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# **CRITICAL ANALYSIS OF** **FALSE IMPRISONMENT** **LAW OF TORTS**

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## ABSTRACT

*The term "false" is "erroneous" or "wrong." False imprisonment occurs when a person is imprisoned in a prison or other enclosed location without legal justification or their consent. No person can imprison another without legal reason accepted universally and especially in all democracies. Article 21<sup>1</sup> of the constitution deals with personal liberty of a person. It can be used by both public and private prisons.<sup>2</sup> S.340<sup>3</sup> of the Indian Penal Code <sup>4</sup> specifically addresses "wrongful confinement <sup>5</sup> " and makes reference to this law. Indian Penal Code S. 339 and 348<sup>6</sup> are dedicated to answering a wide range of supplementary questions on this subject. The basic elements of false imprisonment are restraint of personal liberty of a person<sup>7</sup>, the restraint must be against plaintiff's will, it must be unjustified or unreasonable.*

*This research paper deals with the topic of false imprisonment in law of torts, the topic that is covered is its explanation, elements, restraint, awareness of plaintiff-whether it is a necessary element or not, what happens under the arrest by a private individual and a public officer, defences, remedies. Other than the subtopics this research was conducted with the help of some leading cases.*

**KEYWORD:** False imprisonment, total restraint, unlawful detain, Article 21, trespass of person.

## INTRODUCTION

Even though it is a relatively new tort—it wasn't recognised until almost half a century ago—negligence is expanding at such a rapid rate that it is beginning to eclipse other torts on the basis of a general principle toward which it is moving, which states that it is actionable to cause foreseeable harm to another person in an unreasonable or careless manner. Trespassing is one of

<sup>1</sup> Part III. —Fundamental Rights. —Arts. 19—21

<sup>2</sup> Garner, p. 636

<sup>3</sup> Wrongful confinement

<sup>4</sup> INDIAN PENAL CODE, 1864

<sup>5</sup> Sec.340 IPC 1864

<sup>6</sup> Section 339: Wrongful Restrain, IPC 1860 Section 340: Wrongful Confinement, IPC 1860

Section 341: Punishment for wrongful restraint, IPC 1860 Section 342: Punishment for wrongful Confinement, IPC 1860 Section 343: Wrongful confinement for three or more days, IPC 1860 Section 344: Wrongful confinement for ten or more days, IPC 1860

<sup>7</sup> Art.21

torts that has helped keep the law of torts alive. Its core tenet was that a wrong may be legally actionable if it directly infringed on a protected interest and if the wrong could not be justified. However, the perpetrator may still be held accountable for their actions under a different legal theory if the invasion was indirect despite being predictable, or if it was the product of an omission rather than an affirmative act.<sup>8</sup>

## ● **TRESSPASS:**

When there is immediate and direct injury of a personal or quantifiable and corporeal type done to the individual or property of the plaintiff, the law will indicate violence even if there was no actual use of violence. This is so because trespassing is considered an act of violence under the law, regardless of whether any actual injury was done or not.<sup>9</sup>

Torts such as assault, battery, and false imprisonment were created to protect individuals from being physically harmed or having offensive inferences made about their person. These torts were created to shield a live person from any reference to his person that would violate his respect for himself or others.<sup>10</sup>

## ● **TYPES OF TRESSPASS TO PERSON**

### 1. **ASSAULT:**

An assault is an attempt or a threat to do a corporeal hurt to another, coupled with an apparent present ability and intention to do the act. When unskilled use the word "attack," they usually mean the actual act of using force, such as when Person A strikes Person B. This is an incorrect use. Therefore, it is correct to say that "popular assault began when legal assault ends."<sup>11</sup>

### 2. **BATTERY:**

"Battery"<sup>12</sup> is defined as "the purposeful and direct use of harm against another person without justification. "To establish battery, one must make body contact with another person, however little.

<sup>8</sup> Ratanlal & Dhirajlal, 2019, The law of torts, Published by Lexis Nexis, 28<sup>th</sup> Edition ISBN:978938548410

<sup>9</sup> Jowitt's Dictionary of English Law, Vol. 2 (1977) at p.1804 and Funk & Wagnall's Standard Handbook (1973) at p. 391

<sup>10</sup> B.M Gandhi, Law of Torts, 4<sup>th</sup> edition, pg no.158 published by: Eastern Book Company, 2016 ISBN:9789388206402

<sup>11</sup> A.K Jain, 2016, Law of Torts, Published by - Delhi. Ascent Publication, 8<sup>th</sup> edition, ISBN-9788193555606

<sup>12</sup> Trespass to person

As such, it is considered to be battery to take another by the collar, spit in his face, knock over a chair or vehicle in which another is seated, pour water over another, or force another to undergo a medical examination without his or her will. Close physical contact is necessary for battery operation (may be indirect contact).<sup>13</sup>

### **3. FALSE IMPRISONMENT:**

The word "false" can also mean "incorrect" or "wrong." The plaintiff does not have to prove the defendant's fault in a strict liability tort case.<sup>14</sup>

A complete limitation of a person's liberty falsely is known as false imprisonment in tort law. This essentially implies preventing a person from engaging in any kind of mobility, which may take place in a jail or another confined environment. For a conviction of imprisonment, it is not essential that the person be physically detained; rather, the person must be constrained in such a way that he or she has no opportunity of fleeing, irrespective of the person's intention. A person must have been unlawfully restrained by another individual for the charge of false imprisonment to be upheld as a viable option. False incarceration is a kind of torture that not only violates the subject's constitutional right to freedom but also attacks his dignity and reputation. The idea that one person cannot put another in jail without going through the proper legal channels is a notion that is recognized all around the world, particularly in democracies. Therefore, protection for a person's life and their right to personal liberty<sup>15</sup> is guaranteed by the constitution of India, namely Article 21,<sup>16</sup> which has been enacted.

The main elements of false imprisonment are that there must be a) real or constructive - constraint on a person's liberty, the restraint must be entire as opposed to partial, the restraint must be against the will of the plaintiff, and it must be irrational.

It is important not to confuse the confinement of one's body with a simple loss of independence. To be considered incarceration, a person's liberty must be completely restricted; partial restriction is not the same thing. Even if it's just for a little while, complete confinement is captivity. In the situation of partial restraint, the methods of escape have to be known and reasonable.<sup>17</sup>

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<sup>13</sup> IBID

<sup>14</sup> SUPRA NOTE 10

<sup>15</sup> Supra note 7

<sup>16</sup> SUPRA NOTE 1

<sup>17</sup> SUPRA NOTE 10

# LITERATURE REVIEW

## ARTICLES

### **1. )Torts: False Imprisonment: Detention of Insane Person<sup>18</sup>**

The author in this article talks about the false imprisonment of unsounded mind person. In case, the plaintiff sued the defendant physician for false imprisonment for keeping the plaintiff in jail under the false pretexts that the plaintiff was insane. Even though there was evidence indicating that the plaintiff was not of stable mind when she was initially imprisoned, she was not released until ten days later. This is despite the fact that the plaintiff had been held against her will.

