

AS INTRODUCED IN LOK SABHA

**Bill No. 108 of 2019**

THE PROTECTION OF RIGHTS OF WRONGFUL CONVICTS  
BILL, 2019

By

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BILL

*to establish a procedure for safeguarding the rights of wrongful convicts and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Protection of Rights of Wrongful Convicts Act, 2019.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government, may, by notification  
5 in the Official Gazette, appoint.

Short title,  
extent and  
commencement.

Definitions.

**2.** In this Act, unless the context otherwise requires,—

(a) "Board" means the Board for Wrongful Conviction established under section 5;

(b) "Chairperson" means the Chairperson of the Board designated under section 5;

(c) "claimant" for the purpose of this Act means a person convicted and subsequently imprisoned for a crime that such person had not committed;

(d) "prescribed" means prescribed by rules made under this Act; and

(e) "wrongful incarceration or wrongful conviction" means an individual convicted of an offence and who served all or part of the sentence of the offence and was later acquitted for the reasons the individual was innocent or the judgment was reversed and other accusatory evidence was dismissed or prosecution executed without good faith, which concluded in favour of the accused or includes any of the following:—

(i) making or fabricating a false or incorrect record or document for submission; or

(ii) making a false declaration or statement before an officer authorized by law to receive as evidence when legally bound to state the truth that is to say by an oath or by a provision of law; or

(iii) otherwise giving false evidence when legally bound to state the truth that is to say by an oath or by a provision of law; or

(iv) fabricating false evidence for submission; or

(v) suppression or destruction of an evidence to prevent its production; or

(vi) bringing a false charge or instituting or cause to be instituted false proceedings against a person; or

(vii) acting in violation of any law in any other manner not specifically covered above.

Rights of Wrongful convicts.

**3.** Every person wrongfully convicted shall have the right to:—

(a) work and earn livelihood, and being welcomed back in the society absolved from all prior accusations;

(b) claim damages and compensation from the State and restore the dignity of wrongfully incarcerated;

(c) be treated as not having been arrested or convicted of the crime;

(d) equal opportunities of employment and remuneration without discrimination based on any other criteria that may be deemed discriminatory by the court of law;

(e) vocational training opportunities and education;

(f) claim other non-pecuniary relief from the State such as counseling, therapy, medical support, educational services and Government employment; and

(g) file a petition with the Board for an order declaring the person to be actually innocent and eligible to receive an order of compensation.

Compensation for wrongful conviction.

**4.** (1) An application seeking compensation for a wrongful conviction may be made:—

(a) by the accused person who has sustained the injury; or

(b) by any agent duly authorised by the accused person, who has sustained the injury; or

(c) where the accused person dies either before or after the termination of the wrongful prosecution, by all or any of the heirs or the legal representatives of the deceased:

5 Provided that where all the heirs or the legal representatives of the deceased have not joined in any such application for compensation, the application shall be deemed to have been made on behalf of and for the benefit of all the heirs and the legal representatives of the deceased;

10 (d) if a person convicted by a final decision for a criminal offence suffers punishment because of that conviction and has been granted judicial relief by the court of competent jurisdiction and the conviction is reversed or he is pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice and no more criminal proceeding is pending or may be brought against the individual;

15 (e) if person was sentenced to incarceration for a term of imprisonment and as a result of the wrongful conviction has served not less than seven years of prison sentence;

20 (f) if person imprisoned solely on the basis of the conviction for the offence and that specific conviction has been subsequently reversed and is proven to be factually innocent of the crimes charged or any lesser offence of the crime so charged or any other crime directly related to the charged offence.

(2) Any order to expunge or seal charges so entered by the Board shall provide that in any employment application, the claimant may answer no record as to any charges so expunged or sealed in response to an inquiry regarding prior arrests, court appearances or criminal convictions.

25 (3) The charges and convictions expunged shall not be used against the claimant to disqualify him in any examination, appointment or application for public employment nor shall such charges and convictions be used against the claimant in any other court proceedings or hearings before any court.

