

DOES INDIA NEED AN INNOCENCE PROJECT? – A STEP TOWARDS ENSURING A MORE EQUITABLE SYSTEM OF JUSTICE

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ABSTRACT

The Innocence Project is a non-profit legal organization founded in the US in 1992. It aims to create a fair and equitable system of justice for all by exonerating individuals who may have been wrongfully convicted. This paper highlights the need for an Innocence Project in India to reform the criminal justice system. Firstly, the paper examines the need for and working on the Innocence Project in two regions, namely the US and the UK. It gives instances of several wrongful convictions and enumerates the reasons why these may occur. Secondly, it explains the importance of a similar project in India, by shedding light on the country's unjust convictions and drawbacks of the criminal justice system. Thirdly, it analyzes how an Innocence Project can be introduced in India. The paper also mentions the challenges faced by Innocence Projects across the world.

INTRODUCTION

English jurist and legal scholar, Sir William Blackstone, once famously said – “*It is better that ten guilty persons escape than that one innocent suffers.*”

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Wrongful convictions are the worst form of injustice. Notably seen in criminal cases, a wrongful conviction occurs when an innocent person is convicted for a crime that he has not committed. It is a clear indication of the poor administration of justice. There are imperfections in criminal justice systems all over the world, causing several innocent people to be incarcerated and punished for wrongs they never carried out. India's criminal justice system is also plagued by this issue, resulting in unwarranted punishment and serious damage to the life of the wrongfully convicted.¹

The Innocence Project uses post-conviction DNA testing as an exoneration tool. Through this, it seeks to scientifically prove the innocence of the wrongfully convicted. It works with courts and legislatures by making judges aware of the reasons for wrongful convictions and

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¹Riya Luhadia, 'Wrongful Conviction – A Tale of Injustice' (*Know Law*, June 3, 2021)

<<https://knowlaw.in/index.php/2021/06/03/wrongful-conviction-a-tale-of-injustice/>> accessed 25 June 2023.

recommending policies and reforms to prevent the same in the future. The Project provides all legal representation for free. While it relies on charitable donations to support its work, it does not solicit money from its clients for its services. Additionally, it also helps individuals rebuild their lives after exoneration.² An exoneration occurs when a person who has been convicted of a crime is officially cleared based on new evidence of innocence. This can occur through a pardon based on actual innocence, an acquittal at a retrial, a conviction being vacated, or an indictment being dismissed.³ The Innocence Network was founded in 2005 and headquartered in New York. It consists of more than 20 independent organizations that provide investigative support, legal representation, and assistance to people with claims of innocence.⁴ Apart from the states of the US, the network has expanded to Australia, Canada, Ireland, the UK, the Netherlands, Taiwan, Argentina, Brazil, Italy, and Israel.⁵ As of today, India does not have a fully functioning project of innocence.

Recently, in 2022, Uttar Pradesh's Anti-terrorism squad chief Dr. GK Goswamy became the first person from India to become a part of the Innocence Project launched by the US and stated that it would soon be introduced in India.⁶ Therefore, considering the defects of the criminal justice system, it is important that India becomes a part of the innocence network and takes steps toward ensuring a more equitable system of justice for all its citizens.

INNOCENCE PROJECTS IN THE US AND THE UK

In 1992, Barry Scheck and Peter Neufeld founded the Innocence Project as a law clinic at the Benjamin N. Cardozo School of Law in New York. Since then, several lawyers, students, and volunteers have taken up cases to free wrongfully convicted people through DNA testing at the Cardozo School of Law.⁷ In the UK, the innocence initiative is similar to the one in the US, where the focus is on representing a small number of prisoners who maintain their innocence, in the Court of Appeal, the Criminal Cases Review Commission, and judicial

²'Restoring Freedom' (*Innocence Project*, June 2, 2023) <<https://innocenceproject.org/restoring-freedom/>> accessed 25 June 2023.

³'Research Resources' (*Innocence Project*, June 2, 2023) <<https://innocenceproject.org/restoring-freedom/>> accessed 25 June 2023.

⁴'Restoring Freedom' (n 2).

⁵'Who We Are' (*Innocence Network*, June 14, 2019) <<https://innocencenetwork.org/category/who-we-are/>> accessed 25 June 2023.

⁶'India may soon have an innocence network' (*Hindustan Times*, March 22, 2022) <<https://www.hindustantimes.com/cities/lucknow-news/india-may-soon-have-an-innocence-network-101647972691798.html>> accessed 25 June 2023.