- The author mentions that in common law it is mentioned that unsounded mind person can be imprisoned if he/she is dangerous to others and here in the case there is total restraint of plaintiff and false imprisonment would lie under defendant as it is an exception to “insane person” as per the common law.

### **2. Statute of Limitations. False Imprisonment<sup>19</sup>**

- The author talks about statute of limitations of false imprisonment, he states when the underlying cause of action is finished, the clock on the statute of limitations starts ticking. In some types of lawsuits, the real injury, which occurred as a direct result of the defendant's behaviour, is required for the completion of the cause of action.
- The author mentions that the statute of limitations may start to run even though not all of the damage has been incurred yet, with subsequent losses only adding to the total amount of damage sustained. However, the detention of the plaintiff may be seen to be an ongoing trespass, with each minute of detention giving rise to a new cause of action in the legal proceeding.

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Person, Michigan Law Review, Apr., 1951, Vol. 49, No. 6 (Apr., 1951), pp. 917-919, The Michigan Law Review Association. ISSN-

0026-2234 [Torts: False Imprisonment: Detention of Insane Person on JSTOR](#)

<sup>19</sup> Statute of Limitations. False Imprisonment, Columbia Law Review, Apr., 1925, Vol. 25, No. 4 (Apr., 1925), pp. 505-506, Published by: Columbia Law Review Association, Inc., ISSN-0010-1098

[Statute of Limitations. False Imprisonment on JSTOR](#)

### 3. False Imprisonment: Elements of Liability: Termination of Original Proceeding<sup>20</sup>

- The author mentions that in *Boesch v. Kick*<sup>21</sup>, the plaintiff in an action for false imprisonment did not say that the proceeding that led to her arrest and detention in an insane asylum had been resolved when she initiated her suit to seek damages for her detention. Instead, she claimed that she had been wrongfully incarcerated. This accusation was without merit, as it was held.
- The author mentions that the court that heard the initial case stated that malicious prosecution allegations would have been necessary to proceed with the lawsuit. It is generally acknowledged that the plaintiff in a malicious prosecution suit must allege and establish that the original proceeding against him was dismissed in his favour.
- The situations appear to be the result of a misunderstanding of the difference between malicious prosecution and false incarceration. The wrongful detention is the crux of a false imprisonment claim, and a prior legal proceeding is not necessary to establish injury.

### ➤ **BOOKS**

#### 1. **RATANLAL & DHIRAJLAL, THE LAW OF TORTS**<sup>22</sup>

- The author in this book, states what constitutes the false imprisonment. He defines false imprisonment as a total restraint of freedom of an individual.
- The author states there is no relevance to the length of time that the incarceration will continue. But there can be no legal basis for it.
- The person can be held either (a) actually, which means physically, like when you put your hands on someone, or (b) constructively, which means with just a show of authority, like when an officer tells anyone that he is wanted and makes him follow.

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<sup>20</sup> False Imprisonment: Elements of Liability: Termination of Original Proceeding, Michigan Law Review, Vol. 21, No. 6 (Apr., 1923), pp. 704-705, Published by: The Michigan Law Review Association, [False Imprisonment: Elements of Liability: Termination of Original Proceeding on JSTOR](#)

<sup>21</sup> Boesch v. Kick, (N. J., 1922), 119 Atl. 1

<sup>22</sup> Ratanlal & Dhirajlal, 2019, The law of torts, Published by Lexis Nexis, 28<sup>th</sup> Edition ISBN:978938548410

## 2. A.K JAIN, LAW OF TORTS,2016<sup>23</sup>

- The author mentions the basic definition of false imprisonment on the context to the case *Ram Pyare Lal v Om Prakash*<sup>24</sup> where he defines false imprisonment as "Every restriction of the individual freedom of one person by another is in law an imprisonment and, if imposed without legitimate cause, constitutes a false imprisonment which is both a criminal offence and an actionable tort," says the law."
- The authors talk about the remedy of trespass person where he describes three remedies to the trespass of the person which are action for damage, self-help and habeas corpus.

## 3. B.M GANDHI, LAW OF TORTS,4TH EDITION<sup>25</sup>

- The author explains the definition of false imprisonment with context to *Onkarmal case*<sup>26</sup> in which the false imprisonment to be occur the essentials are described that are total restrain, liberty of person, unlawfully or unreasonable.
- The author describes Article 21 of the constitution states protection of life and liberty of a person<sup>27</sup>, where he states in this perish civilization we must be educated to respect for the right of individual.

## STATEMENT OF PROBLEM

When analysing the false imprisonment, the basic idea we get is restraining person by another person from moving either in a prison or enclosed place. The person before being arrested must be aware of reason of imprisonment. Due to false imprisonment, the plaintiff suffers his life of liberty and personal freedom. If civilisation is not to expire in a country as it has in others too well-known to be mentioned, we must educate ourselves to see that respect for individual rights is the genuine stronghold of democracy. The agenda of the article is to state the basic issues of false imprisonment and its analysis.

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<sup>23</sup> A K Jain, 2016, Law of Torts, Published by - Delhi. Ascent Publication,8th edition, ISBN-9788193555606

<sup>24</sup> Ram Pyare Lal v Om Prakash 1977 Cr LJ 1984

<sup>25</sup> B.M Gandhi, Law of Torts, 4<sup>th</sup> edition, pg no.158 published by: Eastern Book Company,2016 ISBN:9789388206402

<sup>26</sup> Onkarmal v. Banwarilal, AIR 1962 Raj 127.

<sup>27</sup> Art.21 No person shall be deprived of his life or personal liberty except according to the procedure established by law.

## **RATIONALE OF STUDY**

One type of tort that has persisted in part is the trespass. After enduring a violation of their freedom and being physically restrained from moving around, victims of false imprisonment can file a claim for trespass to the person under the tort of false imprisonment. Personal freedom originates in the guarantee of individual security. The plaintiff's harm was caused by the defendant's unlawful restriction of his freedom. This study will compare and contrast the rates of false imprisonment in India with those in other nations, as well as investigate its causes and potential solutions.

## **RESEARCH QUESTIONS**

1. What is the meaning and essential of false imprisonment in law of torts?
2. What is trespass to person and its types?
3. Who is liable for false imprisonment?
4. What are remedies to trespass a person?
5. What is interpretation of false imprisonment in 21<sup>st</sup> century?
6. What is difference between false imprisonment in India and other foreign countries?

## **RESEARCH OBJECTIVES**

- To understand and define concept of false imprisonment in law of torts.
- To study the concept of trespass.
- To understand who is liable for false imprisonment.
- To know the essential for false imprisonment in torts.
- To know about evolution of false imprisonment from Indian and foreign cases.
- To analyse false imprisonment in context to 21<sup>st</sup> century.

## **RESEARCH METHODOLOGY**

I have opted Specifically, doctrinal, analytical, and comparative research methods would be used to carry it out. Indian Penal Code, Fundamental Rights of India, Prison Act, 1894, Law of torts. Books, journals, scholarly articles, online journals, research reports, and other published materials served as secondary sources which has helped me during my research work.

