

Rethinking miscarriage of justice



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Miscarriage of justice leading to wrongful conviction or imprisonment has become an accepted reality across most of the countries embracing common law jurisdiction. Apart from the detrimental effect of a wrongful conviction and imprisonment on an individual person, it is also a glaring example of how criminal justice process or system often fails due to various/(numerous) factors such as, prosecutorial misconduct, false confessions, erroneous eye-witness or testimony, unsound forensic reports or its misuse and so on. Experiences from wrongful convictions and imprisonments certainly instill in the victims a profound sense of ‘cynicism and mistrust’ regarding the fairness and legitimacy behind such convictions.

More often than not, a question as to whether it is the substantive laws or the procedural ones that contribute to wrongful convictions, come up. Penal Code is the official criminal Code of the

then Indian sub-continent, which is a comprehensive Code. The draft Penal Code was prepared in 1834 by the First Law Commission where Lord Macaulay was in the helm of it authority, thus obviously the basis of the draft was the 'Laws of England' though free from overabundance/plethora, technicalities and local peculiarities. But then, some of its rudiments were also borrowed from Napoleonic Code and Louisiana Civil Code (of Edward Livingston).

Lord Macaulay did not spare any opportunity to incorporate all fundamental and cardinal principles of English criminal laws in order to make his masterpiece, Penal Code, worthwhile and sustainable not only to suit the changing need of the society, but also to adequately address the relative nature of the concept of crime, since recognition of a crime varies with public opinion of a given society at a given time and there cannot be any rigid or absolute criteria to determine it. Ideas may change; standards of ethical morality may differ and with them, the recognition of any offence by a Sovereign within the ambits of its penal provisions may also differ. Therefore, while drafting Lord Macaulay meticulously adhered all universal principles of criminal jurisprudence. Instances of wrongful convictions time and again make us think that probably it is not the substantive laws rather the enforcement mechanisms that play the most pivotal role.

The beginning of this year (2019) experienced a classic example of wrongful conviction when the Director General of Anti-Corruption Commission (ACC) was summoned by the High Court Division of the Supreme Court of Bangladesh to explain why a person other than the accused spent 3 years in jail. The incident happened in the case of misappropriation of Tk. 18.5 Crore from a commercial bank during the period of 2010-11 by using fake address while operating the account with the concerned bank. By 2012, the Anti-Graft Watchdog of ACC filed cases over the misappropriation of fund and one Mr. Abu Salek was made the alleged accused and the bank officials were asked to identify and track the accused, Mr. Salek. Thereafter, when Mr. Salek was summoned by the Commission to its office, where bank officials as well as the account's introducers were also present, surprisingly the man who appeared before the ACC claimed before the authorities concerned that they were mistaken in as much as his name is Jaha Alam and not Abu Salek. However, for reasons best known to them, instead of further investigation, the ACC submitted charge-sheet before the Court identifying him as "Abu Salek alias Jaha Alam" and accordingly, Jaha Alam was arrested (in 2016) by the police in connection with several cases in which Mr. Abu Salek was accused although afterwards Commission found Alam's claim to be true and urged the trial Court to exempt Jaha Alam from prosecution and hold Mr. Abu Salek, a fugitive and on the run, to remain as the 'lone accused' in the cases.

In connection to the foregoing, an ordinary Jute Mill worker, Jaha Alam, had spent 3 years in prison due to miscarriage of justice after being wrongfully accused by a commercial bank along with an esteemed national body i.e. Anti-Corruption Commission (ACC). One can easily apprehend and appreciate how dreadful and unbearable his experiences would have been? Obviously, Jaha Alam not only wants that the culprit(s) behind the fraud to face the trial but also empathetically wants that the irresponsible and inefficient ACC personnel/officials responsible for his wrongful imprisonment to face judgment which is only natural and understandable.

Experiences that an individual encounter while in prison fuel anger and aggression in him which ultimately transforms into hatred against the State or for that matter, towards its legal system as well. The nightmare does not end upon with his release only. In fact, the repercussion from wrongful conviction continues to exist for a considerable period. Therefore, difficulty of establishing oneself in the society is intense for such citizens who were wrongfully convicted and failure on the part of the State to redress them financially adds further insult to their injury from wrongful imprisonment. Special aid and pecuniary assistance from the perspective of 'sheer empathy' is also called for in order to secure rectitude of the soundness of their legal system. Considering that no criminal justice system in the world would be flawless, official acknowledgement or public recognition of the impairment perpetrated upon a person who was wrongfully convicted could go a long way in fostering the process of healing, assuring the public at the same time that the Nation is prepared to take responsibility of its own shortcomings or errors.