30 (4) **Every application shall be filed, at the option of the applicant, either with the Board or Special Courts having jurisdiction over the area in which the wrongful prosecution occurred or to the Special Court within the local limits of whose jurisdiction the applicant resides, in such form containing such particulars as may be prescribed.**

(5) A claimant shall not be compensated for any part of the sentence if he:—

(a) had been served sentence for a concurrent crime; or

35 (b) by his own conduct cause or bring about his conviction.

*Explanation.*—For the purpose of this section,—

(a) "injury" means any harm caused to body, mind, reputation or property of any accused harm is an actual or as a probable result of the wrongful prosecution;

(b) "compensation" includes pecuniary or non-pecuniary compensation or both;

40 (c) "non-pecuniary compensation" includes counseling services, mental health services, vocational or employment skills development and such other services.

**5. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established, for the purposes of this Act, a Board to be called the Board for Wrongful Convictions for carrying out the purposes of this Act.**

Establishment  
of the Board  
for Wrongful  
Convictions.

45 (2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by the said name, sue or be sued.

(3) The Board shall consist of,—

(a) a Chairperson, who has been a Judge of a High Court;

(b) **six other members to be appointed by the Central Government in consultation with the Chairperson having ability, integrity and standing special knowledge and professional experience of not less than ten years of litigation experience in the field of human rights:** 5

Provided that Chairperson shall be appointed in consultation with the Chief Justice of India.

**(4) The Central Government shall appoint such administrative, technical, and other staff to the Board as it may consider necessary for effective implementation of the provisions of this Act.** 10

**(5) The salary and allowances payable to the member, officers and staff of the Board shall be such as may be prescribed:**

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or members shall be varied to his disadvantage after his appointment. 15

(6) The Central Government shall at the time of appointing the Chairperson or member, satisfy itself that such person does not and may not have any financial or other interest as is likely to affect prejudicially his functions as such Chairperson or member.

Terms of office.

**6.** The Chairperson or member shall hold office for a term of seven years from the date on which he enters his office and shall be eligible for reappointment for a further term of five years: 20

Provided that no person shall hold office after he has attained the age of seventy years.

Removal and resignation from office.

**7. (1)** The Central Government may remove from office a Chairperson or Member, who— 25

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or 30

(e) is convicted for an offence which is in the opinion of the Central Government involves moral turpitude; or

(f) has acquired such financial or other interest as is likely to affect prejudicially the functions of his office; or

(g) has so abused his position as to render his continuance in office prejudicial to the public interest. 35

(2) The Chairperson or member may—

(a) by notice in writing under his hand and addressed to the concerned authority of the Central Government, resign from his office at any time;

(b) be removed from office in accordance with the provisions of this section. 40

(3) Any vacancy caused by the resignation or removal of the Chairperson or member shall be filled by fresh appointment.

(4) In the event of a vacancy in the post of the Chairperson, one of the members, as the Central Government may by notification authorize in this behalf, shall act as the Chairperson

till such date on which a new Chairperson, appointed in accordance with the provisions of this Act, enters office.

**8.** The Board shall, while deciding the amount of compensation, take into consideration the following financial and other factors, namely:—

Factors to be considered for the amount of compensation.

- 5           (a) seriousness of the offence; severity of the punishment; the length of incarceration;
- (b) loss or damage to health;
- (c) loss of income or earnings;
- (d) loss or damage to property;
- 10           (e) legal fees and other consequential expenses resulting from the wrongful prosecution;
- (f) loss of family life;
- (g) loss of opportunities of education, possibilities of livelihood, future earning abilities and skills;
- 15           (h) stigmatization harm to reputation or similar damage;
- (i) psychological and emotional harm caused to accused and his family; and
- (j) such other factors which the Board considers necessary as regards the claim in furtherance of justice.

**9.** The Board shall,—

Functions of the Board.

