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I. ABSTRACT:

“All over the world, laws are carved out with utmost care covering all acts of deviances/crimes. Indian Judiciary is said to be one of the effective systems. However, defects have managed to creep in the Indian Judiciary. All Human Beings are prone to errors and judges are no exception to it. Judicial Fallibility is not an outcome of a single factor, but several. This paper analyses some of the factors that lead to Judicial Fallibility. Doctrinal Research Methodology is employed in the research. The purpose of this paper is to explore the hardship of the innocents who have become victims of Judicial Fallibility with the help of some landmark judgements. The author also explains the relief awarded to victims as a compensation for Judicial Fallibility. The writer also tries to analyse the impact of Judicial Fallibility especially in the case of the death penalty. Remedying these errors and making sure that these errors won't happen in the future is very necessary to keep the trust of the citizens in the Judicial System.”

II. INTRODUCTION:

The Judiciary is the 3rd most significant organ of the Government of India, the other 2 organs being Legislature & Executive. It is regarded as the most important organ because it regulates the other two organs to not exercise power beyond their limits. It safeguards the fundamental rights and human rights, protects the Indian Constitution and promotes peace & harmony. The main & primary role of judiciary is to provide justice to whoever knocks on the door of court of law. But it cannot be said with surety that the judiciary is infallible, it can make errors too. Hence, the errors made by judicial machinery while dispensing justice is called judicial fallibility. The actual ‘meaning of law’ is how the judges interpret it while passing judgements in several cases. So, does this imply that the judges are mechanical creatures & can never be wrong? No, many judges themselves admit that they cannot confidently say that they have never passed a wrong judgement. Justice Deepak Gupta & Justice Aniruddha Bose in a recent judgement said “To err is human” quoting Alexander Pope.¹ In the case of ***Brown v. Allen***,²

¹ *To err is human, Bench tells High Courts*, THE HINDU, October 12, 2019.

² 344 U.S. 443 (1953).

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Justice Jackson stated “*We are not final because we are infallible, but we are infallible only because we are final.*”³ This quote sums up the position of the judges in the judicial fallibility. Judges alone cannot be blamed for judicial fallibility; it is the entire legal system that should be looked into. Errors can happen during any step of the procedure from arrest till court proceedings, during investigation, while collecting evidence, mishandling of evidence, misidentification by eyewitness, corrupt witnesses, there are many instances which might lead to passing of wrong judgement. Sometimes the law itself might be ambiguous in nature. In such circumstances when the law is not very clear, it will be really difficult to interpret it and judge which interpretation is correct and which one is wrong. When an error is made by the judiciary it results in innumerable consequences, but the main two consequences are that an innocent will be convicted for a crime that he didn’t commit and the real criminal will be out in the open with no punishment, who is a potential threat to the society. There is a dire need to examine where the judiciary is making errors and what are the reasons behind it, so that such mistake doesn’t happen in the future and it will be a step towards solidifying the Indian criminal justice system.

II.I RESEARCH OBJECTIVE:

The objective of the research paper is to analyse the conditions under which the Judicial system make errors. To interpret if excessive pressure on the Judiciary System leads to Judicial Fallibility. It also assesses the obligation of state for compensation for errors made by the Judiciary. It explores the possibilities from which Judicial Fallibility can be avoided. It also looks into the modalities of tackling Judicial Fallibility.

II.II RESEARCH QUESTIONS:

- What are the reasons for the occurrence of Judicial Fallibility?
- Is compensation an answer for the errors made by the Judicial System?
- How does the Judicial Fallibility impact in the case of death penalty/ Capital Punishment?

³ BERNARD SCHWARTZ, A HISTORY OF THE SUPREME COURT (Oxford University Press 1993).

II.III RESEARCH METHODOLOGY:

The research methodology used in this research paper is Doctrinal Research Methodology. This methodology focuses on judgements, laws, legal article, legal sources, statutes etc. It examines law as a collection of principles that can be interpreted & analysed through legal sources only. It is a source-based research & doesn't consist of quantitative/qualitative research. In this research methodology, information is collected from several sources and organised in a systematic order, this is the significant aspect of this research methodology. This also includes legal doctrines, constitutional doctrines, international doctrines, etc. The data obtained for this research paper is secondary data, gathered from case laws, legal articles, legal databases, judgements, etc.

