

A STUDY OF WRONGFUL CONVICTIONS AND IMPRISONMENT IN SRI LANKA AND USA

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Abstract - *The conviction of a factually innocent person or conviction of an individual who did not make any crime can be defined as a wrongful conviction. The innocent persons are imprisoned due to wrongful convictions not even in Sri Lanka but in USA as well. This can be occurred due to eyewitness misidentification, forensic error, false confession, police and prosecutorial misconduct, failure of legal profession and judges. Therefore time has come to take necessary action to prevent such wrongful imprisonment and to produce real offenders to the court and to charge them accordingly for their criminal activities. Thus, this research study is focused to find out the possible reasons of wrongful convictions, to define the standard legal framework in Sri Lanka for the wrongful convictions, to evaluate the standard legal framework of the USA for wrongful convictions and to assess the lessons that can be learned from the USA to eliminate the wrongful convictions in Sri Lanka. The qualitative research method will be used for this research study. Under the qualitative research method data has been collected through primary and secondary sources. Primary sources consist of national laws of Sri Lanka and USA. In addition primary data has been gathered by interviewing some legal practitioners in the field of criminal law. Further secondary data has taken from published books, e-databases, e-journals, e-theses and e-books. In this research study, it is expected to find out a specific mechanism for the Sri Lankan legal framework from the USA legal mechanism to eliminate wrongful convictions in Sri Lanka.*

Keywords - *wrongful convictions, imprisonment, Sri Lanka, USA*

I. INTRODUCTION

The Imprisonment is treated as a life-threatening method of human violence resulting from physical and psychological consequences that an innocent person become the accused. For an instance when an individual is accused for a criminal activity, that particular person

didn't commit and the court case goes against that person is called as a wrongful conviction of an innocent person. Further it can be defined as the conviction of someone who had no involvement in the crime charged whatsoever or criminal conviction of an actually innocent person (Deskovic, 2012). This is common to any citizen who charged wrongfully in any country whether they belong to Sri Lanka or USA. This has been happened for decades, robbing freedom and life experiences of innocent people. However, this should not be practiced and innocent people should be exonerated the crime that they did not involve (Gould and Leo, 2010). Injustice is that wrongdoer is not brought to justice and innocent is convicted. In this context, wrongdoer is free to do any harm to others and it should be corrected by the judiciary system. This has been subject of research several years. Early researchers revealed nearly 65 cases on wrongful convictions (Borchard, 1932).

II. RESEARCH PROBLEM

A mistake of justice is an error of justice which means "errors in the interpretation, procedure, or execution of the rules and regulations – typically, faults that violate due process, often resulting to punish innocent people (Forst, 2004)." Convicting the person who has not committed any crime means that the offender is not brought to the justice, and they are allowed to abuse and harm others (Huff, 2001). In this context, it is clear that there are flaws in the justice system that need to be cleared. The problem is that there are no valid records or statistics on wrongful convictions to determine these defects in Sri Lanka. The Prisons Statistics of Sri Lanka (Borchard, 1932) has given un-convicted and convicted prisoners data but not given any wrongful conviction statistics. However, there are plenty of statistics on such cases in USA. Thus, the question is raised why not Sri Lankan judiciary adopt a system similar to USA to avoid innocence getting wrongfully convicted.

III. RESEARCH OBJECTIVES

The objectives of this research study was to identify the possible causes of wrongful convictions; to define the standard legal framework in Sri Lanka for the wrongful conviction; to evaluate the standard legal framework of the USA for wrongful conviction and to assess the lessons that can be learned from USA to eliminate the wrongful convictions in Sri Lanka.

