

MISCARRIAGE OF JUSTICE IN PAKISTAN: LEGAL FRAMEWORK REDRESSING VIOLATIONS OF THE ACCUSED'S FUNDAMENTAL RIGHTS

Tauqeer Hussain^{*}, Dr. Fakhar Mahmood Makhdoom[†]

Abstract

The legal regime in Pakistan guarantees to protect the fundamental rights of accused in the administration of the criminal justice system. However, the rights are not effectively enforced due to various reasons. Instead, the fundamental rights of accused are violated in terms of wrongful detention, custodial torture, enforced disappearance, malicious prosecution, prolonged pre-trial detention without proof of the guilt and wrongful conviction resulting into miscarriage of justice.

On the other hand, the legal framework does not provide the right to redress explicitly or adequately when these rights are violated by state functionaries. Hence, the existing remedies are either inadequate or ineffective due to immunity clauses or lack of a proper legal framework. Additionally, the courts' practice under Article 199 of the Constitution has been inconsistent and uncertain on this aspect. Resultantly, miscarriage of justice occurs in Pakistan without accountability and the civil liability of the state functionaries has not yet been adequately fixed or determined.

This article attempts to analyze the legal framework relating to civil liability of the state authorities to hold the perpetrators accountable for human rights violations. It looks into various forms of civil remedy and highlights the deficiencies in the legal framework. It delves into the role of the legislature to enact the law in the light of both international best practices and the country's unique socio-economic conditions. The study suggests that the proposed legal framework should be based on the strict liability principle to ensure the effective vindication of the fundamental rights of accused and provide them civil redress. The quantum and mode of redress should reflect principles of justice and fairness, incorporating both monetary and non-monetary redress.

Key Words: The Legal Regime of Pakistan, Fundamental Rights of Accused, Redress, Violations of Fundamental Rights, International Best Practices.

Introduction: Miscarriage of Justice in Pakistan

The 'miscarriage of justice' is a broad term that includes errors of justice such as errors in law, procedure and, errors in fact. The term 'miscarriage of justice' refers to any serious wrong in the justice process involving wrongful accusation, wrongful prosecution, wrongful treatment by the court including wrongful conviction or abuse inside the prison. The miscarriage of justice is the 'error in the justice' or the 'failure of the justice' that may originate from different institutions and occur in different stages or forms.³ It is a miscarriage of justice to arrest an innocent person based solely on accusation or suspicion without just or reasonable grounds and it also includes a perverse verdict in case a court acquits a defendant despite believing he is guilty, or convicts him despite believing not guilty.⁴

Unfortunately, miscarriage of justice is a prevalent phenomenon in Pakistan's criminal justice system⁵ and "Pakistan is one of the countries where human rights including rights of an

^{*} PhD Law, Department of Law, Faculty of Shariah & Law, International Islamic University, Islamabad, Pakistan, toqirh1@gmail.com.

[†] Assistant Professor, Department of Law, Faculty of Shariah & Law, International Islamic University, Islamabad, Pakistan, fakhar.mahmood@iiu.edu.pk.

³ Jiwan Kumar Acharya, Rasmi Regmi, and Andhya Bista, Compensation for the Wrongfully Convicted: A Pressing Need for Statutory Arrangements in Nepal, *Kathmandu School of Law Review*, volume 9 & 10, No. 1, 2021, 92, 90-125. <https://doi.org/10.46985/kslr.v10iS1.2187>.

⁴ "Miscarriage of justice can occur at any stage of the process, starting from the investigation. It is fundamentally wrong to use the phrase 'miscarriage of justice' selectively as if it is related to perverse convictions. This presents a false picture. It is a miscarriage of justice to arrest an innocent man on suspicion alone, keep him in custody for ten days and then release him. Indeed, there is miscarriage of justice when there is a perverse verdict of guilty or a perverse verdict of not guilty." Fazal Karim, and Adeel Shahid Kareem, *Access to Justice in Pakistan* (Pakistan Law House, 2022), 145-146.

⁵ Abdul Ghani, etl, Miscarriage of Justice and Backlog of Criminal Cases: A Case Study of Punjab Pakistan's Courts From (January 01, 2022 to December 31, 2022). (2023). *Journal of Namibian Studies: History Politics Culture*, 34,

accused are adversely violated by the concerned quarters.”⁶ The procedural inadequacies and misuse of process are most significant. As stated earlier, miscarriage of justice entails notions like false accusation, wrongful prosecution, and wrongful conviction.⁷ Often wrongful prosecution ultimately leads to wrongful conviction. The criminal proceedings started with mala-fide intention, corrupt mentality, and lack of due care and attention falls under the term ‘wrongful prosecution’. Therefore, it includes the bogus proceedings initiated by the prosecution against the innocent accused without reasonable and probable cause. It also involves the lengthy and prolonged pre-trial detention of an accused, when it happens due to incompetency of police or prosecution.⁸

Contributing factors and Sufferings of the victims of Miscarriage of justice

Miscarriage of justice occurs due to various factors including negligent or malicious actions or misconduct of police, prosecution, defense lawyers, the court and non-state actors such as media, witnesses, petitioners etc. When police or prosecutorial misconduct is proven, or when prosecution is carried out maliciously or wrongfully, it constitutes a prima facie miscarriage of justice, even if it does not lead to the accused person's conviction or imprisonment. Besides, the conduct of the courts may become a source of miscarriage of justice when there happens a blatant error in interpretation or execution of the law that violates the due process and cause jeopardizes the rights of the accused person.⁹ Generally, the contributing factors takes the shape of false identification, misconduct of the police and prosecution, torture, enforced disappearance, false confession, and political pressure.¹⁰

Once an accused person is exonerated after undergoing criminal justice process, he suffers unimaginable trauma, financial losses, humiliation, health issues, and stigmatization, regardless of whatever caused their unlawful arrest and detention, wrongful prosecution and conviction. Undoubtedly, such victim of miscarriage of justice suffers a lot and sometimes he is deprived from any moral and social support of his family and friends and his reputation deteriorates after any accusation and criminal prosecution.

