



RANDOM WRONGFUL CONVICTION AND EXONERATION, RARE COMPENSATION: A NEED FOR A COMPENSATION STATUTE IN BANGLADESH

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Abstract

It is extremely difficult, not impossible, to determine the number of wrongful conviction in Bangladesh, mainly for the lack of initiative by the government and want of awareness among general people, advocates, rights groups, judges and others. It can undoubtedly be said that in Bangladesh many unjustly convicted are spending their lives in prison with intolerable sufferings and some of them have been released without any compensation. By analyzing the judicial decisions of the High Court Division of the Supreme Court of Bangladesh, the paper tries to highlight the frequency of wrongful conviction and exoneration in Bangladesh. This study also focuses the sufficiency of the present statute or tort law for compensating the unjustly convicted persons and highlights how better compensation can be ensured to the wrongfully convicted individuals in Bangladesh after consulting the statutes and States' practices of USA, UK, Canada, Australia, and India

Keyword: wrongful conviction, exoneration, victim

INTRODUCTION

It is strongly believed that no one will ever be convicted for the crime in which he or she had no involvement (Jones, 2012: 2). Unfortunately, it is frequently happening across the globe. This unjust or wrongful conviction causes burning pains, sufferings, and irreparable loss to the victim, victim's family, society, and the State. The wrongful conviction is a severe injustice for which satisfactory remedies are arguably lacking

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(Zdenkowski, 1993:105), yet considering the impacts of wrongful conviction, the provision of compensating the wrongfully convicted was incorporated in the criminal justice systems of many countries of the world like USA, UK, and Australia. Even before enacting state legislation, the exonerees were compensated under a civil right claim or tort claim or private bill option in some countries (Bernherd, 2009: 409). Although monetary compensation can hardly make up for years wrongful imprisonment, it is the least a State can do for the victims not getting any other better alternative (Mostaghel, 2011:403).

Compensating the unjustly convicted persons is hardly a new notion in some developed countries like the USA, UK (Borchard, 2013) but it is rarely heard in developing countries like Bangladesh where the wrongful conviction and exoneration is the most frequent event (Table-1, below). First, in 1913, the United States introduced no-fault wrongful conviction compensation statute in their legislation (Gutman, 2017: 370). Later on, the concept of compensating the illegal convicted has attracted the consciences of many states' leaders, scholars, and governments resulting in incorporating it in the criminal justice systems of a significant number of States including USA, United Kingdom, Australia, and New Zealand, and so on. Miscarriage of justice is the most common feature of the developing countries of the globe, and Bangladesh is not an exception. In Bangladesh, it is found that in many criminal cases the accused once convicted, later on, the higher court acquitted on the ground that miscarriage of justice was done to him by conviction, but during the arrest to acquittal, a considerable invaluable period from their lives are taken away. For this long-time agony without doing any offence, the victim does not get any compensation or other remedies as the statute is silent on the point of compensation the wrongfully convicted person in Bangladesh. The analysis of the judicial decisions of the apex court of Bangladesh reveals that there is no example of giving compensation to the unjustly convicted except awarding compensation to Abdul Jalil for unlawful imprisonment of 14 years. By analyzing the judicial decisions of the High Court Division of the Supreme Court of Bangladesh, the paper tries to highlight the frequency of wrongful conviction and exoneration in Bangladesh. This study also focuses on the sufficiency of the present statute or tort law for compensating the unjustly convicted persons and highlights how better compensation can be ensured to the wrongfully convicted individuals in Bangladesh.

RESEARCH METHOD

The article examines the criminal appeals, jail appeals and death references decided by the High Court Division (HCD) of the Supreme Court of Bangladesh that have been mentioned in the official website of the Supreme Court of Bangladesh (<http://www.supremecourt.gov.bd/web/>). In doing so, the study collected all the judgments on criminal cases by the HCD from 2011 to 2019 published in the official web site of the Supreme Court of Bangladesh. It did not publish all the judgments pronounced by the HCD during these years; it published only 81 judgments during the eight years from 2011 to 2018. The study did not cover the decisions of 2013, 2014, 2015 and 2018 as a few judgments of these years have been mentioned in this website; only 4 decisions and 2019 was not considered for this study as it is running year.

FINDING AND DISCUSSION

Compensation for Wrongful Convictions

Compensation for unjustly convicted person is hardly a new notion in the world; it has begun to emerge over a century ago at the initiative of Prof. Edwin Borchard (Borchard, 1913: 684). At his initiative, in 1913, the compensatory statutes were enacted in three States- Wisconsin, North Dakota and California, of the United States of America (Borchard, 1941: 202), and the federal law was also passed by the Congress in 1938 for compensating the victims of miscarriage of justice (Borchard, 1941: 202). These enactments were insufficient, imperfect, and less publicized to the general people. In the absence of the compensating statute, an exoneree can approach for legal remedy in three ways in the USA. The exoneree may pursue the state legislature for passing a private bill for awarding compensation for his wrongful conviction or bring a federal civil rights lawsuit against the Government or file a state tort lawsuit (Mostaghel, 2011:410). These systems are less effective, and the exonerees have few possibilities of being successful.