- 20           (a) determine applications to grant compensation for claimants, in accordance with the provisions of this Act;
- (b) decide the claim for wrongful conviction made by the claimant to if within a period of two years after judgement of acquittal or discharge given or after pardon granted or after release from imprisonment;
- 25           (c) on receipt of an application for compensation (made under sub-section (1) of section 4, the Board shall, after giving notice of the application to the Central Government or as the case may be to the concerned State Government, and after giving an opportunity of being heard to all the parties, hold an inquiry into the claim or, as the case may be, into each of the claims and, may make an award determining the just and reasonable compensation, specifying the person or persons to whom it shall be paid, and shall also specify the amount which shall be paid by the Central or the State Government concerned, as the case may be, and may also recommend to the Central or the State Government concerned to proceed against the erring official in accordance with law;
- 30           (d) arrange to deliver copies of the award to the parties concerned, free of cost, within fifteen days from the date of the award;
- 35           (e) fairly and reasonably compensate the claimants on case to case basis ascertaining the loss of income, opportunity, amount spent on legal fees, extent of false accusations and stigma caused;
- 40           (f) upon presentation of the claim, respond within sixty days and fix a time and hearing for the claim;
- (g) after due investigation calculate the compensation for the claimant within thirty days of presentation of the claim or use reasonable diligence in fixing the date for the hearing at the earliest which is convenient for both the parties and the Board;

(h) in case it allows a claim for compensation made under this Act, may direct that in addition to the amount of compensation interest thereon shall also be paid at the rate of six per cent. per annum and from such date not earlier than the date of making the claim as it may specify in the award;

(i) deny a request for compensation if the claimant does not prove the fact that he had not, by any act or omission on his part, intentionally contribute to the bringing about of his arrest or conviction for the crime with which he was charged;

(j) in the interests of doing substantial justice, exercise its lawful discretion regarding the weight and admissibility of evidence, by giving due consideration to any difficulties of proof caused by the passage of time, the death or unavailability of witnesses or other factors not caused by the claimant; and

(k) undertake such other functions as may be assigned to it, from time to time.

Order of  
expungement.

**10.** (1) The Board shall award the expungement order regardless of whether the claimant has prior criminal convictions on being issued the certificate of innocence under subsection (2), the claimant shall be treated as not having been arrested or convicted of the crime.

(2) The Board shall issue a certificate of innocence to the claimant while awarding an expungement order containing:—

(a) claimant's full name at the time of arrest and conviction, if different than the claimant's current name, his claimant's sex, race and date of birth;

(b) crime for which the claimant was arrested and convicted;

(c) date of the claimant's arrest and date of the claimant's conviction; and

(d) identity of the convicting court.

(3) The Board may deny a claim if it finds by a preponderance of the evidence that a claimant plead guilty with the specific intent to protect another from prosecution for the underlying conviction for which the claimant is seeking compensation.

(4) The Board may, for the purposes of award of expungement order, consult agencies, non-Governmental organizations or experts for the purposes of this Act.

Power to  
issue  
directions.

**11.** The Board shall undertake such measures and give such directions or pass such orders as are necessary for the purpose of discharging its functions under this Act.

Chairperson,  
member and  
staff to be a  
public  
servant.

**12.** The Chairperson, members and other staff of the Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

Power of  
special court.

**13.** (1) For holding an inquiry by the Board, the Special Court established under subsection (4) of section 5, may, subject to any rules that may be made in this behalf, follow such summary procedures as it thinks fit.

(2) The Special Court, while adjudicating a claim under this Act, shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908.

Central  
Government  
to provide  
funds.

**14. The Central Government, shall after due appropriation made by Parliament, by law in this behalf, pay to the Board, by way of grants, such sums of money as the Central Government may deem fit for carrying out the purposes of this Act.**

Expenditure  
by the Board.