## CHAPTER-1:

### MEANING NATURE AND SCOPE OF FALSE IMPRISONMENT

It's generally knowledge that no one can arbitrarily restrict another person's liberty if they don't have a valid legal defence. If no such defence exists, the person whose independence has been violated might file a false imprisonment lawsuit against the person responsible. The most prevalent situation in which the defence of lawful authority applies in relation to inmates who are sentenced to serve time in prison for offences for which they have been duly convicted is in lawsuits for false incarceration.

#### □ **BASIC DEFINITION OF FALSE IMPRISONMENT:**

The definition of the term "false" is "erroneous" or "wrong." False imprisonment occurs when a person is imprisoned in a prison or other enclosed location without legal justification or their consent. False incarceration is considered both a civil wrong and a criminal offence under common law. It can be used by both public and private prisons.<sup>28</sup>

S.340<sup>29</sup> of the Indian Penal Code specifically addresses "wrongful confinement" and makes reference to this law. Indian Penal Code S. 339 and 348<sup>30</sup> are dedicated to answering a wide range of supplementary questions on this subject.

False imprisonment may also be defined as an action on the side of the defendant that leads to the plaintiff's imprisonment. For a conviction of imprisonment, it is not essential that the person be physically detained; rather, the person must be constrained in such a way that he or she has no opportunity of fleeing, irrespective of the person's intention. What matters most is not how long somebody is detained for, but instead that there is no legislation to justify their incarceration. The act of preventing a prisoner from moving their property (which is another name for things) when they are in detention is also regarded to be an aspect of the notion of wrongful imprisonment.

“Every restraint of the liberty of one person by another is in law an imprisonment and, if imposed without lawful cause, constitutes a false imprisonment which is both a criminal offence and an actionable tort”<sup>31</sup>

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<sup>28</sup> Supra note 2

<sup>29</sup> Wrongful confinement

<sup>30</sup> Supra note 6

<sup>31</sup> Ram Pyare Lal v Om Prakash ,1977 Cr LJ 1984

In *Ram Pyare Lal v Om Prakash*<sup>32</sup>, it states that restraint on freedom of person by someone else is legally considered as imprisonment, and if the constraint is carried out without valuable legal reason it is said to be false imprisonment that is both a civil and criminal offence.

Imprisonment in the normal sense is not essential for this crime to be committed; a person might be wrongfully imprisoned simply by being prohibited from leaving the location in which he finds himself, whether that location be his own home, an open field, a bus, or a train.<sup>33</sup>

## **FALSE ARREST:**

A person is considered to have been falsely arrested when a police officer or a private person keeps them in detention without having the authority to do so according to the law. False arrest is only regarded as an element of false imprisonment; the two are extremely similar to one another, with the only difference being the vocabulary used to define them, and the law considers them to constitute a single tort. As with other deliberate torts such as assault, violence, illegal harassment, and breach of privacy, false imprisonment is considered to be a tort. These types of infractions are known as "torts of trespass to a person."

There are a number of valid defences to the civil wrong known as false imprisonment. These include the plaintiff's agreement, the complainant's voluntarily acceptance of the risk, reasonable suspicion, and the complainant's contributory negligence. Although the arguments of probable cause and the plaintiff's agreement to the action are both full defences, the defence of contributory negligence is the only one that may be used to diminish the number of damages that are awarded. Even if one took reasonable precautions and acted in good faith at all times, they will not be able to defend themselves against this tort.

If you think that you were wrongfully held, you have many choices: you may file a habeas corpus petition, seek monetary damages, or take matters into your own hands. Because wrongful detention is a kind of tort, the most common method of rectifying the harm it causes is to file a lawsuit and demand monetary compensation. If the victim has undergone bodily or mental suffering, if their reputation has been affected as a result of the defendant's actions, or if the accused behaved deliberately, the court may declare the defendant responsible for these damages. A Writ of Habeas Corpus<sup>34</sup> is a type of legal paperwork that may be used to petition the court for the release of an individual who has been unfairly imprisoned. This might include you or anyone you

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<sup>32</sup> Ram Pyare Lal v Om Prakash, 1977 Cr LJ 1984

<sup>33</sup> A.K Jain, 2016, Law of Torts, Published by - Delhi. Ascent Publication, 8th edition, ISBN-9788193555606

<sup>34</sup> Article 32 Constitution of India 1949

Article 21<sup>35</sup> of the Constitution ensures that every individual have the right to personalliberty. As a direct result of this provision, no one, despite the legal standing, may be subjected to treatment that is brutal, cruel, or humiliating. In the case that this right wasviolated, Article 14<sup>36</sup> of the Constitution would come into play. This is because Article14 guarantees that everyone has the right to be treated equally before the law and to besafeguarded equally from the law. In addition, the subject of harsh treatment ofconvicted criminals was expressly addressed in the Prison Act of 1894<sup>37</sup>, which was passed into law in the same year. The management of the institution is ultimately responsible for any cases of mistreatment or abuse that occur inside its walls.

A person may be held either

- (a) literally, which means seizing control of their body (for example, by handcuffing them) or
- (b) constructively, which means making a public show of force.

Both of these methods are considered to be forms of detention (such as by an officer telling anyone that he is wanted and making him accompany the officer).<sup>38</sup>

## □ **ESSENTIALS OR WHAT CONSTITIUTES OF FALSE IMPRISONMENT INLAW OF TORTS**

In order for anything to be considered unethical, there has to be both an absolute limit placed on the victim's freedom and the absence of a legal explanation for the restriction.

### **1. TOTAL RESTRAIN:**

It is against the law to restrain another person in any way, whether fully (in accordancewith Section 340 of the Indian Penal Code)<sup>39</sup> or in part (in accordance with Section 339of the Indian Penal Code)<sup>40</sup>. <sup>41</sup>In accordance with the standards of civil law, it is not possible to be held legally liable for a constraint that was only partly enforced.

Therefore, there has been no unlawful incarceration if a man is barred from moving inone way but is free to move in any other direction or turn around. This is because the guy has options.

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<sup>35</sup> Supra note 1

<sup>36</sup> Part III. —Fundamental Rights

<sup>37</sup> Act IX of 1894

<sup>38</sup> Supra note 11

<sup>39</sup> wrongful confinement

<sup>40</sup> wrongful restraint

In the leading case of *Bird v. Jones, COLERIDGE, J*<sup>42</sup> stated; “A prison may have its boundary large or narrow, visible and tangible, or, though real, still in the conception only; it may itself be moveable or fixed: but a boundary is must have; and the boundary the party imprisoned must be prevented from passing he must be prevented from leaving that place, within the ambit of which the party imprisoning him would confine him, except by prison-breach. Some confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of definition of freedom to be able to go whithersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by some will or power exterior to our own”

If one man physically or otherwise obstructs another's route, that man need not feel sorry for himself; the blocked individual is free to stay still or pursue another course of action. In the absence of physical force, a man cannot be unhappy as long as he is free to walk in any path, he chooses other than the one obstructed by another man. When a person is imprisoned, his or her freedom is severely limited, even only for a little period of time. This severely limits the individual's ability to exercise his or her will, regardless of how inconvenient that may be.<sup>43</sup>

In the event that there exist "means of escape," the restriction cannot be said to be absolute. The means, on the other hand, have to be ones that the person who is being held can understand, and they shouldn't put anybody in danger. When a person is not physically restrained or confined, but the freedom to go in the conveyance to which he wishes to go or to take the article which he wishes to carry and without which he is not willing to proceed, it cannot be said that he is being falsely imprisoned. This is because the person is not willing to proceed without the article or the conveyance that he wishes to take.<sup>44</sup>

It is not required for a person to be aware that he has been incarcerated, and a person might be incarcerated without his awareness, for instance while he is asleep, intoxicated, or unconscious.