In the last several years, the exonerations of some persons attacked the public consciences and scholars resulting in enacting many national legislations, policies or guidelines for indemnity in a considerable number of countries (Huff). At present in USA 32 States, the District of Columbia, and the Federal Government have passed compensatory statutes for awarding compensation to those who suffered imprisonment for no offence (Innocence Project, 2017). The Innocence Protection Act 2004 is landmark legislation in the arena of compensating the victims of miscarriage of justice. The Act drastically enhanced the compensation limits from 5000 dollars to 50,000 dollars for non-capital cases and 100000 dollars for capital cases for per year in prison (Lincoln and Morrison, 2006: 6). Among 32 states, in 27 states the compensation statutes provides an unchangeable daily or annual compensation amount or modest compensation cap or both. All those states that provide compensation considering only the period of incarceration does not take into count the narratives of the exonerees. It indicates that all the wrongfully incarcerated persons suffer equal and will get equal compensation. For example, in Mississippi a wrongfully convicted person gets Fifty Thousand Dollars (\$ 50,000.00) for each year of incarceration regardless the severity of tortures in the prison and number of felonies (Mississippi Code, 2013, § 11-44-7). Under this code the longest incarcerated individuals will also be deprived of getting justice, as the code prescribes the total amount for each claimant shall not exceed Five Hundred Thousand Dollars (\$ 500,000.00) (Mississippi Code, 2013, § 11-44-7). So the compensation of a ten (10) years wrongfully convicted and twenty or more years wrongfully convicted is same. In Utah, a wrongful convicted shall receive for each year or portion of a year the petitioner was incarcerated, up to a maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah (Utah Code, Post Conviction Remedies Act, Sec. 78B-9-405). The identical provision has been inserted in many states of the USA, i.e., \$50,000 for each year of wrongful incarceration with a maximum of \$750,000 in North Carolina (West's North Carolina General Statutes Annotated, sec. § 148-82), Florida 50,000 dollars per year and maximum 200,000 dollars (FLA. STAT. ANN. § 961.06 (West 2017)). These Acts lack some essentials for ensuring justice to the victims namely the considering the sufferings of the victims, the duration of imprisonment, the complexities of petition. In some states only the compensation cap system has been introduced, for example, Illinois state the

compensation statute gives compensation in three categories like 0-5 years of incarceration cap is \$94,600; 5-14 years = \$188,423; 14+ years = \$ 230,732. These states also failed to ensure justice properly for the wrongfully convicted persons because a wrongfully convicted who spent 14 years in the prison will get compensation total \$ 230,732 and the person who wrongfully remained in prison for 40 or more time will get same amount. Only few states have introduced the provision of considering the circumstances, sufferings of the victims for awarding the compensation. In Alabama, the Division fo Risk Management Committee shall certify to the applicant an amount equal to fifty thousand dollars (\$ 50,000) per year or pro rata amount for the portion of each year of incarceration and the committee shall have the power to recommend some additional amount in addition to the base amount if the circumstances demand so (Alabama Code, 29). In comparison with other statues it has some positive aspects, for instance, considering the circumstances of the victims which is absent in other States Statutes. Importantly, it provides pro rata amount for the portion of imprisonment but it was denied in many statues of the USA. The most health provision of this Act is: it did not include any cap in awarding compensation.

In Canada no law has been passed for compensating the victims for fault of the State agency (Entitlement to Compensation- the Legal Framework, 2015), but under section 696.1 of the Code of Criminal Procedure there is scope of application for compensation to the Department of Justice Criminal Conviction Group and there are many examples of giving compensation to the wrongfully convicted. Steven Truscott who was sentenced to death by hanging for murdering Lynne Harper in 1959 and subsequently in 2007 the Ontario Court of Appeal acquitted him calling his conviction as a miscarriage of justice and granted 5.6 million compensation (Moles and Sangha, 2008), another example is the exoneration of David Milgaard was arrested on May 30, 1969 and charged with the rape and murder of Gail Miller- a crime that had been committed by serial rapist Larry Fisher (Innocence Canada). On January 31, 1970, the jury found David guilty of her rape and murder. Knowing he was innocent, David tried to convince the higher courts of this fact. On January 5, 1971, his appeal to the Saskatchewan Court of Appeal was dismissed, and on November 15 of that year, the Supreme Court of Canada refused him leave to appeal. After a long struggle, on July 18, 1997, DNA testing results confirmed that the semen found in Gail's clothing could not possibly have been David's. Rather, it was Larry Fisher's. Accordingly, David was exonerated from the conviction and the Saskatchewan government has since provided \$10 million of compensation to David and his family for their horrific, decades-long ordeal (Innocence Canada).

The Human Rights Act 2004 incorporated the provisions of compensating the wrongfully convicted and imprisoned individuals in the Australian Capital Territory. Under section 23 of this Act individual who had been convicted and suffered punishment for the conviction order and later on, conviction order is reversed based on the newly discovered facts showing a conclusive miscarriage of justice then the convicted has the right to be compensated according to law (s.23, Human Rights Act 2004). Although this enactment lacks many essentials, yet it is a great development for compensating the wrongfully convicted persons.

UK incorporated the provision of compensation for wrongfully convicted and incarnated individuals in section 133 of the Criminal Justice Act in 1988 (S 133, Criminal Justice Act 1988). Under this Act, the person who has been convicted for any criminal offence and subsequently, his conviction has been reversed or pardoned for discovery of new facts which beyond reasonable doubt proves that there was a miscarriage justice (s. 133.1, Criminal Justice Act. 1988) then that wrongfully convicted has the right to apply

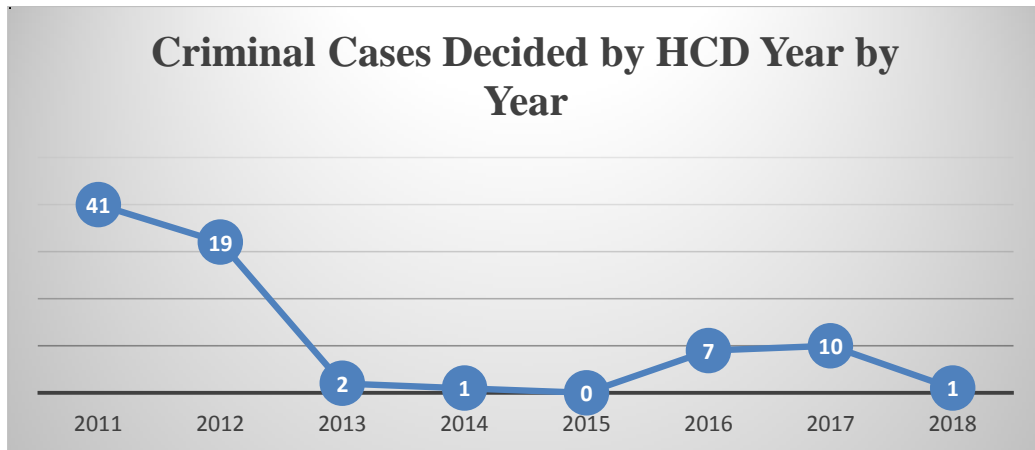
to the Secretary of State for compensation (s.133.2, the Criminal Justice Act 1988). This is a healthy provision that the innocent who is victimized by the miscarriage of justice, has the scope of getting compensation. Most interestingly, even if he is dead his representative will get compensation which may be maximum \$ 1 million for imprisonment at least 10 years or \$ 50,000 for other cases (Lipscombe and Beard, 2015: 8). The law is very specific about the circumstances when an innocent victim can claim compensation for his conviction.