IV. LITERATURE REVIEW

A. *Wrongful Convictions in Sri Lanka*

A conviction of truly innocent person can be introduced as wrongfully convicted person. It means the conviction of an individual who did not make any crime. There are number of wrongful conviction cases in Sri Lanka that convicted innocent persons due to errors of eyewitnesses, forensic science, adjudicative process and also mistakes "by counsel or judges or errors resulting from deficiencies in the institutional framework for the conduct of trials or review of convictions" (Perera, 2018). As described by Perera, it is crystal clear the definition of wrongfully convicted person and how the society make such persons. At this juncture, society can be counsel, judges, or institution that make the framework. Thus, there should be an accountability when the society make decisions to reduce mistakes or to make no mistakes. Shaine (2007) added that a leading Criminologist reported that the argument about wrongful conviction errors by the law enforces is not something restricted to Sri Lanka and it is recorded that 124 cases between 1973 and 2007 of persons convicted of grave crime and sentenced to death by the courts but later exonerated and released. Moreover, 80 of these cases or around 65% of these wrongful convictions caused not from faults made by the law enforces in good faith but from planned wilful, cruel action by criminal justice personnel. According to Shaine, there are cases that make not because of errors but purposely made.

It is a troublesome matter that innocent people have become victim for murders committed by others. One should compare on errors of wrongful convictions with errors of failing to convict guilty persons and if the rate of killing innocent persons was as large, that would be caused to weak the capital punishment. However, there is a belief that appeal process offers huge protection not so much against wrongful conviction as against wrongful performance. Thus, there should be a very

few, if any, documented cases of development of DNA identification (Wijesiri, 2012). As stated by Wijesiri, to reduce the killing rate of innocent persons, DNA identification can provide some sort of solution against wrongful performance.

B. *Death Penalty in Sri Lanka*

Death penalty is a cruel, ineffective and irreparable punishment that can be lead to wrongful conviction due to false identity. The possibility of sentenced to death is more likely to be happened if the people are innocent and poor or an ethnic or religious minority. (EU Praises, 2015). As described by EU Praises, death penalty has become the most cruel punishment that given for the wrong conviction and specifically to the poor people or ethnic or religious minority.

Restoration of death penalty has become a risk in Sri Lanka due to the fact that innocent persons being convicted. Innocence can be caught up due to many reasons. There are instances that witnesses make false evidences and exaggerate their evidences. As an example, when the culprit is one of the family member, there is a tendency to provide witnesses supportive to the culprit from other members of the family. These are common in criminal justice system in Sri Lanka. Specialized forces such as Criminal Investigation Department (CID) and Colombo Crime Division (CCD) are much efficient at investigating crime other than the Sri Lanka Police. "Use of scientific methods such as DNA and fingerprinting are rare and far between". In this context, it is clear that there is a lack of enough resources to use scientific techniques (Pieris, 2018). As stated by Pieris, still Sri Lanka is far behind of using novel methods to identify the culprits. In this manner, if death penalty is restored, there will be increase of wrongful convictions in Sri Lanka.

C. *Police Fabrications*

It is evident that police do not make any investigations on defence version to identify the accused and what is his/her witnesses saying? Many times police do not bother to record the verbal accounts of the defence. These are the claims that made against the police and fraud within the police force add to both wrong allegations and failure to inspect the defence. There are instances that "police incorrectly accusing people on drugs and violent weapons charges. No independent investigations have been done in Sri Lanka against police fabrications where judges have stated serious uncertainties on the honesty of the police descriptions. There are many occasions that witness provides the

truthful information but that is mistakenly connects an innocent person” (Pieris, 2018). According to Pieris, there can be many occasions that Police make wrong allegations against innocent people who have not connected to any wrongful convictions. Similarly, there are many instances that un-convicted women remanded for allegation of crimes and are wrongfully convicted for their husband’s crimes (Thiyagarajah, 2012).

It is duty of the Criminal Justice System in Sri Lanka to deliver justice for all by prosecuting suspects before courts based on the evidence and convicting them if they proved to be guilty for enable to protect the innocent (Kodikara, 2018). However, there is a significant growth of criminal activities within the country that resulted the loss of public confidence on judicial system (Kodikara, 2018). As described by Kodikara, there are many cases where innocence could not be able to prove their innocence and also there is a tremendous growth of criminal activities in Sri Lanka.