In *Herring v Boyle*<sup>45</sup>, When a student was illegally held by his schoolmaster during school holidays (because his parents had not paid the tuition), the schoolmaster was found not liable for false imprisonment since the student was not aware of the restraint. This occurred because the

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<sup>41</sup> SUPRA NOTE 4

<sup>42</sup> *Bird v. Jones, COLERIDGE, J*, (1845) 7 QB 742 ,744

<sup>43</sup> PER PATTESON, J., in *Bird v. Jones* (1845) 7 QB 742, 742; *Parankusan v. Stuart*, (1865) 2 MHC 396; *Warner v. Riddiford*, (1854) 4 CBNS 180.

<sup>44</sup> *Maharani of Nabha v Province of Madras*, ILR (1942) Mad 696

<sup>45</sup> *Herring v Boyle*, (1834) 91 Cr.M & R377

student had no idea he was being detained against his will. In *Merring v Grahame White Aviation Co*<sup>46</sup>. In such a circumstance, a worker who was suspected of taking from the firm would be summoned to the office and made to wait in the waiting room while one or two workers stood outside. It was decided that the defendants' detention of the plaintiff before the arrival of the police constituted to false imprisonment. The fact that the plaintiff did not feel like he was being unlawfully held when he was in the waiting area was irrelevant.

Street is of the view that knowledge of imprisonment should be necessary since the interest protected appears to be a mental one, like an assault. This is why he thinks it should be required. The argument made by Meering has been criticized by Goodhart, but it has received backing from Proser. In a recent instance, the validity of Meering's argument was upheld, whilst the accuracy of Herring's case was called into question. In, *Murray v Minister of Defence*<sup>47</sup>, It was decided in that case that false imprisonment is actionable even without proof of special damage. As a result, it is not necessary for a person who was illegally detained to prove that he knew that he was being held in custody or that he was harmed by his detention in order to pursue legal action against the person who unlawfully detained him.

## 2. UNLAWFUL RESTRAINT:

In order to be considered wrongful incarceration, the detention in question must lack any legal validity. If the defendants submit a false complaint to the police that results in the detention of the plaintiffs, and if the arrest of the plaintiffs was completely unjustified, then the defendants will be held accountable for false imprisonment<sup>48</sup>.

Not only may a defendant be made responsible for false imprisonment if they physically arrest or detain the plaintiff, but they can also be held liable for false imprisonment if they were "active in promoting or causing" the plaintiff's arrest or imprisonment.

An unauthorized arrest is the responsibility of the officer who gave the order to hold the suspect. For an arrest to be made, there must also be "reasonable suspicion" that the detained individual is involved in illegal activity. The very minimal need is this created by a member of the law enforcement<sup>49</sup>. At the time of the arrest, there must be reasonable grounds for suspicion. If

<sup>46</sup> *Merring v Grahame White Aviation Co.* (1920) 121 LT 44

<sup>47</sup> *Murray v Minister of Defence*, (1988) 2 All ER 521 (HL)

<sup>48</sup> *Garikipati v Araza Biksham.*, AIR 1980 A.P. 31

<sup>49</sup> SUPRA NOTE 11

the problem arises after the arrest as a result of interrogation of the accused, then the incarceration and custody up to that point were unlawful, giving rise to a claim for false incarceration for the relevant time period.<sup>50</sup> In *Joginder Kumar v State of U. P*<sup>51</sup>, A good defence for wrongful detention was determined to be a reasonable and honest belief in the existence of certain conditions that, if true, would justify the arrest. It was so because an arrest might be rationally justified by the evidence at hand. It is the responsibility of the court to determine

whether or not the arresting officer had probable cause to believe the prisoner was guilty. An officer who makes an arrest is required by law to tell the suspect why he is being detained. Otherwise, he may be held criminally responsible for false incarceration.<sup>52</sup>

*In Middleweek v Chief Constable of the Merseyside Police*<sup>53</sup>, A person who has been lawfully arrested and held in a jail or a criminal who has been lawfully sent to prison may initiate a case for wrongful imprisonment if the physical conditions of their confinement are so intolerable as to render their incarceration illegal. It is not necessary to establish evidence of ill faith.<sup>54</sup>

In *Rudal Shah v State of Bihar*<sup>55</sup>, A defendant who was held in jail for an excessive amount of time after being found not guilty was awarded damages from the State.

For the same reasons, keeping a prisoner in custody after his sentence has ended is also illegal confinement.

## **When detention is justified:**

When someone enters a building or other facility with the understanding that he or she would be subject to certain reasonable criteria, it is not illegal to bar that person's exit until those requirements are satisfied. Therefore, it is not unfair detention to detain someone in jail until they pay off their debts if they have a legitimate cause to remain there.<sup>56</sup>

<sup>50</sup> *Shabban Bin Hussain v Chong Fook Kam* (1969) 3 All ER 1626(PC)

<sup>51</sup> *Joginder Kumar v State of U.P.*, JT (1994) (3) SC 243]

<sup>52</sup> SUPRA NOTE 11

<sup>53</sup> *Middleweek v Chief Constable of the Merseyside Police*, (1990) 3 All ER 662(CA)

<sup>54</sup> SUPRA NOTE 11

<sup>55</sup> *Rudal Shah v State of Bihar*, AIR 1983 SC 1086

<sup>56</sup> SUPRA NOTE 11

In *Robinson v Balmain New Ferry Co. Ltd*<sup>57</sup>, The plaintiff proceeded to the port where the defendant's ferry boats were parked in order to cross the river on one of the vessels. He wants to leave the harbour, but the next boat wouldn't depart for 20 minutes. Plaintiff had paid one cent to enter, but was now refusing to pay the requisite two cents to exit. The accused refused to allow him to leave the pier. The defendants are not at fault since the fees are reasonable.<sup>58</sup>

A person who has broken the law is subject to arrest. In some situations, a judge, police officer, or even a concerned civilian may make an arrest.