India lacks a criminal legal scheme for articulating State's response for providing compensation for the wrongful prosecution and incarceration of the innocent persons by the miscarriage of justice. Very recently, the Delhi High Court expressed a deep concern regarding unlawful conviction across India and highlighted the need of framing legislation for ensuring compensation to the innocent convicted persons (Baboo Chauhan @ Daboo v. State Government of NCT of Delhi). The concerns of the court have drawn the attention of the Law Commission of India that started wording immediately after the judgment and made its recommendation to the Government of India suggesting amendment of the Code of Criminal Procedure 1898. More interestingly, the Commission submitted a draft bill titled "The Code of Criminal Procedure (Amendment) Bill, 2018". The commission sets out the conditions when it would be considered that miscarriage of justice has been committed and what amounts to wrongful prosecution (Report No. 227, 2018).

Although, with some lacking essentials the compensating the erroneously convicted statutes remain present in many countries of the globe, it remains entirely absent in the legal arena of Bangladesh. So, Justice demands compensation mechanisms for wrongfully convicted, who does not have any connection with the crime but lost almost everything including his valuable time, opportunities of learning, getting jobs, energy, love and affection of the beloved family members and remained in a lonely place named jail for a long time. This vital issue is utterly unaddressed in Bangladesh.

Wrongful Conviction and Exoneration in Bangladesh

Wrongful conviction is a frequent event in criminal cases in Bangladesh. The study has selected and analyzed the criminal cases decided by the High Court Division of the Supreme Court of Bangladesh. It has analyzed only the criminal appeals, jail appeals, and death references as decided by the High Court Division of the Supreme Court of Bangladesh during the years 2011 to 2019. It considered only those criminal cases that have been published in the official web site of the Supreme Court of Bangladesh. The criminal cases decided by the Appellate Division of the Supreme Court of Bangladesh or other special tribunals or courts were not included in this study. The website reveals the following criminal cases that have been decided by the HCD from 2011 to 2018. The study covered only 2011, 2012, 2016, and 2017. It did not consider the decisions of 2013, 2014, 2015, and 2018 because a few judgments of these years have been revealed on the web site. Total 4 criminal appeals, jail appeals and death references of these four years have been included in the official web site of the Supreme Court of Bangladesh. The study analyzed 88 judgments of the HCD in criminal appeals, jail appeals, and death references.



Wrongful Conviction in 2011

It found that in 2011 among 41 cases in 24 cases the convicted persons have been acquitted, only in 14 cases the judgment and decree of the lower judiciary have been maintained and the punishment granted by the lower courts has been reduced in 3 criminal cases. It indicates that in 58.53% cases the HCD granted acquittal whereas only in 34.14% cases the judgment and decree of the lower judiciary have been maintained and in 7.31% cases the punishment pronounced by the lower court has been reduced. In 24 cases in 2011 total 40 convicted persons have been exonerated by the HCD. The List of the exonerees is as follows;

Table 1
The List of Exonerees by the HCD in Criminal Appeals and Death Reference in 2011

Criminal Appeal Nos.	Name/s of Exonerate/s	Punishment
1995 of 1997	Lutfor Rahman	Rigorous imprisonment for 5 years with fine
2565 of 2000	Md. Babul & Md. Rubel	Five years rigorous imprisonment with fine
1250 of 2005 1251 of 2005	Tutul @ Monir Hossain son of Mannan Fakir and Fazlur Rahman @ Badal son of Abdul WahabBepari	Death sentence
4946 of 2006 1017 of 2006	Golzar Hossain and Kabir Ahmed @ Tufan	imprisonment for Life
3504 of 2003	Md. Rafique Ullah	imprisonment for seven years with fine
114 of 2009	Mehedi Hasan and others	
1938 of 1996	Md. Rafiqul Islam alias Rafique	Rigorous imprisonment for life with fine
300 of 1997	Zahangir Sheikh & Emdad	imprisonment for five years with fine

1046 of 1996 25 of 1997	Md. Seru Mia & Md. FaridAhmmad	Rigorous imprisonment for ten years with fine
1257/1993	Md. Saleh Ahmed @ digal	10 years imprisonment with fine
533 of 2006 , 536 of 2006, 537 of 2006,538 of 2006, 539 of 2006	Md. Hazrat Ali, Nobi Hossen Mizan, Faruq & Md. Mohiuddin	Rigorous imprisonment for ten years with fine
807 of 1997	Shapon Bagchi	Rigorous imprisonment for ten years with fine
70 of 1995	Md. Borkat Ali	Discharge from the proceedings
914 of 1996	Altaf Hossain and another	Rigorous imprisonment for ten years with a fine
1315 of 1996	Mokbul Hossain and 2 others	Rigorous imprisonment for six years
1137 of 2006	Fakir Akkas Ali	Imprisonment for 5 years
2451 of 1995	Teli alias Mantu and 4 others	Appellant Nos 1 and 3 rigorous imprisonment for nine years with a fine and appellants Nos. 2, 4 and 5 rigorous imprisonments for seven years
1248 of 1996	Shamsu Miah	Rigorous imprisonment for seven years with a fine
791 of 200	Gazi Ahmed Ali	Imprisonment for 5 years
2707 of 1999	Md. Anowarul Mustakin and another	Rigorous imprisonment for 1 year and 6 months with fine
427 of 199	Md. Sharifullah	Imprisonment for life with fine
589 of 2007	Shah Jahan Badsha	Imprisonment for life with fine
554 of 2007	Abdul Mannan	1 year imprisonment with fine
588 of 2007	Jashim Mira	5 years imprisonment with fine

Total exonerated persons= 40

Out of these 41 cases, in 24 criminal cases, the court granted acquittal of total 40 convicted persons. The court in criminal jail appeal nos. 1250 of 2005 & 1251 of 2005 granted acquittal of Tutul @ Monir Hossain son of Mannan Fakir, and Fazlur Rahman @ Badal son of Abdul Wahab Bepari who have been sentenced to death by the Additional Metropolitan Sessions Judge, First Court, Dhaka. In another 4 criminal appeals, the court granted acquittal of total 5 persons from the sentence of life imprisonment. The HCD exonerated 10 persons who have been convicted by the lower judiciary for 10 years of rigorous imprisonment.