III. WRONGFUL CONVICTION:

When a person is convicted for a certain offence/ crime that on later investigation is found to be erroneous is called wrongful conviction. As the number of exonerations keeps rising it indicates towards the faulty criminal justice system of our country. With the help of DNA testing post wrongful conviction, innocence of a wrongfully convicted can be identified. Some of the common causes for wrongful conviction are: i) Eyewitness Misidentification – This is considered as one of the significant reasons for wrongful conviction over the country. Human memory is fallible and cannot be solely relied upon it. ii) False Confessions – Sometimes innocents confess to the crimes they didn't commit because of police coercion or torture. iii) Government Misconduct – In several cases, government officials convict an innocent even with clear proof, either because of personal reasons or corrupt practices. iv) Junk Science – Forensic methods used which have very less or no scientific validation and aren't very accurate and reliable.⁴ To reduce unnecessary detention & arrest, and to safeguard the interests of the accused, in the case of *D.K. Basu v. State of West Bengal*, the Hon'ble Supreme Court of India provided certain principles in order to solidify the criminal justice system. 11 principles were included, which should be followed by the police officers while making an arrest.⁵ The frequent

⁴ *Causes of Wrongful Convictions*, MICHIGAN LAW (Oct. 12, 2020, 10:54 PM)
<https://www.law.umich.edu/clinical/innocenceclinic/Pages/wrongfulconvictions.aspx>.

⁵ *D.K. Basu v. State of West Bengal*, 1997 SC 610.

interference from the Supreme Court has kept the behaviour of police officers and government officials in check while making inquiry & also in enforcement of law.

In the case of *Kalyan & Ors v. State of U.P.*, appellants along with 7 others were convicted for committing crimes under Section 302, 307, 147, 148 of Indian Penal Code and were sentenced to life imprisonment. Out of the 9 convicted, 2 of them filed an appeal under Sec. 2(A) of Supreme Court Enlargement of Criminal Appellate Jurisdiction Act of 1971. It was contended that the prosecution had failed to connect the accused to the crime connected, failed to prove the charges beyond doubt & the impugned judgement was contrary to law. The Hon'ble Supreme Court set aside the judgement of High Court of convicting the accused & the life imprisonment sentence. And upheld the acquittal order passed by the trial court in favour of the appellants.⁶

Life imprisonment is a severe punishment and as observed in the above cases, the judiciary has made errors in such crucial cases, it is a life altering situation for the innocents who were wrongly convicted and it gravely impacts the rest of their lives. *The ICCPR (International Covenant on Civil and Political Rights)*, which is one of the important international treaty, discusses about the obligation of a State towards the innocent in the cases of miscarriage of justice resulting in wrongful conviction, given that he was convicted & the conviction was subsequently reversed.⁷

IV. WRONGFUL INCARCERATION:

A situation where the rights of an individual are infringed due to detention/imprisonment for an unreasonable amount of time even when the crime was not committed by them, or waiting for trial. The National Crime Records Bureau prepared an annual report on 'Prison Statistics India' which consisted information regarding prisons, prisoners & prison infrastructure. According to the report, India has 4,19,623 prisoners across several prisons, out of which

⁶ Kalyan Singh v. State of U. P 1962 AIR 1183.

⁷ Law Commission of India Report No. 227 Wrongful Prosecution (Miscarriage of Justice), August 2018.

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67.2% of the prisoners were undertrials, which is way higher than the convicted people, i.e., 32%. India is on the 16th position for having the highest undertrial population.⁸

One of the most severe cases where an innocent suffered due to an awfully long wrongful incarceration is ***Mohd. Jalees Ansari & Ors. v. Central Bureau of Investigation***. The accused Mohd. Nissarudin was taken into custody by the police officials in the year 1994, he was charged for the bomb blast in Hyderabad (1993) & was later charged under TADA Act, 1987 for bomb blasts in 5 trains. Eventually, after his ‘confession’, he was sent to Ajmer prison, where he spent twenty-three years of his life. During this time, he was convicted & given life sentence by the Ajmer TADA court. In 2016, when the matter came under the Hon’ble Supreme Court, it overturned the decision of TADA court & ruled that the confession which was taken in the custody of the police, which was the basis for the accused’s conviction was inadmissible & didn’t have any legal sanction.⁹ Nissarudin was cleared of all charges after enduring 23 years of wrongful incarceration.