Unfortunately, these obvious sufferings and serious injustices are taken vary causally or even neglected by the state justice system, treating them as rare mistakes and legitimate costs. Instead of ensuring and providing redress to such victims, the state tries to escape it duty through justifying and seeking exemptions from its obligation, that is the protection of the

1494-1512. <https://doi.org/10.59670/jns.v34i.2822>; Imtiaz Ahmad Khan, Hafiz Abdul Rehman Saleem, Hafiz Shah Jalal ud Din, Muhammad Jawad. “Wrongful Conviction and Miscarriage of Justice”. *Competitive Social Science Research Journal* 3, no. 1 (March 29, 2022): 214, 214–227. Accessed June 3, 2025. <https://cssrjournal.com/index.php/cssrjournal/article/view/132>; Attia Madni, Rao Imran Habib, and Naureen Akhtar. “Wrongful Prosecution a Miscarriage of Justice: Need for Procedural Reforms in Pakistan”. *Pakistan Journal of Social Sciences* 39, no. 4 (December 31, 2021): 1649-1657. Accessed June 3, 2025. <https://pjss.bzu.edu.pk/index.php/pjss/article/view/791>.

⁶ Muhammad Tariq Mahmood, *Rights of Accused Under International Human Rights, Islam and Domestic Legislation of Pakistan*. PhD diss., Selinus University, 2021, p. i.

⁷ Jiwan Kumar Acharya, Rasim Regmi, Sandhya Bista, Compensation for the Wrongful Convicted, Kathmandu School of Law Review, 92.

⁸ Imtiaz Ahmad Khan, et al, Wrongful Conviction and Miscarriage of justice, *Competitive Social Science Research Journal*, 215; Abdul Ghani, et al, Miscarriage of Justice and Backlog of Criminal Cases: A Case Study of Punjab Pakistan's Courts From (January 01, 2022 to December 31, 2022). (2023). *Journal of Namibian Studies: History Politics Culture*, 34, 1494-1512. <https://doi.org/10.59670/jns.v34i.2822>.

⁹ Jiwan Kumar Acharya, Rasmi Regmi, and Andhya Bista, Compensation for the Wrongfully Convicted, 92; Ayodhya Dube and Ors. vs Ram Sumer Singh, *AIR* 1981 SC 1415.

¹⁰ Imtiaz Ahmad Khan, et al, Wrongful Conviction and Miscarriage of justice, *Competitive Social Science Research Journal*, 219-220.

rights of the individuals.¹¹ Hence, upon his release, there is no statue offering him adequate civil redress for the time he has been wrongfully prosecuted and incarcerated in prison and, thus the miscarriage of justice wrecks his life. The justice system of Pakistan that entails lengthy trials without any compensation to the innocent accused persons, is flawed and the executive and judicial errors in justice are left without any civil liability.¹² Thus, it seems that the rights of the accused guaranteed by the legal framework are not enjoyed in reality.¹³

The Legal Framework to Protect the Fundamental Rights

The provisions of the Constitution of Islamic Republic of Pakistan, 1973 provide certain guarantees to protect the rights of the all individuals including of the accused persons. These guarantees have both substantive and procedural contents and are directly or indirectly related to the criminal procedure, and are viewed as a mini-Code of criminal procedure.¹⁴

Amongst the fundamental rights articulated in Chapter two of the Part II of the Constitution, some of the rights are guaranteed in absolute terms and others are not so phrased. Thus, the courts are to interpret them as absolute rights or otherwise. The rights which are absolute, they are not to subject to any other law restriction, whereas the rights that are not absolute, they are subject to law or subject to reasonable restrictions imposed by law.¹⁵

For instance, Article 14 of the Constitution states that “The dignity of man and, subject to law, the privacy of home, shall be inviolable.” The Supreme Court of Pakistan, in one of its famous judgments held that “the dignity and self-respect of every man (and woman) has become inviolable and this guarantee is not subject to law but is an absolute guarantee. Accordingly, in all circumstances, the dignity of every man (and women) is inviolable.¹⁶ It follows that the privacy of home is not an absolute right and the right to dignity is an absolute right.¹⁷

On the other hand, Articles 9 and 15 of Constitution provide for the right to security of life and liberty and the freedom of movement respectively but not in absolute terms. The former is subject to law providing death penalty in certain cases and the latter is subject to the law of extradition.¹⁸

Similarly, there are rights which are explicitly incorporated in the Constitution like right to life, liberty, and protection against retrospective punishment, some fundamental rights are not so explicitly granted but they are closely attached with the basic express rights. Hence, they too are treated as fundamental rights. For instance, in *Shehla Zia* case, the Supreme Court interpreted the right to life to include “all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally.” These rights are termed as penumbras of fundamental rights as they are “grey area of implicit rights existing somewhere between explicit statement in a constitutional provision and a total silence.”