⁷'History of Innocence Project' (*Innocence Project*, June 2, 2023) <<https://innocenceproject.org/restoring-freedom/>> accessed 25 June 2023.

review proceedings.⁸ The first project was established by Dr. Michael Naughton at Bristol in 2004. The project involved university students and academics in the investigation of over 100 projects for wrongful convictions.⁹

There are several causes of wrongful convictions. These include:

Misapplication of Forensic Science – In many instances, practitioners provide misleading testimony that either exaggerates the connection between the evidence and the suspect, wrongly characterizes results as inconclusive, or downplays the method of the forensic method used.¹⁰ Sometimes, the examiner fraudulently claims to have performed laboratory analyses that were never done. This is called dry labbing and is a crime. However, it is often not discovered and is dismissed as a problem with error management.¹¹ Rape kits in many crime labs are not tested properly due to a backlog, leading to contamination of DNA evidence owing to the carelessness of the forensic analyst.¹² An example of the failure of forensics is the case of Amanda Knox, an American college student, and Raffaele Sollecito who were wrongfully convicted for the sexual assault and murder of Knox's roommate Meredith Kercher. The presence of their DNA on the presumed murder weapon led to their conviction. However, in 2015, they were both exonerated from the murder due to flaws in the forensic evidence such as the failure of the police to wear caps or gloves during the investigation, leading to cross-contamination of objects at the crime scene.¹³

Police and Prosecutorial Misconduct – In many cases, police officers abuse their authority and violate a person's constitutional rights by working with unreliable informants and displaying outright prejudice. Prosecutors often violate the law by intentionally concealing evidence of innocence and making false arguments at trial. They make use of coercive interrogation techniques, instilling fear in the minds of the innocent, thus resulting in them

⁸'Innocence Initiative' (*Appeal*) <<https://appeal.org.uk/innocence>> accessed 26 June 2023.

⁹ Abdallah Barakat, 'A history of innocence projects in the UK: a story of continuous struggle' (*The Justice Gap*, June 18, 2023) <<https://www.thejusticegap.com/a-history-of-innocence-projects-in-the-uk-a-story-of-continuous-struggle/>> accessed 26 June 2023.

¹⁰'Misapplication of Forensic Science' (*Innocence Project*, June 2, 2023) <<https://innocenceproject.org/restoring-freedom/>> accessed 26 June 2023.

¹¹'Speaking of Error in Forensic Science' (*NIST*, 5 September 2017) <<https://www.nist.gov/news-events/news/2017/09/speaking-error-forensic-science>> accessed 27 June 2023.

¹² Saumya Singh & Rima Majumdar, 'Innocence Project - Righting a Wrong' (2018) 7 *Nirma ULJ* 19.

¹³ 'Fraud In Forensics: Five Cases of Abuse And Evidence Mishandling' (*Forensics Colleges*) <<https://www.forensicscolleges.com/blog/resources/real-cases-of-forensic-fraud-flawed-evidence>> accessed 27 June 2023.

pleading guilty to a crime they did not commit¹⁴. The threat of the trial penalty is used to coerce people to plead guilty despite their innocence. The sentence offered in a plea deal before the trial is shorter and less severe than the one given after conviction in a trial. This practice causes several innocent people to give up their right to a free trial, thus violating the fundamental rights necessary for a just criminal legal process.¹⁵ Another common form of police and prosecutorial misconduct is tunnel vision which begins at the stage of the police investigation and sometimes continues till the stage of the trial. Tunnel vision is when the police and prosecution focus just on one suspect and exclude all other potential alternative suspects. Thus, instead of developing a theory based on existing evidence, the police and prosecution try to come up with evidence that fits their theory. This results in innocent suspects being wrongfully convicted. In Chicago, Jacques Rivera was wrongly convicted of murder and spent 21 years in prison after the Chicago police framed him. Several years later, the charges against him were dismissed and his conviction was overturned by the court.¹⁶

Eyewitness Misidentification – Wrong identification of an innocent suspect as a perpetrator of a crime is the single greatest cause of wrongful conviction. The accuracy of eyewitness testimony can be questioned due to factors such as the witness' distance from the crime scene, the lighting of the crime scene, and the stress or trauma experienced by the person while witnessing the crime. Human memory is imprecise and decreases over time. While recalling an event, individuals inadvertently fill in memory gaps with information from other memories, assumptions, general knowledge, and details from sources such as a newspaper or a movie.¹⁷ This leads to the creation of false testimony, leading to an unjust conviction. Thus, human memory cannot be the basis on which a person's freedom and liberty are put at stake. An example of the loopholes of eyewitness testimony is the case of Jerry Miller, who was convicted of kidnapping, rape, and robbery in 1982. Miller resembled the real rapist owing to which several witnesses identified him as the perpetrator at the criminal trial. In 2006, DNA

¹⁴'Official Misconduct' (*Innocence Project*, June 2, 2023) <<https://innocenceproject.org/restoring-freedom/>>accessed 26 June 2023.