In *John Lewis & Co. v Times*<sup>59</sup>, The daughter of the defendant committed shoplifting while shopping with the plaintiff. In anticipation of the managing director's decision, they were detained in the office for one hour. He decided to give them to the authorities. At trial, the child was found to have committed theft, but the charge against her mom was dropped. The mother said her son was falsely imprisoned. Since the accused did not keep her any longer than was required to make the managing director's decision, they were deemed not liable.<sup>60</sup>

## □ **WHO IS LIABLE?**

Anyone who "actively promotes or causes" the plaintiff's arrest or detention may be held guilty for false imprisonment regardless of whether or not they participated in the actual arrest or incarceration<sup>61</sup>. Furthermore, a person's culpability may be established vicariously or via the instrumentality of a certain authority. One might be held liable for wrongful imprisonment damages if they aid in a fraudulent arrest by the police.<sup>62</sup> If the police made an arrest of the plaintiff for stealing based on genuine but inaccurate information provided by a shop detective and the officers testified that they had used their own discretion in making the arrest, the store owner would not be held accountable.<sup>63</sup>

The complainant is placed under arrest by the police without a warrant, brought before a Magistrate, and held into custody until further court proceedings. It is important to note that the

<sup>57</sup> *Robinson v Balmain New Ferry Co. Ltd.* (1910) AC 295

<sup>58</sup> SUPRA NOTE 11

<sup>59</sup> *John Lewis & Co. v Times*, (1952) 1 All ER 1203

<sup>60</sup> SUPRA NOTE 11

<sup>61</sup> *Altken vs Badwell* (1827) Mood & M 68

<sup>62</sup> *Sakik Hussain Khan vs Taffazal Khan* (1939) 43 CWN 1080

<sup>63</sup> *Grinham vs Willey* (1859) 4 H & N 496

plaintiff has different legal recourses both before and after the remand in regards to his incarceration. For his treatment after the remand, he may sue for malicious prosecution, and for his incarceration before it, he can sue for trespass for unfair imprisonment. If the wrong person is taken into custody and kept under a court order to which he is not a party, the person who filed the lawsuit is not liable for whatever compensation the wrongdoer may be owed.<sup>64</sup>

## □ **REMEDIES TO TRESPASS OF A PERSON**

### ➤ **Action for damages:**

Using general damages, the plaintiff might seek monetary compensation for the degradation and suffering caused by the trespass. In the absence of serious bodily injury, the amount of compensation awarded should be equal to the actual level of suffering and damage suffered. The amount of compensation awarded will depend on the particulars of each case. However, in circumstances where the plaintiff asserts that the administration or its agents have behaved in an oppressive, capricious, or illegal way, they must be exemplary. If someone is unfairly incarcerated, they have the right to demand recompense not only for the loss of their freedom, but also for the embarrassment, mental agony, and humiliation resulting from their condition.

The party that is being accused for trespassing must have the responsibility to demonstrate that they were justifiable in their activities. Thus, in a false imprisonment case, the only thing the plaintiff has to prove is that he was detained by the defendant or his agents. As a result, the plaintiff does not have the burden of evidence to show that there is no reasonable explanation for the defendant's conduct; rather, the defendant has this duty. It is not needed for the plaintiff to demonstrate that the defendant behaved with any form of ill intent, malice, negligence, or anything else along those lines.<sup>65</sup>

### ➤ **Self-Help:**

A person is authorized to use reasonable force to escape imprisonment without having to wait for judicial proceedings.<sup>66</sup>

<sup>64</sup> Bheema vs Chapman (1848) 8 MHC 38

<sup>65</sup> SUPRA NOTE 11

<sup>66</sup> SUPRA NOTE 11

➤ **Habeas Corpus:**<sup>67</sup>

It is a more expedient way to secure the release of a person who has been detained in violation of their legal rights.<sup>68</sup> The detainer must produce the detainee before the court and explain the basis for the detention in response to this writ. If the court finds there is no justification for the imprisonment, it will immediately release the prisoner. If the defendant is freed before the writ is determined, the court may, at its discretion, impose monetary damages as a kind of additional remedy.<sup>69</sup>

## **CHAPTER-2:** **JUDICIAL PRECEDENTS OF FALSE** **IMPRISONMENT IN 18TH AND 19TH CENTURY**

□ **CASE-1: BHIM SINGH V. STATE OF JAMMU & KASHMIR, 1985**<sup>70</sup>

**FACT:** Petitioner, a legislator in the Indian state of Jammu and Kashmir, was arrested and thrown in jail on the morning of September 11, 1985, with the express intention of keeping them away from the scheduled sessions of parliament. The allegations that he had made a seditious or malicious speech at the public gathering near the parade field in Jammu on September 8, 1985 led to his detention under section 153A<sup>71</sup> of the Indian Penal Code. His arrest was the result of these allegations. The 13<sup>th</sup> of September marked the first time he was brought before a judge. His right to vote was also infringed during a separate assembly vote that he apparently missed, despite the fact that the candidate for whom he planned to vote ultimately prevailed. In this case, his vote was crucial.

<sup>67</sup> Supra note 34

<sup>68</sup> (Arts. 32/226 of the Constitution)

<sup>69</sup> SUPRA NOTE 11

<sup>70</sup> BHIM SINGH V. STATE OF JAMMU & KASHMIR, 1985, AIR 1986 SC 494

<sup>71</sup> Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony, IPC 1860

**ISSUE:** The legitimacy of the incarceration, as well as whether or not it met the criteria for false imprisonment, was in issue.

## **JUGDEMENT:**

1. "If the non-policy liberty of a member of the legislature is to be played within this fashion one can only wonder what can happen to lesser mortals".

2. "Police officials who are custodian of law and order within the state should have the best respect for private liberty of citizen and will not float the laws by stopping to such weird act of lawness"

It was decided that the respondent, the State of Jammu and Kashmir, would have to pay the petitioner a total of five thousand rupees within two months of the decision being issued. It was required that the number be submitted to the Registrar of the Court, where it would subsequently be made available to the petitioner.

## **CRITICAL ANALYSIS:**

As the basic legal right: right to vote has been infringed for which state of J&K has to pay compensation to the petitioner and he was wrongfully detained so here, false imprisonment occurs.

### **CASE-2: BIND VS JOHN (1845)<sup>72</sup>**

**FACT:** Plaintiff wanted to cross a portion of a public road that was closed due to a boat race. Two police officers, the defendant, barred the plaintiff from passing in the desired way, but he was permitted to travel in the only other direction. The plaintiff declined to proceed in that direction and remained in situ. Plaintiff filed a false imprisonment case against defendant.

**ISSUE:** The plaintiff claimed he was unlawfully restricted because he was not permitted to utilise a stretch of a public road that prevented him from travelling in one direction even if all other routes were clear.

**JUDGEMENT:** Partial obstruction and disturbance does not constitute imprisonment. Coleridge J. stated at paragraph 744 of his judgement that:

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<sup>72</sup> Bird v. Jones [1845] 7 QB 742

“a prison may have its boundary large or narrow, visible and tangible, or, though real, still in the conception only; it may itself be moveable or fixed: but a boundary it must have; and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, except by prison-breach.”