In any case, whether the fundamental rights are absolute or qualified, express or implied, they are to be protected and not to be abrogated or waived by the government.¹⁹ In

¹¹ Jiwan Kumar Acharya, Rasim Regmi, Sandhya Bista, Compensation for the Wrongful Convicted, Kathmandu School of Law Review, 124.

¹² Imtiaz Ahmad Khan, et al, Wrongful Conviction and Miscarriage of justice, *Competitive Social Science Research Journal*, 215.

¹³ Muhammad Tariq Mahmood, *Rights of Accused Under International Human Rights, Islam and Domestic Legislation of Pakistan*. PhD diss., Selinus University, 2021, pp. 11, 178 and 181.

¹⁴ Fazal Karim, and Adeel Shahid Kareem, *Access to Justice in Pakistan* (Pakistan Law House, 2022), 157.

¹⁵ Fazal Karim, and Adeel Shahid Kareem, *Access to Justice in Pakistan* (Pakistan Law, 157).

¹⁶ Suo Motu Constitutional Petition no. 9 of 1991, 1994 SCMR 1028.

¹⁷ Fazal Karim, and Adeel Shahid Kareem, *Access to Justice in Pakistan*, 157.

¹⁸ Muhammad Shahid v. Federation of Pakistan, PLD 2018 Islamabad 258; Nasrullah Khan Hanjra v. Ministry of Interior Govt of Pakistan, PLD 1994 SC 23.

¹⁹ Waris Meah v. State PLD 1957 SC; Govt of Pakistan v. Akhlaq Hussain PLD 1965 SC 527; Pakistan Muslim League(N) v. Federation of Pakistan PLD 2007 SC 642.

this paper, however, focuses only into the aspect of civil liability of the State for the violations of fundamental rights of accused.

Enforcement Mechanism of Fundamental Rights

The Constitution of Pakistan not only provides the fundamental rights but it also codifies and guarantees the remedies for their enforcement. Both Article 199 and 184(3) of the Constitution explicitly provide the remedies for the enforcement of fundamental rights guaranteed in the Constitution. These remedies include the famous writ remedies like *mandamus*, *prohibition*, *certiorari*, *quo warranto* and *habeas corpus*. However, Article 199 (1)(c) seems to be more inclusive as it empowers the High Court to provide any adequate redress for the enforcement of the fundamental rights.

Yet, it is important to examine how the courts actually exercise their powers to enforce the fundamental rights of the accused when these rights are violated by state officials during the criminal justice process. While courts sometimes award monetary compensation for such violations, their approach is often inconsistent, irregular, and uncertain, largely due to the absence of a comprehensive legislative framework for redress, even in cases where the accused is ultimately acquitted on merit.

It has been noted with concern that courts, at their discretion, rarely use remedies or forms of reparation other than monetary compensation. Moreover, in several cases, courts have explicitly stated that the existing legal framework lacks adequate remedies for wrongful violations of the accused's fundamental right to liberty.²⁰

If courts leave the victims of fundamental rights violations to pursue civil tort remedies, bearing the burden of expensive, complicated litigation and prolonged court proceedings, they fail to effectively fulfill their role as protectors and guardians of the constitution and the people's fundamental rights. Regarding court practice, the Supreme Court has consistently affirmed the established principle that courts cannot, and should not, create rights, liabilities, or obligations that lack a legal basis.²¹

In the absence of a suitable statutory framework, the practice of providing remedies remains ambiguous, unregulated, arbitrary, unclear, and uncertain. To eliminate this uncertainty, public law redress—including both monetary and non-monetary compensation for victims of fundamental rights violations—should be regulated through an appropriate statutory framework. For this purpose, the legislature must establish clear provisions in the public law to ensure adequate remedies for victims of miscarriages of justice, since the purpose of public law is not only to civilize public power but also to assure citizens that they live under a legal system designed to protect their interests and safeguard their rights.²²

Civil liability of the State for Human Rights Violations

Civil liability for human rights violations is a very significant area of contemporary legal debates. In last few decades, there happened notable developments for the emerging possibility of civil claims to hold the state accountable. In many jurisdictions, the litigants employ the law of torts for redressing human rights violations, and some states have adopted the course of statutory remedies that is enacting specific legislation to redress human rights violations. One such example is the US Alien Tort Statute that permits litigation for the accountability of the perpetrators of certain violations of international law.²³ Besides,

²⁰ For instance, *Muhammad Hussain v. State* 1995 PCr.LJ 488; *Tariq and Others v. State* PLD 1995 SC 34; *Muhammad Shabbir v. State* 2010 YLR 1379 Lahore.

²¹ *Justice Qazi Faez Isa v. The President of Pakistan* PLD 2021 Supreme Court 2021.

²² Muhammad Tariq Masood, "Fundamental Rights: Prospects of Compensatory Jurisprudence in Pakistan." *PLD* (July 2020): 66.