In the case of ***Mohd. Aamir Khan v. State***, the appellant was wrongfully incarcerated for fourteen-years. He was booked under several terror cases, which had no incriminating evidence that connected the accused to those explosions. The Delhi High Court set aside the conviction & held that the prosecution had ***“failed to adduce any evidence to connect the accused with charges framed much less prove them.”***¹⁰

In the above cases of wrongful incarceration, the key element in both the cases was lack of evidence. The question that arises is how were they get convicted with no concrete evidence that linked the accused to the crimes they were charged with? It took the judiciary more than one decade to see that the accused were innocent. This judicial fallibility has cost 23 and 14 precious years of two innocent lives, respectively. A very famous notion “Justice delayed is justice denied” is quite true regarding the judicial system in India. There are several cases in

⁸ *Id.*

⁹ Mohd. Jalees Ansari & Ors v. Central Bureau of Investigation AIR 2016 SC 2461.

¹⁰ Mohd. Aamir Khan v. State 138 (2007) DLT 759.

India where an individual is accused of an offence, for which even it is proved that he has committed the offence, the maximum punishment would be few months but because of delayed trial the accused has to stay in jail for several years. In the case ***Hussainara Khatoon and Others v. State of Bihar***, it was brought to the attention of Supreme Court about the people detained in the prison who have been under-trials for at least two years. And most of them were arrested for minor charges for which the punishment wouldn't have been more than few months. But the detainees were in prison for three to ten years. The Government of Bihar was ordered by the Supreme Court to provide a detailed report regarding the prisoner & under trials. A landmark judgement was passed by the Apex court, it held that the right to speedy trial is a necessary element of administration of justice.¹¹

V. WRONGFUL PROSECUTION:

When any innocent is prosecuted because of negligent investigation or malicious intentions, it is identified as miscarriage of justice and is called wrongful prosecution. In these cases, there will be either malpractice or abuse of power either by police officials, investigation officers/agency or the prosecution during the court proceedings which results in the wrongful prosecution of an individual who was later found to be innocent. It is well known that sometimes people in power misuse their power for their personal vendetta, which results in malicious prosecution, in such cases the liability falls on the state to compensate the accused who was found to be innocent.

In the case of ***State of Bihar v. Rameshwar Prasad Baidya & Anr***, criminal proceedings had been initiated against an innocent with the intention of harming him. It was held by the court that it was state's liability to pay compensation to the accused who was maliciously prosecuted by the State employees.¹² The abuse of power by officials which resulted in long suffering of an innocent was seen in the case of ***CBI v. Om Prakash Aggarwal & Ors***. In this case the court found that the Investigating Officer was abusing his powers & violated the mandate of law by

¹¹ *Hussainara Khatoon v. State of Bihar*, 1979 SCR (3) 532.

¹² *State of Bihar v. Rameshwar Prasad Baidya & Anr*, AIR 1980 Pat 267.

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booking innocent people in a bank fraud. The innocents were acquitted after 14 long years of tiring trial due to lack of incriminating evidence. The Court observed that *“It is astonishing to note that IO despite having come to the conclusion regarding 'no misuse' of power or breach or non-following of the procedure by accused bank officers, yet decided to file the charge sheet against them”*¹³

Wrongful Prosecution is not only troublesome and harmful to an individual who is innocent and is dragged to court for malicious intentions or by abusing power, it is also waste of time of the court. In several cases where the state officials are found to be abusing their power are let off the hook by just suspension and no real punishment. Since several years human rights organizations have strived for deletion of Section 197 of Code of Criminal Procedure, which states that the government sanction is required to prosecute state officials for abusing power while on duty. But results are yet to be achieved.

VI. RELIEF FOR PEOPLE WHO SUFFERED DUE TO JUDICIAL FALLIBILITY:

Several people have suffered at the cost of the fallibility of the judiciary. Whenever someone is wrongfully convicted, incarcerated or prosecuted for the crime/ offence they did not commit it is an infringement of Right to life and liberty which is guaranteed to every citizen of the country by Article 21 of the Indian Constitution. Before 2017, the question of forming a framework to grant relief to people who were wrongly prosecuted, convicted or incarcerated wasn't raised. It first came to light in the case of **Babloo Chauhan @ Dabloo v. State of Government of NCT of Delhi**. The Delhi High Court expressed its concern regarding wrongful implication of innocents who were acquitted after several years of imprisonment. The court ordered the Law Commission of India to conduct a thorough evaluation of “relief and rehabilitation to victims of wrongful prosecution, and incarceration”¹⁴

¹³ *Supra* note 14.