D. Disappearances

Disappearances have become a major challenge in Sri Lanka. There was no proper accountability for the violations committed in the past. It is believed that the considerable number of the culprits have get away justice so far and therefore sufferers seek more accountability. “The Declaration on the Protection of All Persons from Enforced Disappearance requires that the State guarantee to the victims of enforced disappearance an effective remedy that includes a thorough and impartial ex officio investigation with a view to identifying those allegedly responsible for the disappearance and imposing the appropriate penalties. The Working Group has reiterated on many times that freedom for enforced disappearances is a source of future violations” (UN General Assembly, 2016)

There were disappearances, civilians lost their lives during the civil war conflict in Sri Lanka and majority of lower level security personnel were charged. However, in few cases where senior leaders were prosecuted. For example, “in three cases where victims were murdered, senior personnel were convicted, though in two of the three cases, the accused were convicted on lesser charges (e.g. wrongful confinement and failure to control subordinates). The majority of cases involved murder (e.g. massacres, individual extra-judicial killings and murder during detention), or abduction (e.g. disappearance) charges” (Lynch, 2012). According to Lynch, there are discrepancies when the authorities act for some disappearance cases.

In the above standpoints, it is identified legal lacunas peculiar to wrongful convictions in Sri Lanka. A few scholars have identified the term wrongful conviction. The constitution of Sri Lanka has identified some provisions and those provisions also can be related to the innocence but the scholars were failed to recognize those provisions. Moreover, some scholars were failed to identify and to produce the accurate statistics regarding wrongful convictions. It is said that there are cases on wrongful convictions but they were failed to locate such cases. In this context, it is evident that most of the scholars were unable to recognize the laws, statistics, and cases with regard to wrongful convictions in Sri Lanka. Moreover, it is found that there is a lack of literature on wrongful conviction in Sri Lanka.

E. Wrongful Convictions in USA

Criminal justice professionals and policy makers in the USA are currently concerned about the wrongful conviction of innocent offenders. Thus, high level of response has come from the USA government (Ramsay and Frank, 2007). It is included that “eyewitness misidentification; negligence, misconduct and poor training in forensic laboratories; false confessions; the use of jailhouse informants; incompetent or inadequate defense lawyering; and prosecutorial/police mistakes or misconduct as primary causes of wrongful convictions” (Duhaime’s Law Dictionary).

Special mechanisms have been established by law in USA not only to exonerate falsely convicted innocent people but also to compensate (Pieris, 2018). Annually, October 2nd is marked for International Wrongful Conviction Day for two purposes. One is to make attention for the “main contributors to wrongful conviction and to reform” judicial system “to prevent further injustice”. The other one is to help individuals who become victims of a weak system (Brown and Salazar, 2017).

International Wrongful Conviction Day in 2017, it is discussed the worth topic on State Compensation Laws by Innocence Project. It is a known factor by the supporters of the Innocence Project that there are “laws in place which provide some level of compensation to people who’ve been exonerated of wrongful convictions”. However, that all laws are created equal (Brown and Salazar, 2017). For an instances, it is compensated \$80,000 per year for imprisonment of wrongfully convicted persons and allowance set at the same amount in Texas while \$5000 compensation is

given for the wrongfully convicted persons in Wisconsin with a “maximum of \$25,000” total, whatever the “years were spent in prison”. However, there is no compensation laws for 18 states in USA (Brown and Salazar, 2017).