²³ Ekaterina Aristova, Catherine O'Regan, 'Editors' Introduction' in *Civil Liability for Human Rights Violations: A Handbook for practitioners*, 2, https://www.law.ox.ac.uk/sites/default/files/2022-10/3_civil_liabilities_for_human_rights_violations_editors_introduction.pdf.

constitutional remedies are yet another way of redressing human rights violations. Further, the victims of human rights violations may bring an ancillary civil action as part of criminal proceedings and the law of unjust enrichment or restitution.²⁴

The law of civil remedies can be an important tool to seek compensation for human rights violations, but it remains only one of the many strategies available to claimants. Other legal remedies include criminal law, administrative law, judicial review and non-judicial mechanisms such as human rights commissions.²⁵

The paper attempts to examine the legal framework of Pakistan regarding redressing violations of fundamental right of the accused on the basis of doctrine of strict liability.²⁶ The strict liability doctrine signifies that civil liability of the governments and corporations is to be judged by the same rule that govern private defendants, since it is unjust for a small number of individuals to shoulder the consequences of errors in the criminal justice system when the entire society benefits from it.²⁷

According to Professor Edwin M. Borchard, the strict liability theory holds that when a significant endeavor like the administration of criminal justice causes an error or accident, the community benefiting from that endeavor should bear the loss suffered by the victim, rather than the injured individual alone.²⁸

Strict liability serves as a pertinent theoretical framework offering both a legal and conceptual foundation for understanding the state's duty to safeguard fundamental rights and ensure redress for any miscarriage of justice. Grounded in this framework, the study examines the legal and institutional mechanisms available to hold the state accountable for remedying violations of the accused's fundamental rights in Pakistan.

Civil Remedies for Miscarriage of Justice in Pakistan

It is unfortunate that the victims of miscarriage of justice have to face significant challenges and issues in obtaining civil redress for the violations of their fundamental rights. This is due to the reasons that the current legal regime of Pakistan lacks an effective legal or statutory framework to provide civil redress to the victims of miscarriage of justice.²⁹ Hence, the victims of miscarriage of justice are deprived from the civil redress and hence are vulnerable despite of the constitutional guarantee of justiciability of their fundamental rights.

In this regard, it is also important to understand about the possible avenues to provide redress to the victims of miscarriage of justice. These avenues may include private remedy for imposition of tortious liability, compensatory petition to enforce fundamental rights, ex-gratia payment, and specific statutory redress. Among these avenues, however, statutory redress mechanism is considered as the best avenue as it can comprehensively cover all the possible

²⁴ Ekaterina Aristova, Catherine O'Regan, 'Editors' Introduction' in Civil Liability for Human Rights Violations, 7.

²⁵ Ekaterina Aristova, Catherine O'Regan, 'Editors' Introduction' in Civil Liability for Human Rights Violations, 10.

²⁶ "Strict liability does not depend on proof of negligence or intent to do harm but that is based instead on a duty to compensate the harms proximately caused by the activity or behavior subject to the liability rule." Garner, *Black's Law*, 1099; The strict liability is applicable to civil and criminal law, under which a person is legally responsible for the consequences flowing from an activity even in the absence of fault or criminal intent, whereas vicarious liability requires liability of a person without personal fault for the criminal conduct of another (usually an employee or dependent). Imran Ahsan Nyazee, *General Principles of Criminal Law: Islamic and Western*, (Islamabad: Shariah Academy International Islamic University, 2007), 116.

²⁷ Lauren C. Boucher, "Advancing the Argument in favour of State Compensation for the Erroneously Convicted and Wrongfully Incarcerated," *Catholic University Law Review* 56, no. 3 (2007):1072.

²⁸ Edwin M. Borchard, State Indemnity for Errors of Criminal Justice, *The Annals of the American Academy of Political and Social Science* 52 (March 1914): 110.

²⁹ Attia Madni, Rao Imran Habib, and Naureen Akhtar. "Wrongful Prosecution a Miscarriage of Justice: Need for Procedural Reforms in Pakistan". *Pakistan Journal of Social Sciences* 39, no. 4 (December 31, 2021): 1651, 1649-1657. Accessed June 3, 2025. <https://pjss.bzu.edu.pk/index.php/pjss/article/view/791>.

aspects related to redress, and the state would be bound to provide the redress as a matter of right.

Thus, any proposed statutory scheme should provide civil redress to every accused individual whose fundamental rights have been violated in criminal justice process excluding the cases of procedural technicality. Nevertheless, the violations of fundamental rights of accused should be dealt with broadly without differentiating between factual innocence or legal innocence and procedural error.³⁰

As for the mechanism of compensation, the law may establish a specific government department or institution to provide such redress. Other alternative mechanism could be through petitions to some judicial authority. The law may adopt any of the above mechanisms to provide redress, ensuring holistic and comprehensive compensatory measures covering both pecuniary and non-pecuniary compensation to the aggrieved individuals. The law should also specify about the *modes operandi* and the mechanism of generating funds for such payments. For this purpose, the law may include provisions for allocating budget for such compensation.³¹

One of the options for generating such fund could be possible through the contribution of all relevant government departments including police department, prosecution, judiciary, prisons, and the Law Ministry to ensure their responsibility and accountability for miscarriage of justice. Alternatively, a specified agency or department funded by the State could be mandated for the compensation of the victims of miscarriage of justice. In any case, a progressive enactment is required for compensating the aggrieved persons after thoroughly discussing all the relevant aspects.

The Legal Framework of Pakistan enforcing Civil Liability/Redress

Apart from the penal redress whereby the criminal may be brought to justice by invoking the punishment provided under the law, the other route of remedy is the civil remedy which is rarely practiced in Pakistan. For instance, in cases of unlawful arrest and detention,³² mere release of the accused is hardly any satisfaction. The person aggrieved must receive compensation or redress for the agony, mental and physical torture, financial loss, and loss of reputation which are necessary concomitants of false imprisonment of an accused.³³

The concept of civil redress is somewhat acknowledged in the legal framework of Pakistan hence is available in the provisions of Pakistan Penal Code (PPC), 1860 and Code of Criminal Procedure (CrPC), 1898. For instance, Sections 337-Z of PPC states that "The arsh or daman shall be payable to the victim or, if the victim dies, to his heirs according to their respective shares in inheritance."