¹⁴ Babloo Chauhan @ Dabloo v. State Government of NCT of Delhi. 247 (2018) DLT 31.

Analysis of the existing laws provides three types of remedies with respect to miscarriage of justice which results in wrongful prosecution, conviction or incarceration.

- i) Public Law Remedy – This remedy is centred on the violation of Right to life & liberty (Article 21) and Protection against arbitrary arrests and illegal detention (Article 22), when these rights are violated, writ petition can be filed in High Court & Supreme Court under Article 226 & Article 32 respectively. It also includes provision of compensation to the victim who has suffered undue detention or bodily harm because of the state officials. In the case of ***Bhim Singh, MLA v. State of J & K & Ors***, Supreme Court stated that only acquitting the accused who was detained or imprisoned was not sufficient and emphasized on compensating for the suffering endured by “suitable monetary compensation.”¹⁵
- ii) Private Law Remedy – This remedy is for the erroneous acts committed by the officials of a state, this can be done by filing a civil suit against the State for monetary compensation, as the state is vicariously liable for the acts/negligence of the public servants during the course of employment. This was held in the case ***State of Rajasthan v. Vidyawati Mst***, the Supreme Court held that State government is vicariously liable to pay damages for the negligent acts of its employees, if such negligence was “as would render an ordinary employer liable.”¹⁶
- iii) Criminal Law Remedy – This remedy focuses on the wrongdoers. Such provisions are given in Indian Penal Code, 1860 and Criminal Procedure Code, 1973 provide substantive & procedural outline of the actions that could be taken to punish the wrongdoers. In ***State v. Saqib Rehman & Ors.***, the Sessions court charged police officials under Section 166 of IPC (“Public servant disobeying law, with intent to cause injury to any person. Public servant disobeying law, with intent to cause injury to any person¹⁷”) and Section 167 of IPC (“Public servant framing an

¹⁵ Bhim Singh, MLA v. State of J & K & Ors (1985) 4 SCC 677.

¹⁶ State of Rajasthan v. Vidyawati Mst, AIR 1964 SC 1039.

¹⁷ S.166, The Indian Penal Code, 1860.

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incorrect document with intent to cause injury¹⁸) for framing an innocent person in a false criminal case & for fabricating evidence.¹⁹

In several cases the Supreme Court has time and again emphasized on compensating the innocents who have suffered due to miscarriage of justice and yet there is still no legal framework for determining the appropriate amount to compensate the suffering of the innocent. Judiciary might provide monetary compensation for the suffering of the people. However, it cannot measure the damage done to the innocent people who suffered due to the errors made by the judiciary. Because the suffering can be of any form, it can be physical, mental or emotional. No amount of monetary compensation can bring back the years, respect and dignity lost by them. And there is no way to measure it. Hence, reforms need to be made to prevent such judicial fallibility.

VII. IMPLICATIONS OF JUDICIAL FALLIBILITY IN THE CASE OF THE DEATH PENALTY:

Indian criminal justice system is far from flawless. It is not infallible that the chances of errors can be ruled out. Death penalty is a sentence where the courts need to be absolutely sure about the guilt of the accused beyond any reasonable doubt. There is no room for any kind of errors. Judicial errors in general are dreadful, but can be reversible to some extent by acquittal & compensation. But in the case of death penalty if after carrying out of the sentence it was found that the accused was innocent, it would be absolutely irrevocable and any amount of compensation cannot bring justice to the innocent who fell prey to the judicial fallibility. There are several cases in which the accused was sentenced to death and before the sentence was carried out, his innocence was proved and was acquitted, one such case is ***Kali Ram vs State of Himachal Pradesh***. The accused was convicted under Section 302 of IPC in the Court of Sessions Judge for causing death of 2 people. He was sentenced to death. An appeal was made in the High Court, and even the High Court confirmed the conviction. Subsequently, a special

¹⁸ S.167, The Indian Penal Code, 1860.

¹⁹ State (GNCT) of Delhi v. Saqib Rehman @ Masood & Ors., 2012 (3) JCC 2127.

leave petition was filed by the accused before the Hon'ble Supreme Court. The Supreme Court observed that the evidence on which the case was based was all circumstantial evidence. The SC set aside the judgement given by Trial Court and the High Court and acquitted the accused.²⁰ A harsh punishment as death sentence which was based on circumstantial evidence was approved by not one but two courts, this speaks in volumes of how flawed Indian criminal justice system is.