¹⁵'Coerced Pleas' (*Innocence Project*, June 2, 2023)<<https://innocenceproject.org/restoring-freedom/>> accessed 26 June 2023.

¹⁶'Rivera v. City of Chicago' (*MacArthur Justice*, February 16, 2023) <<https://www.macarthurjustice.org/case/rivera-v-city-of-chicago/>>accessed 27 June 2023.

¹⁷'Eyewitness Misidentification' (*Department of Public Advocacy*, 18 January 2022) <<https://dpa.ky.gov/home/about-dpa/offices-and-branches/kip/causes/misid/>>accessed 27 June 2023.

testing exonerated Miller and identified another man as the true perpetrator. Miller spent around 26 years in prison for a crime he did not commit.¹⁸

Race and Wrongful Convictions - According to a 2022 report from the National Registry of Exonerations, innocent Black people were seven times more likely to be wrongly convicted of murder than innocent White people.¹⁹ Cross-racial eyewitness identification is unreliable as people are likely to misidentify people from a different race. White people are particularly bad at recognizing people who are not white. Black or Latinx men are more likely to be wrongly convicted for raping white women than white men.²⁰ Also, there is very low or no representation of Black people in the juries that try the cases. The presence of all-white juries results in verdicts that primarily favor the White community. A clear instance of racial discrimination leading to injustice is the case of George Stinney Jr. in South Carolina, the first person to be sentenced to death in modern times. He was accused of the rape and murder of two White girls. After a two-hour trial and deliberation of merely 10 minutes by an all-White jury, Stinney was convicted and sentenced to death by electrocution. 70 years after his death, he was exonerated as it was revealed that his plea was coerced and that he had an alibi that was never heard. The lack of evidence and speed with which he was convicted illustrates how a young black boy was railroaded by an all-White justice system.²¹

THE NEED FOR AN INNOCENCE PROJECT IN INDIA

Wrongful convictions are also a major issue in India. They are a stark violation of a person's right to life and personal liberty under Article 21 of the Constitution. The wrongfully convicted are then not granted bail, resulting in them spending unjustifiably long periods in prison, waiting to avail of a fair trial. A large number of undertrial detainees are denied bail which has resulted in the overcrowding of prisons. False evidence, forced confessions, stock witnesses, and acceptance of bribes by the police and judges further contribute to the

¹⁸ TCR Staff, 'Witnesses are Often Wrong': The Case Against Eyewitness ID' (*The Crime Report*, May 24, 2021) <<https://thecrimereport.org/2021/05/24/witnesses-are-often-wrong-the-case-against-eyewitness-id/>> accessed 26 June 2023.

¹⁹ 'Race and Wrongful Convictions in the United States 2022' (*National Registry of Exonerations*, September 2022) <<https://www.law.umich.edu/special/exoneration/Documents/Race%20Report%20Preview.pdf>> accessed 26 June 2023.

²⁰ 'Race and Wrongful Conviction' (*Innocence Project*, June 2, 2023) <<https://innocenceproject.org/restoring-freedom/>> accessed 26 June 2023.

²¹ Lindsey Bever, 'It took 10 minutes to convict 14-year-old George Stinney Jr. It took 70 years after his execution to exonerate him' (*The Washington Post*, December 18, 2014) <<https://www.washingtonpost.com/news/morning-mix/wp/2014/12/18/the-rush-job-conviction-of-14-year-old-george-stinney-exonerated-70-years-after-execution/>> accessed 27 June 2023.

miscarriage of justice. Money, social status, and power play an important role in determining access to justice. While the rich are often let off scot-free, it is often the poor sections of society like the Dalits, Adivasis, and Muslims who have to endure the plight of being wrongfully convicted.