Similarly, Section 338-G of PPC authorizes the Government to make rules to actualize the provisions relating to *diyat*, *arsh* and *daman*.³⁴ It also identifies the areas and matters in which the Government can frame rules. This includes providing mechanism for creation of fund for the purpose of making payment of *diyat*, *arsh* and *daman* of the convicts who are unable to pay on account of poverty and weak financial position. The Government, through its making rules,

³⁰ Jiwan Kumar Acharya, Rasim Regmi, Sandhya Bista, Compensation for the Wrongful Convicted, Kathmandu School of Law Review, 94.

³¹ This has been broadly outlined in the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law (2005), [UN Doc. A/RES/60/147](#). It obliges the states to provide redress, including compensation (pecuniary and non-pecuniary), through judicial or administrative mechanisms.

³² Like in cases where the accused is arrested without any legal authority, or not informed about the grounds of his arrest or when he is not produced before the court of magistrate within 24 hours after arrest.

³³ Fazal Karim, and Adeel Shahid Kareem, *Access to Justice in Pakistan*, 162, 166.

³⁴ Section 338-G(1) of PPC states as "the Government may, in consultation with the Council of Islamic Ideology, by notification in the official Gazette, make such rules as it may consider necessary for carrying out the purposes of this Chapter. (XVI of Pakistan Penal Code relating to offences effecting the human body).

can extend the facility of soft loans out of the said fund to the convicts, release such prisoners on parole by the Court who are confined in jails on account of non-payment of diyat, arsh, or daman, and provide jobs to the said convicts enabling them to disburse the amount paid out of the fund or extended to them through loans. Further, the Government through its rules, can employ mechanism to protect the rights of the victims for the purpose of diyat, arsh and daman and can make necessary rules for any other matter for the aforesaid purposes.³⁵

Similarly, under section 544A of CrPC read with section 546, provides that at the time of convicting a criminal for an offence in which death, hurt, mental torture or psychological injury is caused to any person, the court shall consider and order for the compensating the loss of the victim party in view of the relevant circumstances of each case. The compensation awarded under section 544A of CrPC are to be taken into consideration while awarding compensation in any subsequent suit related to the same matter.³⁶

Besides, section 250 of the CrPC provides compensation against false accusation and frivolous litigation. Under this section, the Magistrate while acquitting the accused, is vested with the power to order payment of compensation by the complainant or informant. This remedy is in addition to any other civil or criminal remedy provided under the law to the acquitted accused.³⁷ However, there are various limitations for the enforcement of this remedy. For instance, the appellate Court acting in revision has no power under this section to make an order awarding compensation to the accused as against the complaint. Thus, one way or the other, the provisions addressing the compensation to the wrongfully convicted or incarcerated persons are either insufficient or not have no adequate enforcement mechanism.³⁸

Alternatively, or additionally, one can file a civil suit for damages against the complainant or informant for false accusation or malicious prosecution.³⁹ This remedy is separate and independent remedy given the common law of torts i.e. to sue for damages for the civil wrong of unlawful detention or wrongful deprivation of personal freedom. This civil remedy of tort_ to sue for compensation for false accusation or unlawful imprisonment_ may arise from a criminal case. However, it is unfortunate, that due to various reasons like lengthy process, or lack of resources, awareness or confidence in the judicial systems, people rarely resort to this remedy.⁴⁰

The real problem in pursuing tort law in Pakistan is that there is no adequate practice of tort law in Pakistan and precedents are not properly developed in this field. Thus, seeking of remedy in lawsuits under the tort law, one has face various hurdles as it is a lengthy, costly and uncertain way to seek the compensation.⁴¹

The Quantum of Redress for the Violations of Accused's Fundamental Rights

The quantum of redress or compensation for violations of the accused's fundamental rights in Pakistan depends on the nature and gravity of the violation a right. Courts take into account factors such as mental torture, stress, social disgrace, and other intangible harms. There is no fixed formula for determining quantum of compensation; rather, courts have to exercise their discretionary power to award what they perceive "just, fair, and reasonable" based on the

³⁵ See Section 338-G(2) of PPC

³⁶ Fazal Karim, and Adeel Shahid Kareem, *Access to Justice in Pakistan*, 162-163.

³⁷ See Section 250 (2) (c) of CrPC; Fazal Karim and Shahid Karim, *Access to Justice in Pakistan*, 163.

³⁸ Fazal Karim, and Adeel Shahid Kareem, *Access to Justice in Pakistan* (Pakistan Law House, 2022), 162-163

³⁹ Asghar Ali v. Muhammad Asghar, 2025 MLD 1, Lahore; Muhammad Yousaf v. Abdul Qayyum, PLD 2016 SC 478.

⁴⁰ Fazal Karim, and Adeel Shahid Kareem, *Access to Justice in Pakistan* (Pakistan Law House, 2022), 163, 165, 166.

⁴¹ Imtiaz Ahmad Khan, et al, Wrongful Conviction and Miscarriage of justice, *Competitive Social Science Research Journal*, 222.

facts and circumstances of each case.⁴² The “rule of thumb” for compensation is based on judicial discretion focused on principles of fairness and justice.⁴³

The courts emphasize respecting the inviolability of dignity and personal liberty, awarding compensation primarily for intangible harms, and ensuring redress serves both as restitution for victims and deterrence against future violations. Overall, courts seek to balance adequate compensation with equitable justice considering each case’s context. Often, the compensation amounts awarded by courts differ substantially from the sums claimed by victims, reflecting judicial moderation aimed at fairness and justice.⁴⁴

Inadequacy of the Legal Framework for Civil Liability

Though there are various provisions of the Constitution stressing for the inviolability of the fundamental rights of accused but there is no single express provision stating for the right of compensation, due to which the Courts do not realize it to their responsibility to provide compensation to the victims of the violations of fundamental rights of the people including innocent accused persons.