On the other hand, in 8 cases the court granted acquittal of total 19 persons who have been convicted 5 to 9 years rigorous imprisonment. Only the rest 2 cases, the HCD granted exoneration of those who have been convicted for less than 5 years. It is a matter of great regret that the court has wrongfully convicted a good number of persons in a year and most of them were convicted for a long time with rigorous imprisonment. It will be higher than this picture actually as all convicted persons do not prefer appeal or don't have ability to file an appeal or not cautious regarding their legal remedies. In a year the number of unjustly convicted is 40 so what will be the total number since the independence of Bangladesh? Now it is high time to figure out the exact erroneously convicted persons in Bangladesh to compensate them for taking the sufferings for the offences what they did not do at all.

Alternatively, in 2011, in 14 criminal cases, the court maintained the judgments and decrees of the lower judiciary. Out of 14 criminal appeals in 4 cases the lower judiciary granted acquittal and the High Court has maintained that acquittal orders of the lower courts. In the rest 10 cases the HCD affirmed the judgments and decrees of conviction by the lower courts and the court convicted total 10 persons in these 10 criminal appeals.

Table 2
The List of Convicted Individuals by the HCD in Criminal Appeals and Death Reference in 2011

Sl Nos.	Criminal/Jail Appeal Nos.	Names of the Convicted Persons
1	Criminal Appeal No.2048 of 1993	Abul Kalam
2	Criminal Appeal No.1024 of 1996	Md. Selim
3	Criminal Appeal No. 4251/2003	Md. Dulal Sheikh
4.	Criminal Appeal No. 2545/2006	Md. Lutfar Rahman
5	Criminal Appeal No. 8124 of 2009	Md. Jasim Uddin
6	Criminal Appeal No.5489 of 1991	Jalal Ahammad Boyati
7	Criminal Appeal No.936 of 1990	Abdul Jalil alias Jalil Mia
8	Criminal Appeal No.4786 of 1991	Md. Humayun Shaikh
9	Criminal Appeal No.4942 of 1991	Hamidur Rahman
10	Jail Appeal No. 536/ 2007	Rabiul Alam

Total convicted = 10 persons

Unjust Conviction in 2012

The website reveals judgments and decrees of 19 criminal cases of 2012 where the lower courts convicted the appellants. Out of 19 decisions, the court granted acquittal in 10 cases, whereas in 5 cases the court maintained the decision of the lower judiciary and in 4 cases the punishment continued but reduced by the higher judiciary.

Table 3
The list of exonerees by the HCD in Criminal Appeals and Death Reference in 2012

Criminal Appeal Nos.	Name/s of Exonerate/s	Punishment
Jail Appeal No.343 of 2007	Tarique Aziz	imprisonment for ten years
DEATH REFERENCE NO.134 OF 2005	(2)Md. Saiful Haq (3) Marfat Ali (4) Hajrat Ali (5) Amani (6) Yousuf Ali Chowkider (7) Faruque and (8) Md. Harun	Death Penalty
DEATH REFERENCE NO.134 OF 2005	(9) Gholam Mustafa (10) Shahin (11) Leton (12) Enayet (13) Kurban Ali (14)	Imprisonment for life

	Elahi , (15) Nasiruddin (16) Monurruddin (17) Shahid (18) Md.Rafiqul Islam	
Criminal Appeal No.639 of 2003	(19)Nazrul Gazi alias Nazrul Islam	Imprisonment for life
Criminal Appeal No.663 of 2004	(20)Md. Yousuf Sikder, and (21) Badol Mojumder	Imprisonment for life
Jail Appeal Nos.1285 of 2005 and 1286 of 2005	(22) Ikhtiar Rahman (23) Anisa Begum	Imprisonment for life
Criminal Appeal No.1396 of 2005	(24) Tuntu Das (25) Another one	Imprisonment for five years
Jail Appeal No.1836 of 1996	(26) Oli Ahmed	imprisonment for seven years
Criminal Appeal No. 1138 of 1999	(27) Minnat alias Minnat Ali	imprisonment for life
Criminal Appeal No. 1058 of 1999	(28) Ali (29) Md. Solaiman	imprisonment for 10 years

Total exonerated persons= 29

The study found that in 10 criminal appeals a total of 29 individuals were exonerated in 2012 by the HCD of the Supreme Court of Bangladesh. Out of 29 wrongful convicted persons, 7 (seven) innocent appellants were sentenced for death penalty by the lower judiciary, 17 (seventeen) were imposed rigorous imprisonment for life, 3 (three) sentenced for imprisonment for 10 years, 1 imprisoned for 7 years and the rest one imprisoned for 5 years. It reveals that most of the exonerees were inflicted with heinous non-bailable offences like murder. It indicates that in 52.63% cases, the HCD granted acquittal whereas only in 26.31% cases the judgment and decree of the lower judiciary have been maintained and in 21% cases the punishment pronounced by the lower court has been reduced by the upper court. In 5 cases the HCD affirmed the judgments and decrees of convictions of the lower judiciary.