**15.** The Board may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants.

16. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India. Maintenance of Accounts.
- (2) The Accounts of the Board shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General.
- (3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the Board under this Act, shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General generally has in connection with the audit of Central Government accounts provided further that the Comptroller and Auditor-General shall, in particular, have the right to demand the production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Appellate Board.
- (4) The accounts of the Board, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government.
- (5) The Central Government shall cause the audit report forwarded under sub-section (4) to be laid before each House of Parliament as soon as may be after it is received.
17. (1) The Board shall prepare, once in every year, in such form and at such time as may be prescribed, an annual report giving a full account of its activities during the previous year, copies of which shall be forwarded to the Central Government. Annual Report.
- (2) A copy of the report received shall be laid, as soon as may be after it is received, before each House of Parliament.
18. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removal of the difficulty: Power to remove difficulty.
- Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act .
19. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Act to have overriding effect.
20. (1) The Central Government may, by notification published in the Official Gazette make rules to carry out the provisions of this Chapter; Power to make rules.
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity or anything previously done under that rule or regulation.

## STATEMENT OF OBJECTS AND REASONS

The State's responsibility for wrongful convictions and victims acquitted after years of being incarcerated has not yet been crystallized. There are thousands of persons who spend years sentenced for crimes they were unjustifiably held guilty for and even after being released; it remains a challenge for them to be accepted in the society they are ostracized from. Article 14(6) of the ICCPR read with the General Comment 32 of the United Nations Human Rights Committee dealing with miscarriage of justice, requires that the victims of proven cases of such miscarriage to be compensated "according to law". These provisions collectively create an obligation on the State parties to enact a legislation ensuring that the said victims are compensated, and such compensation is made within a "reasonable period of time". State has to assume statutory responsibility for such miscarriage of justice. India has ratified to the ICCPR in 1968, however a legislation laying down the law for compensation of the victims remains long overdue. Miscarriage of justice is a grave violation of the right to life and personal liberty. There have been landmark cases in the past namely *Rudal Shah vs State of Bihar* and *Nilabati vs State of Orissa*, where the Supreme Court has recognized the remedy of recovering appropriate damages from the State as one of the telling ways in which the violation of fundamental rights can be prevented.

Article 21 protects life and personal liberty and by virtue of judicial pronouncements, deprivation of the life and personal liberty invokes the aforesaid public law remedy of compensation, but there is no explicit provision in the Constitution of India for the grant of compensation by the State for the infringement of right to life and personal liberty.

However the amount and payment of compensation remains rather arbitrary and lacks transparency. The need is to determine the amount of compensation while also making the right to compensation for such victim or claimant a statutory right. The endemic and sensitive nature of the issue and the glaring inadequacies of the available remedies, there is a pressing need for an explicit law for compensating the victims who have suffered miscarriage of justice—laying down State's statutory obligation to recompense these victims of wrongful prosecution, and a dedicated judicial mechanism to give effect to the same.

The Bill, therefore, seeks to establish a Board for adjudicating upon the claims of compensation for wrongful prosecution and lays down procedures to establish both pecuniary and non-pecuniary compensation ascertaining the loss of income, opportunity, amount spent on legal fees and stigma caused because of the proceedings to be awarded to the claimant along with a compensation interest of six percent. It also gives the victim an order of expungement and awards him with a certificate of innocence which will further absolve him from any prior criminal record. It further ascertains the right of the exoneree to be treated as not having been arrested or convicted while ensuring equal opportunities of employment and remuneration without being discriminated.

Hence this Bill.

NEW DELHI;  
June 6, 2019.

KIRIT PREMJBHAI SOLANKI

#### FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for constitution of Special Courts for the inquiry of the wrongful convictions. Clause 5 provides for the establishment of a Board for wrongful convictions for carrying out the purposes of this Act. Clause 14 provides for the Central Government to provide adequate Fund. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees two hundred crore per annum will be involved out of the Consolidated Fund of India.

A non-recurring expenditure of about rupees one hundred crore is also likely to be incurred.

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Bill. As the rules will relate to matter of detail only, the delegation of legislative power is of a normal character.

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*(Dr. Kirit Premjibhai Solanki, M.P.)*