Besides the Constitution, there is no specific legislation that provides adequate redress to the aggrieved accused who is subsequently acquitted after undergoing a lawful detention that may have resulted due to some wrongful action of public servant or ordered and supervised by the judicial authority. Despite of the “double presumption” of innocence earned by the acquitted persons,⁴⁵ there is no express provision in the legal framework about the civil redress or liability for compensating the acquitted accused persons even when they have suffered a lengthy pre-trial detention resulting into violations of his fundamental rights.

State Responsibility under International Law

As discussed above, the principle of state responsibility for wrongful actions is well-established both in international and domestic law.⁴⁶ The state of Pakistan, as a member of the international community, has its certain international obligations under International Law. For this reason, the role of the state is often criticized for lack of any adequate action against enforced disappearance, involuntary abduction, or lengthy preventive or pre-trial detention that are serious violations of human rights.⁴⁷

Pakistan has signed to the number of international human rights instruments that clearly enjoin upon its member states to provide redress to the victims of miscarriage of justice when their innocence is proved after their acquittal. The member states are under obligation to

⁴² Mari gas co. ltd. and 2 others v. Abdul Rehman 2017 YLR 2505; Abdul Rehman (plaintiff) vs chairman m/s. Mari gas, 2015 MLD 61; Murtaza Ali v. Sabir Ali Bangash [2015 YLR 1239]; Mubashir Ahmad v. Syed Muhammad Shah through legal heirs (2011 SCMR 1009)

⁴³ Mari gas co. ltd. and 2 others v. Abdul Rehman 2017 YLR 2505; Abdul Rehman (plaintiff) v. chairman m/s. Mari gas, 2015 MLD 61, Qazi Dost Muhammad V. Malik Dost Muhammad, 1997 CLC 546; Naila Sabir Khan, “Remedies Against a Wrong Doer and Its Limitations,” *PLJ Law Site*, 2013.

⁴⁴ Munawar Ali Abbasi vs. SEPCO, through Chief Executive Sukkur and ors, Civil Revision Application No. S-65 of 2018, Mari gas co. ltd. and 2 others v. Abdul Rehman 2017 YLR 2505; Abdul Rehman (plaintiff) vs chairman m/s. Mari gas, 2015 MLD 61

⁴⁵ Muhammad Shafi v. Muhammad Raza and another, 2008 SCMR 329; Yar Muhammad and 3 others v. The State, 1992 SCMR 96; Muhammad Yaqoob v. Manzoor Hussain and 3 others, 2008 SCMR 1549; State and others v. Abdul Khaliq and others, PLD 2011 SC 554.

⁴⁶ International legal instruments like Article 14(6) of the International Covenant on Civil and Political Rights (ICCPR) and domestic laws (e.g., section 133 of the UK Criminal Justice Act 1988) require the state to provide compensation to the individuals who have suffered due to a miscarriage of justice. However, However, they do not specify any individual department(s) to contribute to a compensation fund.

⁴⁷ Muhammad Imran Ali, *Unveiling Shadows: Jus Cogens Imperative to Criminalize Enforced Disappearance in Pakistan*, *Vietnamese Journal of Legal Sciences*, Vol. 09, No. 02, 2023, pp. 90-114, 102.

provide the redress mechanism for such victims. Pakistan is a signatory party to the International Covenant on Civil and Political Rights 1966 that guarantees to provide remedy to the wrongfully convicted persons in accordance with the law. Under this Covenant, the persons whose legal rights have been violated are entitled to compensation. Article 9(5) specifically states that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”. This obligation is not yet adequately embodied and practiced in the legal framework of Pakistan.

Similarly, Article 14(6) of the ICCPR states “When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”

More specifically, The UN General Assembly adopted in December 2005 a Resolution No. A/RES/60/147 (the UN Resolution) that acknowledges the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. The right to compensation encompasses not only monetary losses but also non-monetary losses such as mental and physical harm, lost opportunities including employment, education and social benefits, material damages and loss of earning potential, moral damage, cost required for legal and expert assistance, medicine and medical services and psychological and social services. Besides, the victims are entitled for rehabilitation, satisfaction, and guarantees of non-repetition of violation.

These Basic Principles and Guidelines explain the fact that the existing International human rights obligation “do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms.”⁴⁸

Thus, the provisions of international law are very clear as for the state obligation to redress the losses of the victims of miscarriage of justice.⁴⁹ However, due to deficient legal system of Pakistan, the victims have to pay the price for this monstrous prejudice. To make the fair trial standards fully consistent with international norms, Pakistan should incorporate right to compensation in its legal framework for the individuals who become victims of miscarriage of justice.⁵⁰

States’ practices regarding Civil Remedies for human Rights violation by Public Authorities

All states recognize the right to life, liberty, and human integrity but differ in providing civil remedies for violations by public authorities. Common law and some civil law jurisdictions apply the same civil liability rules to both private and public defendants, while others, like Colombia, Mexico, China, France, and Turkey, have specialized frameworks or administrative laws governing public authorities' liability. Most states also recognize vicarious and strict liability doctrines, as well as joint and several liability for multiple tortfeasors.