Table 4
The List of Convicted Individuals by the HCD in Criminal Appeals and Death Reference in 2012

Sl.	Criminal Appeals Nos.	Names of the Convicted
1	Criminal Appeal No.413 of 2006	Md. Saiful Islam alias Maznu
2	Criminal Appeal No. 2394 OF 1995	Md. Nur Alam, Md. A. Latif
3	Criminal Appeal No.2962 of 2002	Md. Manzil alias Md. Manzil Miah
4	Criminal Appeal No.2238 of 2002	Md. Haider Alam
5	Jail Appeal No.1050 of 2008	Mohibul Alam

Total convicted individuals= 6 persons

Wrongful Conviction in 2016

The study also analyzed total 7 criminal cases decided by the HCD in 2016. Among these 7 criminal cases, 6 were death references whereas in 4 death references the court reduced the punishment given by the lower court, in 2 death references the previous judgments were maintained and in the rest judgment the convict-appellant Afgan was exonerated. It indicates only in 28.57% cases the judgments and decrees of the lower judiciary have been maintained. In 57.14% cases, the court reduced the punishment given by the lower court of Bangladesh, and in the rest 14.28% cases the court granted exoneration to the wrongfully convicted persons. Out of 7 cases in 2 death references, the court affirmed the convictions of 6 persons as pronounced by the lower judiciary and only one person has been exonerated in Jail Appeal No. 116 of 2011.

Out of four death references, where the HCD reduced the punishment, one is the Death Reference No. 49 of 2011 is an outcome of judgment and order of conviction and sentence dated 31.07.2011 referred by the learned Judge of Nari-O-Shishu Nirjatan Daman Tribunal No. 1, Dhaka to the High Court Division for confirmation under section 374 of the Court of Criminal Procedure. It is found from the judgment that Mohammad Ali is guilty of the charge leveled under section 11(Ka) of the Nari-O-Shishu Nirjatan Damon Ain, 2000 [as amended in 2003] and was sentenced to death with a fine of Tk-5000/ by the Tribunal. The condemned prisoner Mohammad Ali, thereafter, preferred Criminal Appeal No. 5763 of 2011 and Jail Appeal No. 245 of 2011 respectively, challenging the said judgment and order of conviction and sentence. The High Court Division of the Supreme Court heard the death reference along with the above mentioned criminal appeal and jail appeal. The court found that the condemned prisoner was not guilty under section 11(Ka) of the Nari-O-Shishu Nirjatan Damon Ain, 2000 and he was charged under section 304 of the penal code. After examining the relevant documents, the court sentenced to Mohammad Ali to suffer rigorous imprisonment for 10[ten] years with a fine of Tk-10,000/- [ten thousand], in default, to suffer rigorous imprisonment for 01[one] year more.

In other three death references respectively Death Reference No. 70 of 2010, Death Reference No. 68 of 2010 and Death Reference No. 31 of 2010, the court commuted the punishment of death penalty to the life imprisonment considering the pieces of evidence, facts, and circumstances of each case.

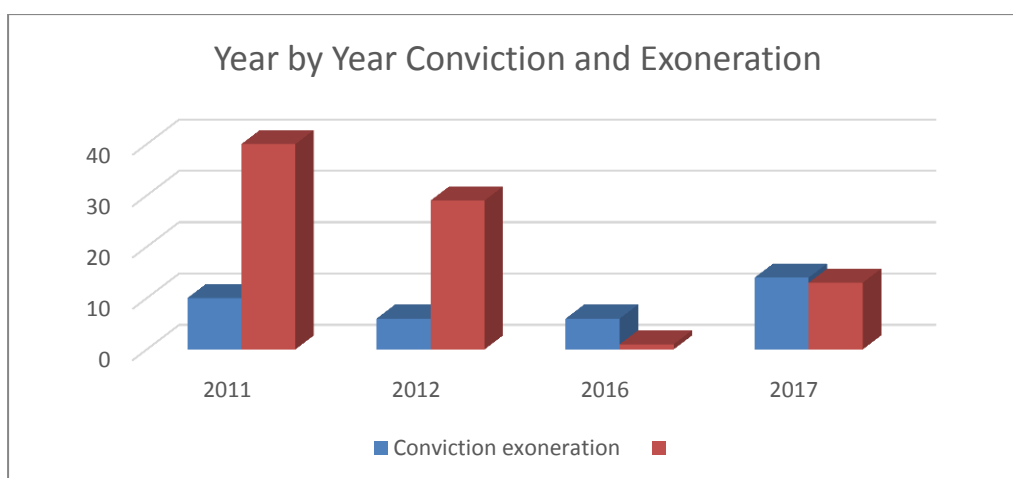
Erroneous Conviction in 2017

It further analyzed the 10 criminal appeals, death references, and jail appeals decided by the HCD in 2017. From studying these judgments, it was found that in 4 cases total 13 persons have been exonerated from the wrongful conviction imposed by the lower judiciary, in 3 cases the previous judgments were maintained and in rest 3 cases the punishment was reduced. It indicates only in 30% cases, the judgments and decrees of the lower judiciary have been maintained. In 30% cases, the court reduced the punishment given by the lower court of Bangladesh and in the rest 40% cases, the court granted exoneration to the wrongfully convicted persons. In 3 cases, the court confirmed the punishment of 14 persons pronounced by the lower judiciary.

The research reveals that wrongful conviction is a common picture in the justice delivery system of Bangladesh, but unfortunately, this misfortune erroneously convicted individuals don't have any remedy in many countries of the globe including Bangladesh.

