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Legal Framework on Compensation for Wrongful Conviction in Pakistan: A Comparative Analysis with Washington and England Laws

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Abstract: Wrongful convictions are a pervasive problem in Pakistan's criminal justice system, leaving victims without adequate redress for the injustices they have suffered which inevitably undermines the credibility of the country's criminal justice system. The objectives of the study at hand were to identify the key features of compensation frameworks, their effectiveness to redress the harms of wrongfully convicted persons and to recommend some appropriate legislative designs in the context of the criminal justice system in Pakistan. The qualitative research methodology was adopted and a comparative analysis of compensatory statutes of the US and UK has been taken into consideration. This study not only contributes to the literature on wrongful convictions and compensation but is also momentous for policymakers and legal practitioners, other stakeholders in Pakistan and other jurisdictions grappling with this issue. This study concludes streamlined monetary compensation, counseling and support services to redress the harms that are caused to innocent persons due to wrongful convictions. Additionally, the compensation process for wrongful convictions should be easily accessible, timely, and non-adversarial.

Introduction

Wrongful convictions are one of the most tragic and damaging consequences of the criminal justice system. Wrongful convictions occur when an innocent person is found guilty of a crime and is subsequently sentenced to prison or even death. These convictions can result from various factors, including false confessions, eyewitness misidentification, and unreliable or fraudulent evidence (Gross & O'Brien, 2019). The consequences of wrongful convictions can be devastating, including loss of freedom, stigma, and damage to reputation and relationships. Moreover, it is not just the wrongfully convicted individual who suffers, but also their families and the community at large (Furman, 2003).

The strength of a strong criminal justice system lies in proving the defendant's guilt beyond a reasonable doubt, and until then he is presumed innocent (Amin, 2021). However, this is not the case in many developing countries, including Pakistan. The Foundation of Fundamental Rights Report (2019), clearly stated that after spending 10 to 15 years in poorly managed prisons, innocent convicts of death row in Pakistan are declared innocent. One-third of Appeals are also followed by complete acquittal. Investigations that use torture and forced confessions during interrogations, along with a shortage of defense attorneys and an imbalance of power between prosecutors and defense

attorneys in criminal proceedings, exacerbate the issue. Additionally, there is a general lack of procedural protections in Pakistan and international human rights laws designed to protect the accused. Pakistani law enforcement officers and prosecutors are also known for detaining and imprisoning suspects without legal justification and presuming guilt over innocence. Furthermore, Pakistani laws lack ensuring appropriate compensation for wrongful and innocent convictions, and there is no statutory right to compensation for wrongful convicts when acquitted after a lengthy trial, unlike in other countries.

Article 4 of the constitution of the Islamic Republic of Pakistan (1973) guarantees that every citizen shall *"enjoy the protection of the law, will be treated in accordance with the law,"* and Article 9 further states that *"No person shall be deprived of life or liberty save in accordance with the law."* However, these guarantees seem to be just words in light of cases such as Rani Bibi, Muhammad Malik Taj, Mazhar Farooq, and Muhammad Iqbal, where fundamental rights appear to have been violated. Due process of law and a compensatory regime are urgently needed to redress such miscarriage of justice. Wrongly convicted individuals face an agonizing struggle upon their release from prison, with no money, housing, health services, insurance, transportation, and a criminal record stigma that is rarely cleared despite innocence (Khan, et al., 2022).

In 2008, Pakistan signed the International Covenant on Civil and Political Rights (1966), which guarantees compensation for those who are wrongly convicted under the law. Under Article 9(5) of ICCPR (1966), *"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."* Article 14(6) of ICCPR (1966), states that a person who has been convicted of an offence by the decision of the court and afterward due to a new fact or discovery, the judgment is reversed or the person is pardoned concluding the new fact or discovery such that it reflects an adverse miscarriage of

justice. Such a person should be compensated as a result of wrongful conviction and punishment except where the new fact or discovery was not disclosed due to the person's own fault.

All signatories to the International Covenant on Civil and Political Rights, are bound to take substantial measures to ensure compensation for wrongful conviction. However, Pakistan has yet to adopt any laws aimed at compensating wrongly convicted individuals.