There are several cases where the judges have realised that the judgement, they passed in cases of death penalty were erroneous, but it was too late as the sentence was already carried out. During the Presidentship of late Pranab Mukherjee, 14 former judges appealed to request his intervention in revocation of 13 convicts' death sentences, because they were erroneously sentenced to death. The judges made reference to the wrongful execution of Ravji Rao & Surja Ram in 1996 & 1997 respectively.²¹ These cases were based on the principle handed down in ***Ravji @ Ramchandra v. State of Rajasthan*** - "*It is the nature of and gravity of the crime but not the criminal which are germane for consideration of appropriate punishment in a criminal trial*"²² overruling the principle laid down in ***Bachan Singh v. State of Punjab*** - "*the court must have regard to every relevant circumstance relating to the crime as well as the criminal*"²³

If the judiciary is capable of making errors in a grievous punishment as death sentence, where a human life is at stake, then how can the people be expected to put their faith in the judicial system to provide them justice.

VIII. CONCLUSIONS AND SUGGESTIONS:

Judicial Fallibility is a multi-causal phenomenon which can be considered as a black mole on the judicial system of a country. It may occur due to rapid social transformation and incapability

²⁰ Kali Ram v. State of Himachal Pradesh, 1973 AIR 2773.

²¹ Dhananjay Kashyap, *Death Penalty in India*, ASIAN JOURNAL OF LEGAL STUDIES (2013).

²² Ravji @ Ramchandra v. State of Rajasthan 1996 AIR 787.

²³ Bachan Singh v. State of Punjab 1980 (2) SCC 684.

of the legal machinery to keep in pace with the transformation & this gap may result in judicial fallibility. Three factors might result in judicial fallibility and they are i) Anthropogenic errors, as humans tend to err, this includes, judges, lawyers, police officers, investigators, etc. ii) Situation which can create pressure on judicial machinery. iii) Structural arrangements under which judicial machinery is operating.

In India, there are over 3.5 crores of pending cases across several courts. This might act as a catalyst in pressurizing the judicial machinery to pass judgments in a hurried manner & justice shouldn't be served in hurry, as it might result into erroneous judgment. This is very contradictory to speedy trials, which aims to give justice as soon as possible, in several cases due to certain circumstances, accumulating and presenting evidence might be difficult in a short time and that might result in passing wrong judgment with insufficient evidences.

As observed in the above cases, the main reason where the judiciary has made errors are regarding evidence, where several innocents were wrongfully convicted, prosecuted or incarcerated & even sentenced to death based on circumstantial evidence, and the guilt wasn't proved beyond doubt. Evidence plays a crucial part in any case, an entire case is based on evidence, hence due care and importance should be given to its proper assessment.

As to the contradiction regarding the delay in trials which results in several people accused of petty crimes wrongfully incarcerated for a long period of time in prison, cases in which serious crimes are committed such as murder, attempt to murder, rape, etc the accused should be kept in prison until the trial, however, in cases where an individual is accused of minor crimes such as theft, burglary, vandalism, etc, such accused should be kept in house arrest while waiting for trial to avoid wrongful incarceration for several years, which violates right to life and liberty under Article 21 of the Indian Constitution.

Many innocent's innocence couldn't be proved because of the unavailability of proper counsel for representation in the court. This can be generally seen in cases where the accused belongs to economically weaker section and cannot afford a lawyer and is given a legal aid lawyer who

isn't very experienced. In the cases of death penalty, when the accused is not capable of affording a lawyer, a lawyer with good expertise needs to be provided, so that he gets a fair trial with proper legal representative, as death penalty is a serious punishment and no individual should suffer because of poor legal representative.

In the cases of death penalty, the accused shouldn't be awarded death penalty unless there is strong evidence, guilt is proven beyond reasonable doubt and all the judges of the bench unilaterally decide to award death penalty. Judicial Fallibility can seep into judicial proceedings & can weaken the structure of the judicial system.

Hence, there is a dire need to revert back to the cases where the judiciary has erred and analyse where the error was made, so that those mistakes can be identified to not only eliminate them but also to prevent them from occurring in the future, so as to strengthen the Indian Judiciary System.

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