In 2016, Madhubala Mondal was wrongfully convicted and lodged at a detention center in Assam for almost three years. She had committed no wrong and was imprisoned as the police had mistaken her identity. During her years of detention, she was subjected to extreme trauma and partially lost her vision.²²In *Rudul Sah v. State of Bihar*,²³ the petitioner was wrongfully detained for a period of 14 years in jail. The court declared that mere release from illegal detention would not be an adequate remedy as the victim's Fundamental Right to personal liberty under Article 21 and protection against arrest and detention under Article 22 of the Constitution had been violated. Therefore, the court ordered the State to pay Rs. 30,000 to the victim as monetary compensation.²⁴In *Ram Lakhan Singh v. State of UP*,²⁵ the accused were wrongfully convicted and sentenced to death for the offense of dacoity. The court ordered a compensation amount of Rs.10 lakhs to the accused who fought a prolonged legal battle for ten years and also spent 11 days in jail. The infamous Akshardham terror case smears upon the judicial literature of wrongful convictions. In this case, the Supreme Court reprimanded the authorities for conducting the investigation of terror attacks in an injudicious manner and levying severe allegations against innocent persons.²⁶In 1998, at the age of eighteen, Mohammad Amir Khan was kidnapped, tortured, and framed in eighteen bomb blast cases. Communal slurs were continuously thrown at him during the judicial proceedings due to his religion. He was finally acquitted in 2012. He had lost 14 years to persecution and jail, a time that he could have used to pursue his education and help his family. He was subjected to severe trauma and is still piecing together his life today.²⁷

²² 'Assam releases woman detained for 3 years over mistaken identity as foreigner' (*India Today*, June 27, 2019) <<https://www.indiatoday.in/india/story/assam-releases-woman-detained-for-3-years-over-mistaken-identity-as-foreigner-1557046-2019-06-27>> accessed 26 June 2023.

²³*Rudul Sah v. State of Bihar* 1983 SCR (3) 508 (Supreme Court of India).

²⁴ Priyanshee, 'Wrongful Conviction: The Tale Of Victimization' (2022) 2(2) Indian Journal of Integrated Research in Law 11 <<https://ijirl.com/wp-content/uploads/2022/03/WRONGFUL-CONVICTION-THE-TALE-OF-VICTIMIZATION.pdf>> accessed 26 June 2023.

²⁵*Ram Lakhan Singh v. State of UP* 978 SCR (1) 125 (Supreme Court of India).

²⁶ Manisha Tripathi and Shivam Tripathi, 'Malicious Prosecution and Conviction: A Question Mark on Justice' (2019) 4(3) IJLMH <<https://www.ijlmh.com/paper/malicious-prosecution-and-conviction-a-question-mark-on-justice/>> accessed 26 June 2023.

²⁷ Mirza Arif Beg, 'Failed as a Spy, Framed as a Terrorist – the Saga of Mohammad Aamir Khan' (*The Wire*, April 9, 2016) <<https://thewire.in/politics/failed-as-a-spy-framed-as-a-terrorist-the-saga-of-mhd-aamir-khan>> accessed 26 June 2023.

However, there is no definite legislative framework that provides relief to victims of wrongful convictions in India. Even merely providing monetary compensation to victims will not compensate them for the torture and trauma they faced during their imprisonment. Wrongful convictions cause serious psychological damage to the victims. Many of them face social stigma and find it hard to rebuild their lives and reintegrate into society. There is a need to prevent wrongful convictions to the best possible extent. Thus, the introduction of an Innocence Project in India will be a step toward reducing the number of wrongful convictions and will be a means to reform our criminal justice system.

HOW CAN INNOCENCE PROJECT BE INTRODUCED IN INDIA?

Both in India and in other countries of the world, a large majority of the people who are wrongfully convicted belong to the marginalized and underprivileged sections of society. Ineffective lawyering acts as a large cause for the injustice meted out to the poor. They are not released from prison for long periods due to their inability to access an advocate to represent them in court. Thus, wrongful convictions can be viewed as a social problem caused due to poor legal services. Legal aid clinics can play an important role in the start of the innocence project in India. Students and professors in universities can be encouraged to work towards pro bono legal aid for the underprivileged. NGOs can also be mobilized to work towards the implementation of the innocence project. Since students and teachers in universities cannot act as defense lawyers necessary for an innocence project, there is also the need for privately funded defense lawyers who will provide free legal services, ensuring legal access to justice as public goods.²⁸

CONCLUSION

There are also challenges to the working of innocence projects across the world. An innocence project can only take up a fixed number of cases to work upon. It is not always easy to reopen a trial and provide fresh evidence to prove a person's innocence. Since these projects work on charity and donations, they sometimes face monetary constraints and are unable to achieve entirely satisfactory results. The project was started at the Cardozo School of Law to exonerate individuals who had been convicted due to the incorrect application of forensic science. However, we now find that innocence projects work largely based on DNA

²⁸I learnt this from a conversation with Professor Anil B Suraj, Associate Professor of Practice at Indian Institute of Management, Bangalore.

evidence. Thus, forensic science is being used to correct the wrongs of forensic science, which may not always be reliable. Despite these obstacles, it is appreciable to see that innocent projects all around the world are continuously striving to exonerate the wrongfully convicted and bring reforms to the criminal justice system. Even though replicating the same in India might be a difficult task, efforts must be made towards making India a part of the Innocence network at the earliest.