Foundation of Fundamental Rights (FFR) in its analysis of death penalty appeals of Supreme Court decisions 2010–2018 stated that 39 percent of capital punishment cases result in complete acquittal whereas the average time spent by such individuals in prison is 10 years. 1 in every 10 inmates convicted wrongfully have to wait for 15 years before they can be released (Podgers, 2008). The victims of wrongful convictions suffer financially, physically, and socially due to a flawed criminal justice system. The social impacts stretch far beyond any other factor leaving victims unable to obtain any decent job even after being proven innocent due to felonious history. This factor alone keeps the victims off their social well-being which could otherwise bring them back to having a normal life (Leipold, 2005). A person wrongfully convicted and not given a chance to rejoin society due to lack of societal acceptance of such individuals leaves an eternal mark on the victim which may induce criminal tendencies in the victims rather than rehabilitating them in society. This study highlighted the reasons for wrongfully victimizing individuals in the criminal justice system of Pakistan and proposes the creation of a legal framework for the compensation of victims of wrongful convictions to minimize the effects thereof and also contemplates the method of such compensation depending upon various factors including and not limited to long gaps in hearings, false confessions, improper investigations, the prosecutorial attitude of court officers and fabrication of evidence.

This study also takes into account the available laws and settled principles in Pakistan regarding the compensation of wrongful convictions and the extent to which these laws are applicable. This study also highlights the various compensatory mechanisms and enactments available in other countries especially in Washington State and England with a comparative analysis to curb the effects of miscarriage of justice and the socioeconomic suffering of incarcerated individuals.

Objectives of the Study

1. To know about the prevailing compensatory mechanisms for wrongful convictions in Pakistan.
2. To examine the compensatory laws for wrongful convictions in the US: Washington State and England.
3. To suggest some appropriate and effective legislative model for wrongful convictions in Pakistan that could adequately compensate wrongfully convicted persons.

Methodology

This study employed a comparative research design to examine the compensation frameworks for wrongful convictions in US: Washington State, and England, and to identify gaps in the literature regarding compensation frameworks for wrongful convictions in Pakistan. The study is based on a comprehensive review of relevant laws and statutes, as well as a qualitative analysis of secondary sources such as academic articles, reports, and case studies. Purposive sampling techniques were applied to identify relevant laws, statutes, and secondary sources for each jurisdiction.

Washington State Compensation Framework

This study employed a comparative research design to examine the compensation frameworks for wrongful convictions in US: Washington State, and England, and to identify gaps in the literature regarding compensation frameworks

for wrongful convictions in Pakistan. The study is based on a comprehensive review of relevant laws and statutes, as well as a qualitative analysis of secondary sources such as academic articles, reports, and case studies. Purposive sampling techniques were applied to identify relevant laws, statutes, and secondary sources for each jurisdiction.

US: Washington State Compensation Framework Limitations

However, despite being a pioneer in establishing a compensation framework for wrongful convictions, the Washington State compensation system has its limitations.

One of the most significant limitations is that not all wrongfully convicted persons are eligible to receive compensation. Only exonerees of felony crimes are eligible for compensation, making exonerees of misdemeanors and other crimes ineligible. Moreover, a person who is currently serving time in prison for a crime other than the one for which the claimant was wrongfully imprisoned is not eligible for compensation.

Another limitation is the burden of proof required to establish eligibility for compensation. In Washington State, individuals seeking compensation must prove their innocence by clear and convincing evidence, which is a higher standard of proof than the standard used in criminal trials (National Conference of State Legislatures, 2021). This requirement can be difficult to meet, particularly in cases where evidence has been lost or destroyed, or where there was no DNA evidence available at the time of the trial.

Finally, the compensation framework in Washington State does not provide automatic compensation for all wrongful convictions. Instead, individuals must file a claim with the state and demonstrate that they meet the eligibility criteria. This process can be time-consuming and costly and may deter some

wrongfully convicted individuals from seeking compensation (Innocence Project, 2021).

Overall, while the compensation framework in Washington State provides an important model for Pakistan to follow, there are limitations that must be addressed in the compensatory statute of Pakistan in order to ensure that wrongfully convicted individuals receive just compensation for the harm they have suffered.

England and Wales Compensation Framework

In England and Wales, the compensation framework is based on the Criminal Justice Act 1988, which provides compensation to be awarded to a person who has been convicted of a crime and subsequently acquitted, if it appears to the Secretary of State that the conviction was a miscarriage of justice. The amount of compensation awarded is based on the length of time spent in custody and can be supplemented by additional compensation for loss of earnings and other expenses related to the wrongful conviction (Hoyle & Tilt, 2017).