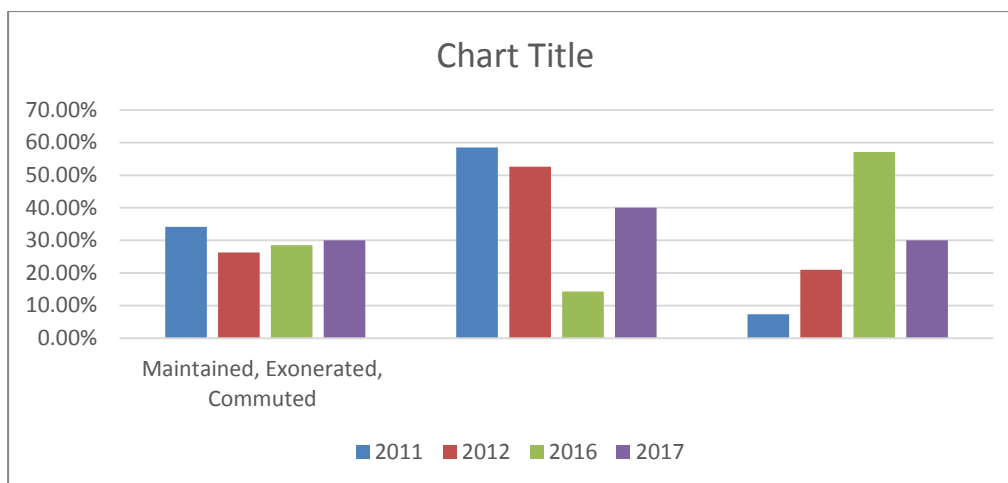
Analysis

In these four years namely in 2011, 2012, 2016 and 2017 total, 83 convicted persons have been exonerated by the HCD of the Supreme Court of Bangladesh respectively 40, 29, 1 and 13 persons. On the other hand in these four years total 36 persons have been convicted by the HCD respectively 10, 6, 6 and 14 persons. The study finds that 83 persons have been wrongfully convicted in these four years whereas only 36 individuals were convicted by the HCD whom the lower courts convicted. The exonerated persons are almost three times in number in comparison to the convicted persons. The following is a chart of comparison between exonerated persons and convicted persons.



The chart shows the number of convictions and exonerations by HCD. It is a very good sign that the rate of wrongful conviction by the lower courts of our judiciary is slightly decreasing, i.e., in 2016, out of 7 persons only 1 has been exonerated and in 2017, the number of exoneration is less than the number of conviction but we see reverse picture in 2011 and 2012.

On the other hand, the analysis of the criminal appeals of the HCD discloses that only in a small number of cases the judgments and decrees of the lower judiciary are maintained by the HCD. In 2011, whereas only in 34.14% cases the judgments and decrees of the lower judiciary have been maintained by the HCD, alternatively, in 58.53% cases the HCD granted acquittal to the erroneously convicted persons by the lower courts and in 7.31% cases, the punishment pronounced by the lower court has been reduced. In 2012, in 52.63% cases, the HCD granted acquittal whereas, only in 26.31% cases the judgments and decrees of the lower judiciary have been maintained and in 21% cases the punishment pronounced by the lower court has been reduced by the higher court. In 2016, in 28.57% cases, the judgments and decrees of the lower judiciary have been maintained, in 57.14% cases, the court reduced the punishment given by the lower court of Bangladesh and in the rest 14.28% cases, the court granted exoneration to the wrongfully convicted persons. In 2017, only in 30% cases the judgments and decrees of the lower judiciary have been maintained. In 30% cases, the court reduced the punishment given by the lower court of Bangladesh, and in the rest 40% cases the court granted exoneration to the wrongfully convicted persons.



The chart shows the conviction rate by the HCD confirming the judgments of the lower judiciary is very poor, although it has gone up gradually from 2012 to 2017 that is from 26.31% to 30% only. Although the exoneration rate has reduced, yet it is a significant portion in comparison with the conviction rate. Only in 2016, the exoneration rate in criminal appeals was lower than conviction in the same year. Except this, in all other years, the exoneration in criminal cases was higher than sentence, for example, in 2011 only 34% criminal appeals were disposed of with maintaining the judgments and decrees of the lower judiciary and 59% appeals were disposed of with granting pardon to the wrongfully convicted persons. The study shows sufficiently that a big number of persons are wrongfully convicted in Bangladesh and these people spend many years with miserable sufferings and pains before proving themselves as innocents.

Consequences of Wrongful Conviction

It is tough to measure the harm caused to the victims by wrongful conviction and incarceration. After the release from the prison, the wrongfully convicted persons face insuperable hurdles to lead a normal life in society. Often they lack money, education, necessary job skills and so on. They are likely to suffer physical and psychological trauma also (Kaplan, 2009: 232). Often without family, they live alone and isolated (Bernhard, 2009: 403). One wrongfully incarcerated person stated that unjustly incarceration completely destroyed his life (Kaplan, 2009: 232). One exoneree reported the embarrassment of having to rely on the family or friends for assistance. An example can be cited from an American exoneree who has served more than 11 years in prison and after release he shared his feelings by few words like “At the age of 34, I had to go back to my parents as if I was a child and say, ‘Mama, or daddy, I need this, that, and the other’” (Norris, 2012).

The post-release exonerees face not only the monetary problem but the posttraumatic stress and other psychiatric disorders, and the difficulties of coping with stigma, grief, and loss (Norris, 2012).

On the other side, the long delay in the disposal of criminal cases in Bangladesh lingers social and mental agonies of the wrongfully imprisoned individuals. The study found that the High Court Division granted acquittal of the 83 appellants who have already suffered a lot without any offence. Most unfortunately, the data shows that the cases decided in 2011 before coming to the final decision have already run on average 15

years 5 months 14 days. Almost 16 years an individual had to bear the curse of a false case with serious mental agony, physical and psychological torture, social neglecting and many other disadvantages. The table-5 shows the date of institution of a case, the date of pronouncement of judgment by the HCD, the total time taken for the disposal of a case from its institution to final disposal, the average time is taken for declaring an innocent person as an innocent.

Table 5
The Average Time Taken for the Disposal of Criminal Case Where the Lower Judiciary Unjustly Convicted a Person.

Appeal Nos	Date of Institution of the case	Date of Judgment	Total time for disposal of a case	Average
1995 of 1997	14.10.1987	01.03.2011	23 years 5 months	15 Years 5 Months 14 Days
2565 of 2000	28.07.1995	25.07.2011	16 years	
04 of 2007	02.06.1998	12.05.2011	12 years 11 months	
3504 of 2003	09.05.2000	09.08.2011	11 years 3 months	
114 of 2009	03.08.2007	26.07.2011	4 years	
1938 of 1996	22.09.1993	13.04.2011	17 years 7 months	
300 of 1997	13.08.1994	28.04.2011	16 years 8 months	
1046 of 1996	30.8.1993	04.05.2011	17 years 8 months	
1257/1993	27.06.1993	07.09.2011	18 years 2 months	
533 of 2006	31.01.2003	23.10.2011	8 years 9 months	
807 of 1997	02.05.1989	27.10.2011	32 years 6 months	
70 of 1995	31.12.1991	21.04.2011	19 years 4 months	
914 of 1996	24.04.1995	17.04.2011	16 years	
1315 of 1996	13.09.1991	19.04.2011	19 years 8 months	
1137 of 2006	05.08.2005	17.11.2011	6 years 3 months	
2451 of 1995	20.01.1994	20.04.2011	27 years 3 months	
1248 of 1996	29.03.1994	19.04.2011	27 years 1 month	
791 of 2003	18.04.2002	27.03.2011	8 years 11 months	
2707 of 1999	13.11.1998	24.04.2011	12 years 5 months	
427 of 199 6	27.07.1992	26.04.2011	18 years 9 months	
589 of 2007	04.06.2002	15.03.2011	8 years 9 months	
554 of 2007	08.06.2006	10.03.2011	4 years 9 months	
588 of 2007	22.10.2003	14.03.2011	7 years 5 months	