A jail always has some sort of barrier. As plaintiff could still travel in one way, he cannot be considered imprisoned because he was not stopped from moving through or leaving the area. Plaintiff was not restrained in any way, nor was he subjected to any actual physical violence; he was free to leave in any direction he chose.

**CRITICAL ANALYSIS:** Here, the plaintiff cannot claim for false imprisonment as he was not restrained to an enclosed, he has choice to move to another direction and imprisonment means restraining person from moving anywhere.

□ **CASE-3: R V. DEPUTY GOVERNOR OF PARKSHURT PRISON (EX PARTE HAGUE)<sup>73</sup>, 1992**

**FACT:** In the time, Hague was a detainee at the Parkhurst state prison, where he was serving a sentence. It was the deputy governor of the Parkhurst jail who made the decision to send him to the Wormwood Scrubs facility. The deputy then gave the order for Hague to be isolated from the other convicts in the facility. Due to the fact that he was not permitted to issue this order by the Prison Rules of 1964, the segregation was in violation of the law. The Prison Act of 1954, specifically section 47(1)<sup>74</sup>, provides the legal basis for the existence of the Prison Rules.

**ISSUE:**

1. Infraction of the 1954 Prison Rules might lead to a private action for statutory obligation, right?
2. Does a prisoner's lawfully imposed sentence count as 'detention' for evaluating if they're falsely imprisoned?
3. Does a prisoner's improper or unpleasant treatment make his imprisonment unconstitutional?

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<sup>73</sup> R V. DEPUTY GOVERNOR OF PARKSHURT PRISON (EX PARTE HAGUE) 1992] 1 AC 58; [1991] 3 WLR 340; [1991] 3 All ER 733; (1993) 5 Admin LR 425; [1992] COD 69; (1991) 135 SJLB 102; [1992] CLY 3651.

<sup>74</sup> The Secretary of State may make rules for the regulation and management of prisons, remand centers and for the classification, treatment, employment, discipline and control of persons required to be detained therein, Prison act, 1964

**JUDGEMENT:**

Lords opposed Hague. The 1964 Prison Rules didn't allow private actions for statutory breaches. The Rules were meant to manage prison governance, not help prisoners. As lawful inmates, Hague and Weldon had no residual freedoms such as the jail governors.

“Prisoners who are lawfully detained do not have any ‘residual liberty’ against the prison governors. This means that it is not false imprisonment to confine them to a particular part of the prison. Unlawful treatment of a prisoner after their lawful detention does not make the detention unlawful.”

**CRITICAL ANALYSIS:**

As Hague was lawfully detained, his personal liberty has not been infringed and as per Prison Act, 1964 sec 47(1)<sup>75</sup> secretary has right to make changes in the rules and regulation to maintain the discipline in the prison.

□ **CASE -4: HERD VS WEARDALE STEEL CO 1915<sup>76</sup>**

**FACT:** Herd worked in the mines. His shift would generally begin at 9:30 in the morning, and he would be hauled up to the surface around 4:00 in the afternoon. Herd was unwilling to work inside the mine and requested to be hoisted out at eleven in the morning. The proprietors of the colliery, Weardale Steel, Coal and Coke Company (D), decided that they would not raise H until 1.30 in the afternoon. H had been locked up until that point. H lost money as a result of his false detention.

**ISSUE:** H asserted that he was falsely imprisoned in the mine because he was not permitted to use the lift until 1:30 p.m., which was the only route out of the mine at the time. This was the only way out of the mine at the time. This was a breach of his rights guaranteed by the Constitution.

**JUDGEMENT:** There was no false detention because of the law of *volente non fit injuria*, which provides that an individual cannot bring an action against another for tort or delict if they knowingly placed themselves in a position where harm might arise. Since the doctrine was used, there was no false imprisonment, hence the defendants were released. The 'damage' here is that the person

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<sup>75</sup> SUPRA NOTE 60

<sup>76</sup> Herd v Weardale Steel, Coal and Coke Co Ltd. [1915] AC 67

is behind bars. The court ruled in *Robinson v. Balmain New Ferry Co*<sup>77</sup>. Ltd. that Herd may only use the exit if he met the same requirements to leave as he did to enter the building. Herd broke the terms of his job agreement by refusing to perform the tasks he was assigned. If he didn't stay in the mine until 1.10 p.m. on that day, the lift wouldn't be operational because he'd broken the contract.

**CRITICAL ANALYSIS:** Herd cannot claim for false imprisonment as he himself offered the cause to happen which basically means *volenti non fit injuria*, he himself refused to do the work.

#### □ **CASE-5: ROBERSTON V. NEW FERRY COMPANY LTD. 1910**<sup>78</sup>

**FACT:** While Robinson paid his one cent for a ferry ride, he almost skipped the boat and finally decided not to take the trip. Robinson tried to leave through the same entrance he had entered, but leaving required him to spend an additional dime. Because Robinson didn't ride the ferry, he didn't think he had to fork over the one cent. Employees of Balmain New Ferry Co. (D) physically prevented R from leaving until he paid the cent. R. has filed suit for false imprisonment.

**ISSUE:** Robinson alleged that he was unjustly detained when he was prevented from leaving the ferry wharf without first paying a fee.

**JUDGEMENT:** "A person can be legitimately prevented from leaving if they had entered an earlier contracted permitting so."

**CRITICAL ANALYSIS:** Robinson verbally agreed to pay a single penny to enter and exit the ferry when he stepped through the ticket booth. This legally bound him to the terms of the contract, and D was within its rights to require him to comply with any reasonable restrictions on his freedom of movement before allowing him to pass through their turnstile after he had gone there of his own free will. When it was determined in *Bird v. Jones* that whole (and not partial) obstruction constitutes false imprisonment, the scope of the law regarding false imprisonment was narrowed. In this case, however, the court ruled that a person's being completely blocked from passing does not constitute wrongful imprisonment provided there is a legitimate condition to passing. This case is a continuation of *Bird v. Jones*<sup>79</sup>, in which it was decided that whole (as opposed to partial) blockage constitutes false detention.

<sup>77</sup> *Robinson v Balmain New Ferry Co. Ltd* [1910] AC 295

<sup>78</sup> *Robinson v Balmain New Ferry Co. Ltd* [1910] AC 295

<sup>79</sup> *Bird v. Jones* [1845] 7 QB 742

**CRITICAL ANALYSIS:** While entering the gate, Robinson promised to pay fee for both entrance and leaving so he came into contract which reduces the claiming of false imprisonment. So according to the judgement he must be asked to pay for leaving too.

## **CHAPTER-3:** **JUDICIAL VIEW OF FALSE** **IMPRISONMENT IN 21ST CENTURY**

### **CASE-1: WALKER V. COMMISSIONER FOR POLICE FOR THE METROPOLIS 2014<sup>80</sup>**

**FACT:** After an allegation that the Plaintiff had struck his partner, he got into an altercation with law enforcement. He was arrested and charged with assault on a police officer. His initial detention was deemed unlawful, leading to his acquittal. A police officer was found to have unlawfully detained him by limiting his movement while he was standing in a doorway. The officer's actions were not in furtherance of an arrest and did not have any reasonable suspicion that an arrest was necessary. Damages were sought on his behalf for his wrongful imprisonment, assault, and malicious prosecution. His claim ultimately failed because the circuit judge didn't believe his evidence. He filed an appeal with the higher court.