In England and Wales, the statutory scheme for compensation for miscarriages of justice is provided by Section 133 of the Criminal Justice Act 1988, which ratifies Article 14(6) of the International Covenant on Civil and Political Rights (ICCPR). Those who may apply for compensation for a miscarriage of justice must do so within two years of having their conviction “reversed” or having been granted a Free Pardon. Eligibility for compensation after a quashed conviction is not automatic in England and Wales; the burden rests on the person who has suffered the miscarriage of justice to request compensation from the State and to prove it is deserved. Furthermore, the decision on eligibility for, and determination of, compensation in these circumstances is via a non-judicial process; it is not considered or determined by a court but rather by a public official (the Secretary of State, who determines eligibility, and the Independent Assessor, who decides on the amount of

compensation if the applicant is deemed eligible) The non-judicial nature of the statutory compensation scheme raises issues of accountability. Decisions made by the Secretary of State are not publicly available, eliminating the opportunity for precedent; no reasons are required to be given for eligibility decisions or determination of the compensation amount. Its highly discretionary nature and lack of transparency creates the opportunity for gross arbitrariness (Hoyle & Tilt, 2017).

Provisions for Wrongly Convicted Persons in the Context of Pakistan

In Pakistan, unlike other nations, a falsely convicted person who is exonerated after a lengthy trial does not have a legal claim to compensation. Nevertheless, the Constitution of Pakistan of Pakistan (1973), Section 250 of the Criminal Procedure Code, and bringing a tortious claim against accountable persons under the law of torts are three legal texts that merit mentioning in relation to compensation. These writings are pertinent because they all acknowledge the value of providing compensation to those who have experienced a miscarriage of justice. The International Covenant on Civil and Political Rights of (1966) , which ensures compensation for persons who are unfairly convicted under the law, was signed by Pakistan in 2008. However, in reality, the aforementioned regulations and accords have not been put into practice. Article 4 of the constitution governs how individual rights are to be handled by law in terms of fundamental rights guaranteed by the constitution. The right to life and liberty is further discussed in Article 9, while protections against arrest and detention are discussed in Article 10. According to a report by the Foundation for Fundamental Rights, lower courts in Pakistan held nearly 78% of the death verdicts that Pakistan's Supreme Court later overturned. The Constitution's Article 4 governs the rights of people to be protected by the law. The right to life and liberty is further discussed in Article 9, while protections against arrest and

detention are discussed in Article 10. Over one-third of the people on Pakistan's death row may be absolutely innocent, according to estimates. The appeals procedure to overturn their sentences, however, may take a decade to complete, even if they are innocent, which is why it is said that Justice Delayed is Justice Denied. Numerous articles of Pakistan's 1973 Constitution support the use of a compensation mechanism for persons who suffer as a result of someone else's or an institution's bad behavior. However, the law is not being followed. Miscarriage of justice victims might endure severe social and financial consequences.

The constitution is the supreme law, and it states that many sections that are unfair to someone shall be ignored. Here, a few of the clauses merit highlighting in order to highlight the importance of having legislation regarding remedial content for the individual's right to be treated in accordance with the law (Article 4 of the 1973 Constitution).

Article 4 expressly safeguards a person's fundamental right to treatment in conformity with the law. It becomes ironic when a guy suffers because of the law, which in reality is meant to defend a person's rights. The 1973 Constitution's Article 4 serves as a reminder to detest acts that result in a miscarriage of justice. It states that no action should be conducted that could endanger a person's life, liberty, body, reputation, or property unless it is legal to do so. A person loses his life, liberty, and reputation when he is falsely imprisoned after being convicted of a crime. When he learns that the flaws in our justice system were what led to this abomination happening to him, his socioeconomic life becomes a thing of the past, and he suffers even more, this evil phenomenon has accelerated to hawk-like speed.

Despite these legal provisions, the process of seeking compensation for wrongful convictions in Pakistan is often difficult and lengthy. Many wrongfully convicted individuals face financial and social difficulties as a result of their wrongful

imprisonment, and may not have access to the legal resources necessary to pursue compensation claims.

Comparison and Implications for Pakistan

For Pakistan to develop a compensation framework for wrongful convictions, it is crucial to consider the strengths and limitations of the compensation frameworks in Washington State, England, and Wales. The comparative analysis of compensation frameworks in Washington State, England, and Wales provides valuable insights for developing a compensation framework for wrongful convictions in Pakistan.