Total cases 23, total years taken = 355 years, 126 months

These unfortunate victims of mistakes or negligence are often denied their basic necessities during the detention and imprisonment. The above table discloses that the maximum time 32 years 6 months have been taken for declaring an innocent person as an innocent. The cases of shocking injustice, although, in Bangladesh are not of infrequent occurrence (tables-1, 3, 4), yet no attempt has been made by Bangladesh Government to minimize the numbers of the wrongful convictions and to redress the

victims at best.

Tutul and Badal were convicted for the death sentence for committing the offense of abduction and murder that they did not commit. They were sentenced to death by the Additional Metropolitan Sessions Judge, Dhaka in 2005 as a result of submitting erroneous and dubious evidence by police and prosecutions and false and fabricated testimony by the witnesses. Against the decision of the Sessions court, the convicted Tutul and Badal preferred Jail Appeals being Nos. 1250 of 2005 and 1251 of 2005. The higher court subsequently found that they were innocent and accordingly ordered to set at liberty at once and acquitted from all the charges. But before pronouncement of this judgment, they have already passed 10 years in the prison and tolerated the inhuman tortures several times in police remand. (The Supreme Court of Bangladesh, HCD, Death Reference 4 of 2007). They were released from the prison without grating any compensation after enormous sufferings of more than 10 years in the prison without any cause.

The flagrant injustice meted out to Md. Rafique Ullah, an old aged and left hand paralyzed, Government Primary School teacher who was convicted to suffer rigorous imprisonment for seven years with a fine of tk. 20000 for sexual assault of a student of class V. Subsequently, it was proved that he was not involved with such type of heinous act but falsely he was implicated in the case, as a result the HCD acquitted him from all the charges and ordered for his release from the bail bond (HCD, Criminal Appeal No. 3504 of 2003,) but before coming to this final judgment he had to spend a long time in the jail and had to bear this false chare in his head 11 years 3 months (Table-2, Colum 4). Another example of wrongful conviction is the case of Md. Rafiquil Islam alias Rafique was convicted and sentenced to imprisonment for life with fine taka 5000/ but later on, the HCD granted him acquittal and released him from the bail bond as it was proved that he was innocent (Rafiquil Islam v. State). But to pronounce the judgment acquitting and releasing Mr. Rafique from all the charges and bail bond, the court has taken 17 years and 7 months (Table-2, Colum 6). During this time he was taken in detention and remand for several times.

These frequent unjust arrests, detentions, prosecutions, convictions and imprisonments in Bangladesh are gradually reducing the confidence of the general people to the police administration and judiciary; and encouraging the people for instituting false, fabricated cases against the innocent persons. These two pictures clearly show the importance of enactment in Bangladesh for compensating the wrongfully convicted persons. If these innocent persons are released from the jail after long time without any financial support, justice definitely will cry secretly alone.

Legal Remedies of Unjustly Convicted Person in Bangladesh

Exoneration is a hope of every imprisoned, and especially it is more strong to an erroneously incarcerated person but the only release is not enough for a wrongfully convicted individual because exoneration itself automatically does not restore the status quo ante. The exoneration may remove the chain from his body and permit to walk, but the false taint in his character will not go away quickly from him which is a big hurdle to step back into society (Mostaghel, 2011: 509). The exonerated persons are harmed in countless ways by taking away his valuable time; separating from the family members, friends, and society; depriving of being skilled, employed and educated; requiring a high financial involvement for conducting the case and most importantly inflicting a false accusation and so on. The heinous criminal cases like rape, corruption, eve teasing don't

negatively impact only on the convicted, but it includes the whole family members. Even in some time, it may be a unique ground of torture by in-law family members on the daughter-in-law. These demands the wrongfully convicted must be compensated not just for the wages lost and the irreparable sufferings and pains tolerated during prison but also for the obstacles may be faced to reenter and regain their healthy life after the prison (Kahn, 2010: 124).

The study presents 24 cases out of 41 decided by the HCD in 2011, where the court granted exoneration to the convicted persons and most regrettably the court, from institution to final disposal by the HCD, in an average in every case has taken close to 16 years for declaring a convicted innocent as innocent and acquitted. During this time the unjustly convicted had to spend a good amount for legal fees of the advocates, traveling cost of the witnesses and parties and a significant hidden cost. Considering the situations of the exonerated persons, many countries of the world have taken initiatives to minimize the sufferings of the unjustly convicted persons. Among them, financially compensating the exonerees is the most talked and most effective way of reducing the harms of the victims of miscarriage of justice. To this end, many States have already enacted national legislations inserting the provision of compensation for the erroneously convicted persons who have subsequently been released on the ground of his innocence. Till date, no such initiative can be found in Bangladesh, although the rate of wrongful conviction is higher in comparison to rightly convicted persons.

In Bangladesh, the wrongfully convicted person has two indirect remedial options under the existing legal system. As a common law country, they have the scope of filing torts lawsuit claiming compensation based on false imprisonment, malicious cases or abuse of process, but rarely it is filed (Khan, 2017) and there is a very limited possibility of its being successful (Bernhard, 2009: 403) because it is generally difficult to prove malice (Kahn, 2010:124), on the other hand it is time consuming, costly and uncertain (Bernhard, 2009: 403). Interestingly, in recent past the HCD made some very courageous orders against the concerned authorities for compensation to the victims of wrongful acts by negligence. For example, in *Bangladesh Beverage vs Rawsban Akhte and others*, Catherine Masud Vs. Md. Kashed Mia and others cases the HCD of the Supreme Court of Bangladesh, ordered for compensation Taka 2, 01, 47,008 and tk. 4, 61, 75,452 respectively. These historic judgments have widened the scope of application of tort in the practical legal field of Bangladesh.