**ISSUE:** Is it possible that the initial detention of the Claimant at the doorway constituted a legal infraction, which would render the situation a case of wrongful imprisonment?

**JUDGEMENT:** LORD JUSTICE RIX SAID," apart from the basic facts described above, almost everything else about the incident had been disputed at the trial of Mr. Walker's claim, including the circumstances of that initial detention and arrest. He went over the evidence before the circuit judge, who had rejected the Claimant's evidence in its entirety. Nevertheless, there was a legal weakness in the Commissioner's defense to the Claimant's claim with respect to the claims for false imprisonment and assault in that it was always accepted by the police that his initial detention in the doorway was not for the purpose of arrest, but only for the purpose of pursuing enquiries. It was accepted by defense counsel that this amounted to a detention. This enabled the Claimant to argue that that initial detention was unlawful and justified him to use reasonable force to extricate himself from what was an unlawful, if brief, imprisonment.

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<sup>80</sup> WALKER V COMMISSIONER FOR THE POLICE FOR THE METROPOLIS [2014] EWCA Civ

It was also submitted that this initial unlawfulness was compounded by the failure of the police officer to effect a lawful arrest at the time when, he did purport to arrest the Claimant, namely immediately before the fight broke out.”

**CRITICAL ANALYSIS:** Claimant cannot claim for false imprisonment as initial detention was for general enquiries not for unlawful imprisonment.

## □ **CASE -2: THAPINDER SINGH BAWA vs JIA LAL KHANNA &ORS, 2015:**

**FACTS:** Defendant no. 1 claimed in court that the plaintiff was Bawa Thapinder Singh's nephew, notwithstanding the plaintiff's innocence. Plaintiff was enticed into a contrived criminal case by defendants. The FIR was dismissed on May 21, 2013 in Thapinder Singh Bawa vs. Jia Lal & Ors. The officer allegedly broke the law by launching a phoney trial based on the first defendant's bogus allegation. The defendants'2–6 officials created a fake criminal case against the plaintiff, hurting his image and breaking the law. The plaintiff suffered emotional and physical harm and monetary losses due to the defendant's actions. Nos. 5 and 6 didn't adequately investigate the case, and No. 1 never told them if the petitioner was engaged. Plaintiff claims Respondents 1–6 is individually and jointly accountable for damages caused by their actions. Plaintiff sued defendants for Rs. 19,500,000.

**ISSUE:** Evidence is required to determine whether or not a public worker acted in goodfaith while performing his official duties.

What is the minimal amount of time required to file a malicious prosecution lawsuit against a public officer?

**JUDGEMENT:** In accordance with section 140 of the Delhi Police Act, 1978, if a police officer or other person is accused of committing an offence or wrong by acting in excess of his or her duty or authority, or if it appears to the court that the offence or wrong, if committed or done, was of the aforementioned nature, the prosecution or suit shall be dismissed. The court may hear any such prosecution against a Police Officer or other individual, so long as it is initiated within one year of the date of the offence and with the Administrator's prior approval.

According to section 140 of the Delhi Police Act, the plaintiff's claim against the fifth defendant

is time-barred since it was not submitted within three months of the plaintiff's cause of action accruing. The complaint is dismissed as defendant number 5 is statutorily ineligible. Consequently, the motion submitted by defendant number 5 pursuant to section 1 rule 10 CPC is also granted, and defendant number 5 is removed from the list of parties.

**CRITICAL ANALYSIS:** In the aforementioned case, the public official filed a false criminal complaint against the plaintiff, so damaging their reputation and breaching due process. Whether or not the plaintiff was engaged in this case was not disclosed. I suppose that

- **CASE-3: SAROL AND ANR. vs RUBY, 2018**<sup>81</sup>

The plaintiff charged the defendant with defamation and sought obligatory injunctions. This application was filed by plaintiff 1- wife and plaintiff 2- husband, who is a head constable with the Delhi police. Their son, who was married to the defendant and worked for the Delhi police as a constable, falsely accused him of group sex and illicit contacts with the plaintiff's son, with the intent to slander him in society. The plaintiffs claim they were humiliated by the defendant's filing of such a complaint against them and by the dissemination of such words/content by filing a complaint with CAW Cell NE, Delhi.

In *Shri Ram Singh Batra v. Smt. Sharan Premi*, 133 (2006) DLT 126, this court dealt with a claim for the recovery of damages for defamation caused by the publication in the press of the FIR lodged against the plaintiff and his incarceration. A claim was made that the complaint used to register the FIR was false. It was decided that the criminal proceeding was still underway and that the plaintiff had neither been exonerated nor released. It was held that malicious prosecution is actionable as a tort, but that the mere presentation of a false complaint that seeks to set the criminal law in motion does not provide an action

for damages for malicious prosecution; (ii) that until the complainant obtains a request of conviction or disposal in his favour, there is no civil action to file a suit against the defendant on the tort of malicious prosecution; Thus, the lawsuit's complaint was dismissed.

**ANALYSIS:** In the aforementioned case, the public official filed a false criminal complaint against the plaintiff, so damaging their reputation and breaching due process. Again, in this scenario, the public officer abused his or her position.

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<sup>81</sup> code of criminal procedure, 1908 ACT No. 5 of 1908

#### □ **CASE-4: C. KISHIN CHAND vs CITY BANK N.A. & ANOTHER**

The complainant maintained a membership establishment agreement with the Bank, pursuant to which the complainant sought authorization from the Bank for a transaction made by his (the Plaintiff's) customer, and the Bank subsequently sent an authorization code to the Plaintiff before paying the Plaintiff the corresponding amount. During this time, the Defendant Bank filed a police report based on a letter it received from another bank about a fraudulent wire transfer, but without sufficient verification.

The Complaint prompted an investigation and the filing of a First Information Report against the Plaintiff and two other defendants. However, the Criminal Court exonerated the Plaintiff. The Plaintiff sued the Defendant Bank for damages on the basis that the Defendant Bank acted intentionally. However, the Honorable Madras High Court dismissed the Plaintiff's claim. The Honorable Madras High Court has held that the Defendant Bank, having received information of a fraudulent transaction, must tell the Police in order for the Police to investigate the issue. In addition, the Honorable Madras High Court determined that the matter pertains to offences, not criminals. During the investigation alone, the defendant was indicted. Malice cannot be inferred from a simple complaint, especially in the absence of personal animosity between the Plaintiff and the Defendant Bank.

**ANALYSIS:** In this instance. There was no mention of the specific individual involved, thus there was no personal animosity. Additionally, it is the responsibility of the bank to prevent any fraudulent transactions from occurring. I support the bank's choice.

However, if the transaction was unauthorized and fraudulent, I believe it should be reported straight to the police.