Development of a Compensation Framework for Wrongful Conviction in Pakistan

Based on the comparative analysis of compensation frameworks in Washington State, England, and Wales, it is clear that each jurisdiction has its own strengths and weaknesses. However, none of the existing compensation laws fully meets the requirements for a fair and just compensation framework for wrongful convictions in Pakistan.

Therefore, propose a compensation framework for wrongful convictions in Pakistan that takes into account the strengths of the existing compensation laws while addressing their limitations. The proposed compensation framework includes the following elements:

1. **Legislative Intent:** A new compensation law of Pakistan should explicitly provide legislative findings, as the Washington law does. Legislative findings and purpose statements can serve as valuable guidance to judges, lawyers, and claimants.
2. **Eligibility:** All wrongfully convicted persons should be eligible for compensation regardless of the type of crime they were convicted of and whether they were imprisoned or not.
3. **The burden of Proof:** The burden of proof should be on the claimant to show that they were wrongfully convicted. However, the

standard of proof should not be as high as "clear and convincing" evidence or "beyond reasonable doubt."

4. **Judicial Process:** Eligibility for compensation and determination of compensation amount should be considered and determined by a court of law rather than a public official. This ensures accountability and transparency in the process.
5. **Time Limit:** There should be a reasonable time limit for submitting an application for compensation. This time limit should be long enough to give wrongfully convicted persons a fair opportunity to apply for compensation, but not so long that it becomes difficult to determine the facts of the case.
6. **Compensation Amount:** The compensation amount should be determined based on the length of imprisonment, the severity of the crime for which the claimant was wrongfully convicted, and the financial and emotional harm suffered as a result of the wrongful conviction.
7. **Social services:** The compensation scheme should provide social services to help individuals reintegrate back into society after their wrongful convictions. Social services should include counseling, education, job training, and other services to help individuals rebuild their lives.
8. **Expedited Process:** The compensation scheme should have an expedited process to ensure that the wrongfully convicted person does not have to wait for an extended period to receive their compensation. This process should be simple, easy to understand, and accessible to all.
9. **Clear Guidelines:** The compensation scheme should have clear guidelines that outline the eligibility criteria, the amount of compensation, and the process for making a claim. These guidelines should be easy to understand and should be available to the public.
10. **Independent Authority:** The compensation scheme should be overseen by an

independent authority that is not associated with the criminal justice system. This authority should have the power to review claims and make decisions on compensation.

11. **Awareness and Outreach:** The compensation scheme should be accompanied by an awareness and outreach campaign to ensure that wrongfully convicted individuals are aware of their rights and how to access compensation.

Conclusion and Recommendation

The study concluded that there is a need for urgent action to design and implement a compensation framework for wrongful convictions in Pakistan, and the comparative analysis of the laws in Washington State and England offers valuable insights into how this can be achieved. Though there are significant differences in the compensation schemes of the US: Washington State and England and Pakistan could learn from the strengths and weaknesses of each. The comparative analysis also revealed that the compensation laws in Washington State, England, and Wales are effective in providing redress to wrongfully convicted individuals. The study's implications for policy and practice are substantial, as they highlight the need for Pakistan to establish a comprehensive compensation framework for wrongful convictions. The current lack of such a framework may contribute to the continued injustices faced by those wrongfully convicted, and the implementation of a compensation scheme could go a long way in addressing these issues. Additionally, the study's findings may be useful for other countries facing similar challenges in their legal systems.

Therefore, Pakistan needs to develop a well-established compensation framework for wrongful convictions. Pakistan should adopt a new legislative scheme that explicitly articulates the issues of wrongful conviction and compensation, defining eligibility, establishing the procedure for bringing a claim, providing a

schedule of compensation amounts, and offering other related issues. A combination of the Washington and England compensation models might be considered by the stakeholders in Pakistan, to draft its compensation law. Pakistan should consider adopting a comprehensive compensation scheme for wrongful convictions that provide exonerees with a range of benefits, including monetary compensation, counseling, job training, and education. Secondly, Pakistan should ensure that all wrongfully convicted persons are eligible to receive compensation, regardless of the nature of their conviction. Thirdly, Pakistan should ensure that the burden of proof rests on the State rather than the exoneree and that the decision on eligibility for, and determination of, compensation is made by a court rather than a public official. Finally, Pakistan should ensure that the compensation scheme is transparent and accountable and that decisions are publicly available.