The Innocence Protection Act in USA makes provisions for “exonerating the innocent through DNA testing”. It is established “rules regarding applications for DNA testing by convicts who claim to be innocent in Title 1” and it “prevents the destruction of biological evidence in a criminal case” during a suspect’s detention. This act allows even for “death penalty cases, are in state courts, not in the federal system, to apply for federal grants for DNA procedures that would make testing available to prisoners on death row in the 38 states with capital punishment statutes” (The Editors, ‘The Innocence Protection Act’, 2002)

In USA, there is an organization that “deal with cases of miscarriage of justice, such as the Arizona Project” (Pieris, 2018). Other than Arizona project there are many more organizations were established to protect the innocence persons such as Minnesota innocence project, Florida innocence project etc.

It is evident that the attention has greatly increased on wrongful convictions over the past few decades and as a result, it is created innocence commissions in eleven different states in USA. However, there is a need for improvement in key areas of the wrongful conviction.

V. Methodology/Experimental Design

Under the qualitative research method, data was collected through primary and secondary sources. Primary sources consist of national laws mainly the supreme “constitution of the democratic socialist republic of Sri Lanka”, “The Penal code of Sri Lanka”, “The Corporal Punishment (Repeal) Act No. 23 of 2005”, “Code of Criminal Procedure Act No 15 of 1979”, “Evidence Ordinance of Sri Lanka”. And also it is considered USA statutes such as “The Constitution of the USA”, “The Innocence Protection Act”, “Justice for All Act” and the “USA Federal Compensation Laws” that related to wrongful convictions.

In addition, primary data has been collected by interviewing a senior lawyer in the field of criminal law who was appointed as a President’s Counsel in 2017. Face to face interviews have been conducted among legal practitioners and judges in the field of criminal law by making a personal appointments and their answers

have been taken down. The main reason of selecting them are that they have gained vast knowledge and experience in the field of criminal law. Moreover, they have appeared numerous type of criminal cases during their professional life. Thus, their competence in the legal profession is also considered as one of the reasons to interview them.

The reasons of selecting USA for this research study is that they have mechanisms to control the wrongful convictions and to pay compensation for such victims. They have established statutes and legally authorized innocence projects such as “Arizona Attorney for Criminal Justice”, “Arizona Justice Project” and the “Innocence Project of Florida” etc. to help and to deal with cases of miscarriage of justice for such persons. Moreover, it is established “special mechanisms by law and innocent people falsely convicted not only released but also compensated. We in Sri Lanka have no such safeguards” (Pieris, 2018).

Secondary data has taken from published books, journals, theses and online websites, e-databases, e-journals, e-theses and e-books. The published books, journals encyclopaedias and other e-documents that have taken for this research study were given some important data such as definitions, theories, causes, history, psychological issues, exoneration, public attitudes of wrongful convictions etc. Moreover, theses and dissertations have revealed the previous research work done by other researchers in the field of criminal law.

Validity of the data has been highly taken into consideration. In this context, secondary data has been selected from scholarly journals and books. Moreover, data has taken from e-data bases such as Academia Edu, Research Gate etc. Validity is assessed in terms of the quality of data, techniques and strategies of data interpretation, credibility and acceptability.

It is reviewed substantial amount of literature related to the present research study. Sufficient data has been found for wrongful convictions in USA while there was a lack of published data in Sri Lanka.

VI. Results and Discussion

In the Sri Lankan legal framework there is no valid records or statistics on wrongful convictions. For an instance the latest report of prisons statistics of Sri Lanka has given convicted and un-convicted prisoners data but not given any wrongful conviction statistics (Dept. of Prisons, 2016). Therefore, it is suggested that

those records and statistics should be publicly available and that helps to make aware the public that the wrongful convictions are still existing in the country. In this way it is reduced the persons who get wrongfully convicted (Perera, 2018).

