

Need for law to compensate those implicated in false cases

(GS paper 2, Judiciary)

Why in news?

- In October 2021, Aryan Khan, son of actor Shah Rukh Khan, was arrested in Mumbai by the Narcotics Control Bureau in a drug racket case.
- Now, after many twists and turns in the case, he and five others were given a clean chit by a special investigation team from Delhi.
- Besides highlighting the torment suffered by him and his family, Aryan Khan's case also threw the focus on the countless victims of malicious prosecution, many of whom are resourceless.



Impact of false implication & why it should be compensated?

- There is a distinction between somebody who has been falsely implicated and somebody who has been implicated but is eventually acquitted, either because the evidence is deficient or because of some other reason.
- In the case of Aryan Khan, as it appears from the newspaper reports and some statements that have come out, there was actually no reason to arrest him and keep him in custody for almost a month.
- There are several reasons why a person should be compensated if there is false implication, if there has been physical discomfort of being in jail because the person may have been in jail for many years.
- Indian justice delivery system is painfully slow. There are instances where persons have spent eight, 10 or more years under trial. Then there is the mental trauma that not only a person, but also their family and children undergo.
- There is social stigma. It is also important to look at mental health, emotional health, not only of the person, but also of the family.

Role of judicial officers' along with investigating agency:

- Any case of deliberate, intentional arrest or booking of an individual in a criminal case should be compensated. When an agency arrests a person, it's only for 24 hours, and then the person is produced before

the court. So it is not the enforcement agencies alone, it's also the judicial mind which is applied within 24 hours.

- If the judicial officer feels or thinks that the investigating agency does not have enough evidence or it's going blatantly wrong, they should not hand over the custody either to the agency or to prison.

Would it be fair to say that a wrongful prosecution stems from a malicious probe that operates on a bias and prejudice?

- Sometimes there can be genuine mistakes. But a malicious and deliberate act on the part of an investigating officer should be viewed very seriously.
- It could be and it may not be. Nowadays, there are several **instances of sedition**. In a case of a harmless tweet, the prosecution books the person for a charge as serious as sedition, here it is clearly malicious.
- Another example is **Section 66A (punishment for sending offensive messages through communication service, etc.) of the Information Technology Act** that has been struck down by the Supreme Court (in 2015) as unconstitutional. But there are still a few thousand cases that have been filed even after that.

Role of prosecution and the judiciary:

- There is also a very heavy responsibility on the judiciary. The judiciary also has to be alive to the fact that it is just a simple tweet and nobody is trying to topple the government. Therefore, the judge must say, 'why accuse the person with sedition' and 'I don't agree with this.'
- Similarly, with Section 66A, the judge should ask, 'why have you filed a case under a provision that has been declared to be unconstitutional?'
- Both the prosecution and the judiciary have to be very, very careful about this. Because at the end of the day, if the prosecution is not able to prove its case beyond reasonable doubt, which is a standard of proof that is required, then one can come to the conclusion that the prosecution has a malicious intent.
- The Law Commission in its report number 277, titled 'Wrongful Prosecution (Miscarriage of Justice): Legal Remedies', has recommended enactment of a specific legal provision for redressal of such cases, covering the substantive and procedural aspects.

How to calculate compensation?

There can be some way of doing it:

- First, you have to accept the fact that compensation has to be given, then comes the calculation. There have been instances.
- In scientist Nambi Narayanan's case (he was acquitted 24 years after Kerala police arrested him in a fabricated spy case), the Supreme Court gave him ₹50 lakh as compensation (in 2018).
- The Delhi High Court on a couple of occasions has said the person needs to be compensated for having been kept in jail even though he's entitled to bail and all the papers are in order. So, there are a whole lot of factors which point unerringly to the fact that compensation must be given.

Other steps which can be taken:

- Some steps can also be taken in moderation; for example, more professional scrutiny by the senior officers of enforcement agencies.
- In Aryan Khan's case, a senior officer could have applied his mind and maybe advised the overenthusiastic officers on the professional lines of investigation.
- The second role is of the prosecutors, as they are neither with the police nor with the investigating agencies; they are independent officers of the court. So, when the investigating agency or police are saying that a person is involved, and want his custody, **even the prosecutors can point out to the enforcement agencies that they are wrong**; that their case is not strong, so they should not ask for custody.
- But sometimes, agencies and investigators get very troubled by the thought that if we do not show the arrest of a person who is a very influential person or child of an influential person, adverse reactions shall be drawn by the media and by citizens.
- Therefore, the agencies sometimes err on the side of arresting; the role of the prosecutor and judicial application of mind will help against an error of judgment in prosecuting a person.

Need for a new law to ensure disbursement of compensation?

- There is also a remedy of filing a civil suit by the victim or the family members. But that is time consuming.
- As seen in land acquisition cases, the collector would give some amount, the High Court would double it, the Supreme Court would make it two and a half times or three times more.
- So there is need of a standard which can be laid down by legislation for determining compensation.

Section 211 of the Indian Penal Code:

- Section 211 of the Indian Penal Code talks of a false charge of offence made with an intent to injure.
- It can lead to two years of imprisonment, or up to seven years.
- This section is valid for malicious prosecutions, but further legislation for compensation would be a welcome step.

Legal or statutory responsibility of state in case of false implication:

- One of the consequences of not adhering to that responsibility is compensation. Or it could be punishment in some other form; there can be a departmental inquiry against an errant officer or he can be dismissed from service.
- If the judicial officer at the time of trial, if not earlier, comes to the conclusion that the prosecution's case is false, it can distinguish between a genuine error or a malicious one and the court can pass an order for compensation. The state must also take responsibility in case of wrongful confinement.
- If the judicial officer feels or thinks that the investigating agency does not have enough evidence or it's going blatantly wrong, they should not hand over the custody either to the agency or to prison.