In addition to this remedy another constitutional option exists under articles 44 and 102 (1) of the Constitution of the People's Republic of Bangladesh 1972 constitutional tort suit claiming compensation can be instituted against the government if the fundamental rights, for example, fair trial, equality before law, principles regarding arrest and detention (art. 33, the Constitution of the People's Republic of Bangladesh), principles regarding trial and punishment (art. 35, the Constitution of the People's Republic of Bangladesh), are violated (Apurbo, 2018). In CCB Foundation case the HCD granted compensation of taka 20, 00000/ to the parents of victim named 'jihad' against the government (CCB Foundation Vs. Bangladesh and Others) for violating his constitutional right under article 32. This is a best example of awarding compensation order against the government for doing tortuous acts. The wrongfully convicted person who deems the conviction or imprisonment or detention was given not following the fundamental guarantees as enumerated in the Part III of the Constitution of the People's Republic of Bangladesh, may institute a writ petition claiming compensation for such unjust conviction. Recently, the Supreme Court of Bangladesh pronounced few landmark verdicts granting compensation for the wrongful conviction and incarceration.

In judicial history of Bangladesh, the first landmark judgment granting

compensation for the wrongfully convicted pronounced by Justice AFM Abdur Rahman in 2016 in a rape case. A brief description of the case is; Mr Abdul Jalil was handed down life imprisonment for rape case filed on September 24, 2001 with Char Fashion Police Station by the Women and Children Repression Prevention Tribunal in 2004 (The Independent, 2016). The convicted Jalil filed an appeal with the HCD against the verdict of the tribunal. The court, after granting the appeal, sent the case back to the trial court. The Additional Sessions Judge of Bholra on 2010 convicted Abdul Jalil for his life imprisonment. Abdul Jalil against the verdict moved to the HCD again with an appeal then the HC declared; "Instead of justice, the trial court judge had done injustice. Therefore, the conviction order of Abdul Jalil is not satisfying. Hence to establish justice, the court has to set aside the disputed verdict and conviction" (Sarkar, 2016). By this time he has already spent 14 years in the prison, as a result, the court *suomotu* ordered the government to pay tk. 50, 00000 to Abdul Jalil for his 14 years wrongful conviction. In another case, the HCD issued a rule asking the government why Mr. Javed Ali from Satkhira will not be given compensation of tk. 20.00000 for suffering 13 years imprisonment after his acquittal from a murder case (The Daily Observer, 2016). These are the two examples of awarding compensation to the unjustly convicted persons. In both of these cases, the HC granted compensation at its own initiative not by the application of the convicted person. Although the decisions of these two cases are not final yet.

The failure, difficulties, uncertainty, costly, time consuming and second time harassment nature of the tort lawsuits or civil law suits or constitution tort lawsuit in Bangladesh and the obvious fact that the criminal justice system can never be error free resulting in a big number of wrongful conviction and exoneration demand domestic legislation for awarding compensation to the wrongfully convicted and exonerated persons in Bangladesh. The high rate of wrongful conviction and exoneration in Bangladesh made this claim more strong and urgent. On the other hand compensation statute should be flexible, cost free, generous, easy and certain damage award with ensuring social and psychological service and treatment.

CONCLUSION

It is badly true that with utmost sincerity of the judges avoiding full wrongful conviction is near to impossible but with the sincere effort of all the authorities like judges, polices, prosecutors and doctors, it may be reduced to a significant number. Simultaneously, it is also true that the wrongfully convicted even if it is one of billion should not be released with an effort of healing the wound. Compensating the unjustly convicted may be an award which can contribute to minimize the sufferings of the victims, although it is not sufficient for a rich wrongfully convicted man. Getting no other alternatives, many States of the world, for example USA, UK, have enacted national legislations making the provision of compensation for the wrongfully convicted persons, and some countries like Canada, are giving compensation under the existing legislation without making any separate legislation.

The study found that the wrongful conviction rate in Bangladesh is so high but there is no legislation for giving any compensation or other remedies to the unjustly convicted person, although in some cases the victim may prefer a writ if the fundamental right is violated or file a tortuous lawsuit claiming compensation, there is hardly such example in Bangladesh. In most of the cases, this second suit will be the big ground of secondary victimization of the victim for its delay, cost, and time consuming

nature. Very unfortunately, the study also found the HCD granted acquittal to 83 convicted persons which indicate that majority of the accused have been given conviction by the lower court mistakenly or erroneously leading to miscarriage of justice. In average these cases continued for almost 16 years and many have passed more than 10 years in the imprisonment without doing any offence. The research indicates that many people without committing any offence spending their valuable time in the prison which destroying their families also.

Right now, it is urgent need to take an initiative by the Government to identify the people who are in prison without committing any offence and it is also necessary to release them immediately with compensation considering their total loss like money spent for this case, money what he would have earned if he remained free and so on. The state should, at this moment, make a legislation inserting the provision of compensating the wrongfully convicted person. The enactment should mainly focuses on the grounds under which a wrongfully convicted may claim the compensation, the criteria of fixing the amount of compensation, the time period for settling the application of compensation, who will receive the compensation of the dead wrongfully convicted person, to whom the application shall be submitted, the process of application and others or the Parliament may amend the Code of Criminal Procedure 1898 inserting a provision of compensating the wrongfully convicted persons. For ensuring justice to the victims the Draft Amendment (Bill) should include minimum amount of compensation for per day wrongful incarceration and it should give an authority to the judge to enhance the amount to the claimant considering the facts and circumstances of exonerees. The new law should include the victim for getting the compensation will make an application to a respective committee created by the Government who will assess the amount of the compensation just only considering the judgment of the court. But if the victim desires to get enhanced amount for his abnormal sufferings and pains in the prison and actual losses he faced by the wrongful conviction, then it will be determined by any judicial body after hearing the claimant and taking other evidenc.

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