⁴⁸ UN General Assembly Resolution No. A/RES/60/147 (2005). <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

⁴⁹ Regional international human rights instruments, like Article 3 of the European Convention on Human Rights and Article 10 of the American Convention on Human Rights also provide for compensation to the victims of miscarriage of justice.

⁵⁰ Nasir Majeed, Arshad Nawaz Khan, Ayesha Asif, “The requirement of a fair trial in International and Pakistani legal framework: A critical Analysis” *Pakistan Languages and Humanities Review*, January-March, 2022, Vol. 6, No. 1[193-203], 197, 2001

Monetary compensation is the most common remedy, though injunctions, declaratory relief, and restitution are also used.⁵¹

In numerous jurisdictions, civil remedy laws serve as an effective means to hold public institutions and private individuals accountable for human rights infringements. Across many legal systems, civil remedy laws tend to evolve in response to societal demands and are likely to continue progressing in this area. However, it is clear that civil claims are not always an ideal means for addressing human rights violations. Certain violations may lack a direct civil cause of action. Moreover, civil remedy laws tend to focus on past harm and typically do not aim to uncover underlying causes or offer solutions to prevent recurring patterns of abuse beyond the individual case.⁵²

As for eligibility criteria to determine who should be compensated under the compensation statute, states have different approaches.⁵³ However, it is pertinent to mention that the procedural obstacles limit the effectiveness of civil claims in promoting human rights accountability. While these barriers differ across jurisdictions, commonly highlighted challenges include the allocation of the burden of proof, difficulties in gathering and presenting adequate evidence, challenges in initiating collective actions, the high costs associated with litigation, the lack of contingency fee systems, lengthy durations of legal proceedings, and, in certain instances, insufficient compensation awards.⁵⁴

Islamic Law on Civil Liability of the State for Miscarriage of Justice

Pakistan is an Islamic state and its Constitution declares Islam as State religion. It acknowledges the sovereignty of Almighty Allah and guarantees about the fully observance of Islamic principles.⁵⁵ Article 227(1) of the Constitution of Pakistan provides for the conformity of all laws of Pakistan to the injunctions of Islam. Further it was held by the Supreme Court of Pakistan in *Zaheeruddin v. State* 1993 SMCR 1718 that “every man-made law must now conform to the Injunctions of Islam as contained in Quran and Sunnah of the Holy Prophet. Therefore, even the fundamental Rights as given in the Constitution must not violate the norms of Islam”. Thus, the principles Islamic law, are substantive part of the legal system of Pakistan and have binding effect. The Supreme Court of Pakistan has interpreted that “the fundamental rights as given in the Constitution, therefore, must not violate the norms of Islam”.⁵⁶

Islamic law does recognize the state liability in cases of miscarriage of justice. While individual officials may be shielded from personal liability if they acted sincerely, the state through the public treasury is obligated to compensate victims or their heirs, thereby ensuring accountability and safeguarding justice.⁵⁷ The classical jurists held that if the state, its agents, or judges wrongfully cause harm—such as unjust imprisonment, confiscation of property, or

⁵¹ Ekaterina Aristova, Catherine O'Regan, 'Editors' Introduction' in *Civil Liability for Human Rights Violations*, 7-9.

⁵² Ekaterina Aristova, Catherine O'Regan, 'Editors' Introduction' in *Civil Liability for Human Rights Violations*, 9.

⁵³ Jiwan Kumar Acharya, Rasim Regmi, Sandhya Bista, *Compensation for the Wrongful Convicted*, Kathmandu School of Law Review, 117.

⁵⁴ Ekaterina Aristova, Catherine O'Regan, 'Editors' Introduction' in *Civil Liability for Human Rights Violations*, 9-10.

⁵⁵ “The principles of democracy, freedom, equality, tolerance, and social justice as enunciated by Islam shall be fully observed.” See Objectives Resolution of the Constitution of Pakistan.

⁵⁶ *Zaheeruddin v. State* 1993 SMCR 1718.

⁵⁷ The Qur'an emphasizes justice as the foundation of governance: “Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice.” (Qur'an 4:58). The Rulers and judges (Qāḍīs) are entrusted as guardians of people's rights, and a miscarriage of justice is a breach of that trust.

even execution based on false testimony—the Bayt al-Māl (public treasury) bears the liability for compensation.⁵⁸

Similarly, The Cairo Declaration of the Organization of Islamic Cooperation on Human Rights acknowledges redress for the victims of miscarriage of justice. The Declaration outlines that “Victims of lawfully proven miscarriage of justice shall have the right to be compensated according to law.”⁵⁹ Similarly, the Arab Charter on Human Rights also incorporated this right by stating that “Anyone who is the victim of unlawful arrest or detention shall be entitled to compensation”.⁶⁰ As for the redress for miscarriage of justice, it further states that “Anyone whose innocence has been established by a final judgment shall be entitled to compensation for damages suffered.”⁶¹

Classical Islamic jurisprudence establishes a foundational principle of state liability for miscarriages of justice, framing the ruler as the trustee (amin) ultimately responsible for the welfare and rights of the citizens. This liability was historically enforced through institutions like the Mazalim Courts which possessed the authority to overturn erroneous verdicts and mandate financial compensation (diyah or jabr al-darr) for the victim from the state treasury (Bayt al-Mal), especially in cases of judicial error or when an individual perpetrator was unable to pay.⁶²

Thus, although Islamic law upholds justice and accountability, including state responsibility for wrongful harm, most Muslim countries including have not yet enacted comprehensive laws on compensation for miscarriage of justice. Therefore, apart from limited judicial interventions, effective legislative frameworks remain largely absent across the Muslim states.