There are some specific provisions related to the innocence in the “Constitution of the Democratic Socialist Republic of Sri Lanka” such as chapter 3 of Article 12(1). It states that “All persons are equal before the law and are entitled to the equal protection of the law”. Therefore this equality and protection must also apply to the innocence people too. However, the question is even though it has been stated in the Constitution of Sri Lanka that has not been practiced by the legal authorities. Other than that there are so many provisions which are also applicable for the innocence in Sri Lanka. Those are mainly “the Penal Code of Sri Lanka”, “Criminal Procedure Code of Sri Lanka” and “the Evidence Ordinance of Sri Lanka”. Though there are provisions with regard to innocence persons in varying Acts of Sri Lanka it can be suggested to have a specific Act for the innocence persons and it will be more helpful to recognize the protection granted for the innocence more specifically rather than having those provisions in separate acts.

Wrongfully convicted persons are not be able to prove their innocence when they apply for jobs or sign government documents. They can prove their innocence if they have been fully forgiven, released, or obtained a report of innocence. Moreover legal finding of innocence is not a remedy for physical and psychological consequences of imprisonment or it is not easy to be free from social disgrace caused by imprisonment for a wrongfully convicted person. And also they do loss many things as normal civilians such as liberty, family connections, job achievement, psychological health, and physical health, as a result of wrongful conviction. Therefore, it is important to make a compensation for them. However, there are still gaps of such agreements and how this could be done or how much should be given to these individuals. This insufficient or non-existent compensation leads many individuals to pursue legal or legislative alternatives, which can include constitutional or common law tort remedies, private legislative bills, and, more commonly, action under state compensation statutes (Kahn, 2010). This can be recommended to the Sri Lankan legal framework too.

There are many ways that persons search payment for the crimes that they did not make. However, there are

many barriers and legal hurdles that they have to face. The resistance of the government organizations against which these persons are filing cases is the most common barrier. The government protection is likely to chunk most of these cases from ever seeing a courtroom or even a clearance negotiation (Brooks and Simpson, 2012). In this context it is recommended that all lawsuit barriers should be removed legally to settlement of compensation.

It is very difficult to satisfy the requirements of claim for a wrongfully convicted persons. Because that requirements are not be specifically covered by the constitution. It is difficult to prove guilty conduct on the part of the government. Most of the cases are usually an end of issues such as unplanned misidentifications by witnesses or incorrect evidence by jailhouse informers, etc. and do not arise from misconduct on the part of the government. Even if there are cases for direct misconduct of government officials it is difficult to prove that because of the competent invulnerable police and prosecutors are arranged by the benches (Kahn, 2010). At this juncture, it is recommended that there should be an accountability of criminal justice system to provide clear justification for the wrongful convictions.

Wrongful conviction has become a serious problem and a big issue as there is no solid backing from the members of the criminal justice system. Due to a “dark figure” of wrongful convictions that really happen it has become more complicated. The quantity of hidden cases of convictions that happen within the criminal justice system are called as the “dark figure”. At the numerous phases of the justification procedure including illegal convictions there are no records of the statistics on errors made.

VII. Conclusion

In this research study it is found that wrongful convictions may occur due to various reasons. Also it has been identified that the Sri Lankan legal framework has no any mechanism which specifically address the issue of wrongful convictions but it has some provisions with regard to innocence in varying Acts. Further it evaluated the standard legal framework of USA for the innocence and accessed the lessons that can be learned from the USA to eliminate the wrongful convictions. Finally it described about the recommendations that can be made for the Sri Lankan legal framework from the above lessons which learnt from this research study.

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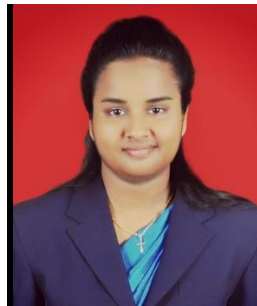
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Acknowledgment

I am extremely grateful to Mrs. LM De Silva, Lecturer, General Sir John Kotelawala Defence University, for her scholarly guidance provided at various stages of this research study and also to the President's Counsel Mr. Upali Senaratne for providing valuable information for this research study. Further I would like to extend my gratitude to the other legal practitioners and judges for providing important information towards this end.