The implications of these findings are significant. First, a compensation framework for wrongful convictions in Pakistan could help to rectify some of the injustices that have occurred in the criminal justice system. Second, it could serve as a deterrent to future miscarriages of justice, as law enforcement officials and prosecutors would be held accountable for their actions. Third, it could help to restore the public's confidence in the criminal justice system, which has been undermined by numerous cases of wrongful conviction.

However, the implementation of a compensation framework for wrongful convictions in Pakistan will require significant reforms in the criminal justice system. This includes addressing issues such as police misconduct, false confessions, and inadequate legal representation. Additionally, there may be resistance from certain quarters, such as law enforcement agencies, who may view such a framework as a threat to their authority.

References

- Akbar, A. (2018). Comparative analysis of compensation frameworks for wrongful convictions: Lessons for Pakistan. *International Journal of Law, Crime and Justice*, 52, 109–124.
- Amin, S. (2021). Wrongful Convictions. *Daily Pakistan*. <https://en.dailypakistan.com.pk/16-Jul-2021/wrongful-convictions>
- Amnesty International. (2019). Human rights in Pakistan. <https://www.amnesty.org/en/count-ries/asia-and-the-pacific/pakistan/report-pakistan/>
- CODE OF CRIMINAL PROCEDURE (ACT V OF 1898)
https://www.fmu.gov.pk/docs/laws/Code_of_criminal_procedure_1898.pdf
- Furman, H. P. (2003). Wrongful Convictions and the Accuracy of the Criminal Justice System. *The Colorado Lawyer*. <https://scholar.law.colorado.edu/articles/513/>
- Gross, S. R., & O'Brien, B. J. (2016). Compensation for the wrongfully convicted: A longitudinal study. *Journal of Empirical Legal Studies*, 13(2), 209–241.
<https://onlinelibrary.wiley.com/doi/abs/10.1111/jels.12126>
- Gutman, J. S. (2018). An empirical reexamination of state statutory compensation for the wrongly convicted. *Michigan Law Review*, 116(2), 229–267.
- Hoyle, C., & Tilt, L. (2017). Not innocent enough: State compensation for miscarriages of justice in England and Wales. *Criminal Law Review*, 2017(6), 464–481.
- Innocence Project. (2021). Compensation for the wrongfully convicted. <https://www.innocenceproject.org/compensation-for-the-wrongly-convicted/>
- Khan, I. A., Saleem, H. A. R., Jalal ud Din, H. S., & Jawad, M. (2022). Wrongful conviction and miscarriage of justice. *Competitive Social Science Research Journal (CSSRJ)*, 3(1), 214–227.

- Leipold, A. D. (2005). How the pretrial process contributes to wrongful convictions. *American Criminal Law Review*, 42(4), 1123–1165.
- National Institute of Justice. (2016). *Convicted by juries, exonerated by science: Case studies in the use of DNA evidence to establish innocence after trial*. Washington, DC: U.S. Department of Justice.
- National Registry of Exonerations. (2021). *Exonerations in the United States, 1989–2021*. University of California, Irvine, Newkirk Center for Science and Society.
- OHCHR. (n.d.). *International Covenant on Civil and Political Rights*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- Qayum, S., Farid, S., Shehzad, S., & Zhu, W. (2016). Short Comings of the Criminal Justice System of Pakistan and its Effects on the Rights of Accused Prisoners Wrongfully Convicted or Imprisoned. *Journal of Legal Studies*, 18(32), 13–27. <https://doi.org/10.1515/jles-2016-0015>
- Report, (2019). *The Pakistan Capital Punishment Study A Study of the Capital Jurisprudence of the Supreme Court of Pakistan*, Reprieve & Foundation for Fundamental Rights.
- Ryan, M. J. (2022). Compensation for wrongful conviction and incarceration in the United States. SSRN *Electronic Journal*. <https://doi.org/10.2139/ssrn.4002746>
- The Constitution of Islamic Republic of Pakistan (1973). <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/33863/76773/F1453295923/PAK33863.pdf>
- Washington State Legislature. (2013). *Wrongful conviction compensation*. <http://app.leg.wa.gov/RCW/default.aspx?cite=4.100>
- West's Revised Code of Washington Annotated; Chapter 4.100. Wrongly Convicted Persons. https://www.innocenceproject.org/wp-content/uploads/2016/03/wa_statute3.pdf