Conclusion:

Pakistan’s Constitution guarantees fundamental rights under Articles 4 and 9, which assure accused person the right to due process and legal protection of life or liberty. Section 250 of the Criminal Procedure Code allows magistrates to grant compensation for false or frivolous accusations if the accused is acquitted or discharged. Unfortunately, this remedy is insufficient and limited only to certain cases. Besides, tort law claims against individuals responsible for miscarriage of justice are theoretically possible, but they are rarely successful because of procedural complications and evidential barriers.

Innocent persons who are wrongfully accused, arrested prosecuted, or convicted becomes victims of miscarriage of justice which typically results from systemic flaws, procedural errors and malpractices within the criminal justice system. Various factors including delays in trials, inadequate investigations, misconduct by prosecutors, unreliable evidence, and procedural errors, contribute to the miscarriage of justice. Victims of miscarriage of justice face severe personal, social, and economic consequences, and mostly do not receive any compensation or support after their release. Pakistan, despite being a signatory to important

⁵⁸ Alā’ al-Dīn Abū Bakr ibn Mas’ūd al-Kāsānī al-Ḥanafī, *Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’ (The unprecedented Analytical Arrangement of Islamic Laws)*, Book LIII: *Adab al-Qāḍī (Duties and of the Qāḍī and Judicial Procedure)*, trans. by Imran Ahsan Khan Nyazee, (Advanced Legal Studies Institute, 2007), 102.

⁵⁹ Article 22(e) of the Cairo Declaration of the Organization of Islamic Cooperation on Human Rights 2021, https://www.oic-oci.org/upload/pages/conventions/en/CDHRI_2021_ENG.pdf, Accessed August 25, 2025.

⁶⁰ Article 14(7) of the Arab Charter on Human Rights, 2004, Accessed on August 28, 2025 <https://digitallibrary.un.org/record/551368?ln=en&v=pdf>.

⁶¹ Article 19(2) of the Arab Charter on Human Rights, 2004.

⁶² See, for instance, Al-Kasani, Ala al-Din. *Bada’i’ al-Sana’i’ fī Tartīb al-Shara’i’* (A Hanafi legal text that explicitly states compensation for judicial error is due from the Bayt al-Mal). Abu al-Hasan Al-Mawardi, *Al-Ahkam al-Sultaniyyah wa al-Wilayat al-Diniyyah* (The Ordinances of Government), This classic text of Islamic public law details the structure and function of the Mazalim courts and the state's role in administering justice.

international conventions like the ICCPR, lacks a comprehensive legal mechanism to compensate such victims of miscarriage of justice.

The judiciary lacks adequate safeguards to prevent cases of miscarriage of justice, and it is often difficult for victims to seek redress for violations of their fundamental rights. Many such cases are not reported or poorly documented, reflecting institutional neglect. Even when innocent individuals are acquitted, they frequently experience stigma and do not receive financial compensation or the social security programs that could help them reintegrate into society. The inadequate legal framework often fails to bridge the gap between formal rights and actual protection for the victims of miscarriage of justice. Addressing these challenges will require structural reforms, political commitment, and fulfillment of international human rights obligations to ensure justice and protection for all citizens.

Though the Pakistan's legal framework includes basic constitutional protections and some procedural rules, yet it has systemic shortcomings, lacks robust compensation mechanisms, and provides weak or no institutional support for victims of miscarriage of justice. Therefore, urgent reforms including improved procedural safeguards, statutory laws that comprehensively compensate the victims, transparent review procedures, and rehabilitation programs aligned with international standards, are the need of the hour.

This paper highlights the need for dedicated legislation to compensate victims, given the current lack of adequate remedies. It suggests key considerations for drafting such laws and recommends establishing an independent, accessible body to handle claims and determine compensation amounts. The paper also proposes creating a separate fund to ensure resources are available for compensatory damages. Victims should be compensated unless the exoneration is based on a mere procedural technicality. In the absence of such technicality, the accused persons could have been convicted otherwise.

It identifies that the current legal framework suffers from fundamental flaws, primarily due to its outdated procedural structure. A significant deficiency is its failure to provide adequate compensation to victims. Individuals who have been wrongfully prosecuted, incarcerated or convicted deserve not only to be freed from injustice but also entitled to receive compensation for the time they were unjustly incarcerated. However, Pakistan currently lacks an adequate legal framework to offer monetary compensation to these victims.

Although remedies such as remuneration and damages are available under tort law in cases of malicious prosecution, they are not adequate for the victims of miscarriage of criminal justice. Apart from this, there is no comprehensive policy or legislation addressing compensation specifically for these victims. The Constitution guarantees the right to liberty, but this safeguard alone is insufficient without effective legal remedies to ensure redress. Therefore, there is an urgent need for dedicated legislation to provide fair and timely compensation to those wrongfully imprisoned, reinforcing the principle that justice must be both done and seen to be done.

Pakistan should enact comprehensive remedial legislation that provides both monetary and non-monetary support to the victims of miscarriage of justice. Such laws should ensure speedy access to essential subsistence support and services, facilitating the effective reintegration of the victims into society. This includes housing, employment training, mental health counseling, and other critical assistance required for full rehabilitation. Such reforms will uphold fundamental rights, promote fairness, and restore confidence in the criminal justice system by addressing the needs and rights of victims of miscarriage of justice.