "Rudul Shah v. State of Bihar⁸" the defendant was illegally confined for false charges. The court observed that "one of how the violation of the right to live in liberty under article 21 can be prevented by drying out its violators as payment of the monetary compensation." In "Bhim Singh v. State of J&K", the defendant was a member of the legislative assembly and was kept detained from attending the session. The defence demanded a compensation of fifty thousand rupees which was compensated to him. In the famous "Akshardham temple case" also called "Suleimanbhai Ajmeri v. Union of India⁹" in which many terrorists were arrested, some of whom were innocent and kept in detain for over a decade and were rejected for the defence

⁶ W.J.H. v. The Netherlands, Communication No. 408/1990, U.N. Doc. CCPR/C/45/D/408/1990, Sec. 6.3 (1992).

⁷ <https://indiankanoon.org/doc/140150087/>, Indian kanoon case law

⁸ <https://indiankanoon.org/doc/810491/>, Indian kanoon case law

⁹ <https://indiankanoon.org/doc/129620993/>, Indian kanoon case law

compensation by the court. The loss of their livelihood and their reputation were not considered by the court which was a harsh reality for them.

The Defence Compensation System in different countries:

1. England

Per the Prosecution of the Offences Act, 1985 and The Costs in Criminal Cases Regulation Act, 1986¹⁰. The British courts have wide discretion regarding the awarding of compensation, both concerning substance (i.e., regarding the circumstances in which compensation will be awarded) and concerning amount (the size of the compensation); however, the Lord Chief Justice of England and Wales does occasionally publish guidelines regarding how judicial discretion may be exercised for the awarding of compensation to an acquitted defendant¹¹.

The judgement held that a court should award compensation to a defendant who has been either fully or partially acquitted, for costs incurred to conduct his defence in the proceeding in which he was acquitted. The court may deviate from this rule if there is a good reason for doing so. As an example of circumstances that justify the denial of a right to compensation, the Practice Direction points to a situation in which the defendant's behaviour misled the prosecution and caused it to believe that the indictment against him had a more solid foundation than it did. In cases in which the right to compensation is denied, the judge must explain to those present in the courtroom that the refusal to grant compensation to the defendant is not meant to suggest that the defendant is guilty.¹²

2. Germany

A defendant who has been acquitted or against whom criminal proceedings have been terminated is entitled to compensation for his legal costs, to be paid out of the Government Treasury. Excluded are costs that are incurred

due to the defendant's fault. Similarly, a defendant will not be entitled to payment if his acquittal resulted from a procedural defect only, or if his indictment was the result of his intentional self-incrimination which was later refuted.¹³

3. France

A person who was placed under arrest during the course of his trial and whose trial concluded with either the withdrawal of the indictment, dismissal or acquittal will be entitled to compensation for all monetary and non-monetary damages brought about by his arrest¹⁴.

An exception applies in cases in which the acquittal is based on an exemption from criminal liability due to psychological or neuro-psychological disturbance or in which the acquittal was a result of a pardon that was granted to the defendant after his conviction, or from the expiration of the statute of limitations or was accompanied by a conviction for other crimes or in which the defendant remained under arrest voluntarily or caused his arrest and the filing of the indictment against him through his behaviour, to enable the party who had committed the crime to avoid being brought to justice. Once the defendant is informed that the indictment against him has been withdrawn or dismissed, or of his acquittal, he must also be informed of his right to demand compensation for his arrest¹⁵.

4. Norway

According to Article 444 of the Criminal Procedure Law, a defendant who has been acquitted or regarding whom an indictment has been withdrawn, or who was arrested or held in violation of Articles 5 or 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms is entitled to compensation for any damages resulting from the filing of the indictment or the violation of his rights (A defendant is also entitled to

¹⁰ according to the Prosecution of Offences Act, 1985, c. 23, § 16 (Eng.), and to the Costs in Criminal Cases (General) Regulations 1986.

¹¹ See Practice Direction on Costs in Criminal Proceedings, dated 18 May 2004)

^v http://www.hmcourts-service.gov.uk/cms/files/costs_pd_180504.pdf, part II

¹³ – According to § 467 of Strafprozeßordnung [StPO] [Criminal Procedure Law] Apr. 7, 1987

¹⁴ according to Article 149 of the Criminal Procedure Law (C. PR. P'EN. – Partie Legislative) (Fr.)

¹⁵ The text of the law is available in English at <http://195.83.177.9/code/liste.phtml?lang=uk&c=34>.

compensation for non-monetary damages resulting from an arrest or incarceration that accompanied the legal proceeding)¹⁶.

According to Article 445, a defendant who was convicted may also be entitled to compensation if he suffered unique or disproportionate damages as a result of the judicial proceeding.

According to Article 446, a court has the discretion to reduce the size of the compensation or can completely refuse to award it in a case in which a defendant, with no reasonable grounds for doing so, has refrained from giving testimony, prevented a determination of the truth, brought the indictment or the conviction upon himself through his actions or failed to make any effort to minimize his damages¹⁷.

5. Austria

in Austria, the exception to the compensation rule applies "where the accused has deliberately caused the suspicion which gave rise to the criminal proceedings or where the proceedings have come to an end solely because the accused carried out the act in question in a state in which he was not responsible for his action.

Similarly, a defendant who was held under arrest for the duration of the criminal proceedings that were conducted against him and was subsequently acquitted is entitled to compensation for the period of the arrest¹⁸.

Conclusion

Even though the defendant compensation system is evolving in India at a faster pace than abroad, the need to increase the knowledge about the same is the same as before. The defence compensation system if utilised positively would help to increase the number of acquittal cases in India over time and it would help in having quicker judgements as the compensation would be fixed and based on the

court's discretion. If it is so found that the defendant is concealing some facts which when come affront would result in the reduction in the amount of the compensation, so provided. It would certainly pave the path for a positive outlook of democracy that India is striving so hard for.

¹⁶ Human Rights Committee, Nov. 18, 2004, Consideration Of Reports Submitted By States Parties Under The Covenant, U.N. Doc. CCPR/C/NOR/2204/5 (Dec. 3, 2004)

¹⁷ http://odin.dep.no/ud/norsk/dok/andre_dok/rapporter/032201-220007/hov011-bu.html#hov.ing.7

¹⁸ 2(1)(b) of the Criminal Proceedings Compensation Act 1969 (Strafrechtliches Entschädigungsgesetz 1969).