#### **CASE-5: M. ABUBAKER vs ABDUL KAREEM, 2021<sup>82</sup>**

Justice G.R. Swaminathan stated that the plaintiff needs establish more than the defendant's acquittal in order for his malicious prosecution claim to be successful. Instead, the burden of proof falls on the plaintiff.

- (i) that there were insufficient grounds for the prosecution,
- (ii) that the prosecution was motivated by malice, and
- (iii) that he was damaged as a result.

<sup>82</sup> M. ABUBAKER vs ABDUL KAREEM, 2021, S.A (MD) No. 122 of 2013

URL: [https://www.livelaw.in/pdf\\_upload/madras-high-court-malicious-prosecution-burden-of-proof-393945.pdf](https://www.livelaw.in/pdf_upload/madras-high-court-malicious-prosecution-burden-of-proof-393945.pdf)

This second appeal was filed by the defendant in response to the plaintiff's malicious prosecution claim. The petitioner had expressed worries about the leadership of the local mosque. In accordance with Sections 452 and 506(2) of the Indian Penal Code, it was the brother-in-law of Defendant 1 who filed the complaint against the plaintiff and his son on behalf of the Jamath that governed the mosque. The plaintiff was arrested and detained for about twenty-four hours. He was also temporarily removed from duty. The Judicial Magistrate later determined that he was innocent. The plaintiff filed this action following his acquittal.

The complainant requested Rs 1.5 lakh in damages from the accused. The trial court denied the plaintiff's claim, but the first Appellate Court ruled in his favour and granted him Rs 1 lakh in damages. The defendants 1 through 6 (in this case, all appellants) were found responsible by the first appellate court.

## **CHAPTER 4:**

# **CRITICAL ANALYSIS OF FALSE IMPRISONMENT**

False imprisonment is one of the most serious forms of human rights violation. It is vital to recognize the human nature of the condemned offender. The foundations of India's socio legal system are nonviolence, mutual respect, and the maintenance of human dignity. The use of torture in prisons is not the final remedy in the justice pharmacopoeia; rather, it is an admission that justice has not been served to any living person<sup>83</sup>.

All of a prisoner's fundamental rights are enforceable, but with limitations due to imprisonment. In reality, Article 21<sup>84</sup> of the Indian Constitution acknowledges the same thing. Article 20<sup>85</sup>, with its sub clauses, reaffirms the same and aims to safeguard offenders from being kept down by ex post facto laws (Article 20(a)), double jeopardy (Article 20(b)), and self-incrimination (Article 20(c)).

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<sup>83</sup> Surendra Kumar Pachauri, "Prisoners and Human Rights", S.B. Nangia and A.P.H. Publishing Corporation, Ed. 1999, p. 1

<sup>84</sup> Protection of life and personal liberty

<sup>85</sup> Protection in respect of conviction for offences

After analysing case laws and having detail information for false imprisonment we can conclude the following:

- The right to personal liberty, freedom of life with dignity has been guaranteed under Art.19, 20 and 21 of constitution, and of which Art 20,21 can be infringed even during emergency
- The person who is arrested has also life to liberty and freedom, jail authorities cannot take his/her right away.
- Term tort of imprisonment is a vital term while taking damages and if the matter of false imprisonment concerns mental and physical damage should be taken into consideration before awarding damages.
- If person is wrongfully imprisoned by police officer or any govt authority. Then, he or any other person on his behalf can file a writ of habeas corpus.
- If person is falsely arrested, he/she can use reasonable force in order to save him from false arrest. It can be self-help.

Analysing false imprisonment with foreign countries. Basically, false imprisonment is an intentionally restraining someone from going anywhere. In India, restriction someone into an enclosed area or prison the basic fundamental right of person that is right to liberty, freedom is violated which is Art.19,20,21.

**False imprisonment to happen in India elements are:**

1. there must be restrain
  - a. actual b. constructive-on person's liberty
2. the restrain must be total as distinguished from partial
3. the restraint must be against the plaintiff's will
4. it must be unreasonable<sup>86</sup>

**Comparing it to U.S the elements are:**

Under United States law, police have right to detain person based on justified cause, that the person has been involved in the criminal activity.

False imprisonment to happen in U.S.A elements are: 1. Willfull detention in bounded area

1. Without consent
2. Without authority of lawful arrest.<sup>87</sup>

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<sup>86</sup> Supra Note 10

<sup>87</sup> Supra Note 10

## **CHAPTER-5:** **SUGGESTION AND CONCLUSION**

### **SUGGESTION:**

As the topic of this research paper was “Analysing false imprisonment” and after analysing various case laws and having a gist of false imprisonment.

According to my point of view, a person either he/she is sound or unsound minded either he/she is all well or handicapped, either he/she is male or female, young or old. According to constitution that provide us fundamental right there comes a right to personal liberty and freedom as per Art.19,20 and 21<sup>88</sup>. A person who is detained must not be tortured in the sense that his/her personal rights are infringed. Govt. Or police authorities don't have right to torture an accused across the limit. Some limitations are being imposed but by keeping rights in mind. A state must strive to act on such issues of false imprisonment and should formulate more stringent laws for these issues.

Wrongfully detained person should have reasonable right to save himself from false arrest. As in a case of govt. And police authorities arrest, detained can file a writ and he/she can use reasonable force of self-help.

The future preference for reducing false imprisonment can be before arresting or detaining someone, there must be true evidence on which person is detained and person who is being arrested must have knowledge for on which grounds he/she going to be arrested, police authorities should treat prisoners by keeping in mind that their basic rights must not get infringed.

### **CONCLUSION:**

The whole research paper dealt with false imprisonment and its remedies and element and some law cases.

- False imprisonment may also be defined as an action on the side of the defendant that leads to the plaintiff's imprisonment. No person can imprison another without legal reason accepted universally and especially in all democracies. Article 21<sup>89</sup> of the constitution deals with personal liberty of a person.

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<sup>88</sup> Supra note 1

<sup>89</sup> SUPRA NOTE 24

The basic essentials/elements of false imprisonment are:

1. there must be restraint
    - a. actual b. constructive-on person's liberty
  2. the restraint must be total as distinguished from partial
  3. the restraint must be against the plaintiff's will it must be unreasonable.<sup>90</sup>
- The remedies for the false imprisonment are self-help, damages, habeas corpus.<sup>91</sup>
  - It's generally knowledge that no one can arbitrarily restrict another person's liberty if they don't have a valid legal defence. If no such defence exists, the person whose independence has been violated might file a false imprisonment lawsuit against the person responsible. The most prevalent situation in which the defence of lawful authority applies in relation to inmates who are sentenced to serve time in prison for offences for which they have been duly convicted is in lawsuits for false incarceration.
  - The future preference for reducing false imprisonment can be before arresting or detaining someone, there must be true evidence on which person is detained and person who is being arrested must have knowledge for on which grounds he/she going to be arrested, police authorities should treat prisoners by keeping in mind that their basic rights must not get infringed.

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<sup>90</sup> Supra note 10

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