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Editorial Note

South Asian Journal of Management Research (SAJMR), is a scholarly journal that publishes scientific research on the theory and practice of management. All management, computer science, environmental science related issues relating to strategy, entrepreneurship, innovation, technology, and organizations are covered by the journal, along with all business-related functional areas like accounting, finance, information systems, marketing, and operations. The research presented in these articles contributes to our understanding of critical issues and offers valuable insights for policymakers, practitioners, and researchers. Authors are invited to publish novel, original, empirical, and high quality research work pertaining to the recent developments & practices in all areas and disciplined.

Cross-functional, multidisciplinary research that reflects the diversity of the management science professions is also encouraged, the articles are generally based on the core disciplines of computer science, economics, environmental science, mathematics, psychology, sociology, and statistics. The journal's focus includes managerial issues in a variety of organizational contexts, including for profit and nonprofit businesses, organizations from the public and private sectors, and formal and informal networks of people. Theoretical, experimental (in the field or the lab), and empirical contributions are all welcome.The journal will continue to disseminate knowledge and publish high-quality research so that we may all benefit from it.

Dr. Pooja M. Patil
Editor

South Asian Journal of Management Research
(SAJMR)

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C O N T E N T S

Examining the Prevalence and Impact of Miscarriages of Justice on the Criminal Justice System: A Critical Assessment

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Abstract:

This paper critically examines the phenomenon of miscarriage of justice in the criminal justice system. Despite the standard of 'beyond reasonable doubt' in criminal law, innocent individuals can still be wrongly convicted, as exemplified in the House of Lords' ruling in the case of Director of Public Prosecutions v. Shannon. The history of successful appeals against criminal conviction worldwide shows that 'probabilities' are not certainties and there are various ways in which wrongful convictions can occur. This paper explores the circumstances and causes of past miscarriages of justice, and proposes measures to reduce the risk of such occurrences in Mauritius.

Keywords: Miscarriage of Justice, wrongful convictions**,** Tunnel vision, Criminal Justice System, Human Rights.

Introduction

According to the Criminal Justice system in Mauritius, a fair trial is a fundamental principle that is also protected by the Constitution and Criminal law. Anglo-based criminal justice systems like the one in Mauritius have several safeguards to prevent wrongful convictions, such as the presumption of innocence, the prosecution's burden of proof beyond reasonable doubt, the right to counsel and to present evidence, trial by jury for charges of murder or manslaughter, rules of evidence to exclude irrelevant, unfair, or prejudicial information, and rights conferred to a suspect during the police enquiry stage. Despite these measures, courts are not infallible, and sometimes, innocent individuals may be wrongly convicted. If found guilty, a person may appeal to a court of appeal and ultimately to the Judicial Committee of the Privy Council (J.C.P.C.).

Wrongful Conviction or Miscarriage of Justice?

The term "miscarriage of justice" refers to the irony of injustice caused by a justice system that is meant to dispense justice. Some authors argue that it results in a double injustice: the first being towards the victim or the victim's family since the actual perpetrator has not been held accountable for their crime, and the second being towards the innocent individual who has been wrongfully convicted. Although the term "miscarriage of justice" is frequently used, there are few legal decisions that have clarified its meaning. The term "miscarriage" refers to a failure to achieve a desired outcome or goal, and a miscarriage of justice is the failure to attain the desired end result of justice. In a 2011 judgment, the Supreme Court of England formulated a test to determine whether a miscarriage of justice has occurred.
The definition of a miscarriage of justice was established by the Supreme Court of England in 2011 as "when a new or newly discovered fact shows conclusively that the evidence against a defendant has been so undermined that no conviction could possibly be based upon it." (Maguire & Sandford, 2012). According to Naughton (2007), a conviction is considered unsafe and a miscarriage of justice has occurred when the grounds on which it was attained give serious cause for concern about its safety. The term "miscarriage of justice" encompasses both wrongful convictions and cases where a defendant is found guilty on grounds that are later deemed unsafe, which can occur in the same case (Naughton, 2007).

Errare Humanumest

With the absence of any mechanism to recognise and deal with wrongful convictions in Mauritius, one might assume that the country is immune from any form of miscarriage of justice. However, unlike other countries such as Canada, India, Singapore, Australia, United States of America or New Zealand, Mauritius has not faced public scrutiny for such cases. Nevertheless, it is acknowledged that despite the safeguards in place, the judicial system sometimes fails, and this has led to the exoneration of thousands of wrongfully

convicted persons in other countries. The advent of DNA testing technology has played a significant role in preventing wrongful convictions that could lead to imprisonment, life imprisonment, or death penalties. All stakeholders within the criminal justice system in Mauritius should consistently strive to reduce the risk of miscarriages of justice to a minimum, and acknowledging the problem is the first step towards achieving that aim. The former Prime Minister Blair's apology letter to the wrongfully convicted Guildford Four and acknowledgment of the miscarriage of justice was a giant step towards addressing wrongful convictions. In reference to the wrongful convictions of the Guildford Four, the former Prime Minister expressed his regret, stating that "I believe that it is an indictment of our system of justice and a matter for the greatest regret when anyone suffers punishment as a result of a miscarriage of justice. There were miscarriages of justice in your husband's case, and the cases of those convicted with him. I am very sorry indeed that this should have happened." (Blair, 1991, as cited in Naughton, 2007).

According to research, the United States has set up a national registry of exonerated persons, revealing that over 2,000 people were convicted and incarcerated for crimes they did not commit. These individuals had to endure years of imprisonment before being declared innocent. Similarly, in the United Kingdom, high-profile cases such as the Birmingham Six, the Guildford Four, and the Maguire Seven have been overturned and labelled as "unsafe and unsatisfactory" after the falsely accused individuals had spent more than a decade in prison. These miscarriages of justice have brought into question the integrity of the justice system in both countries as it represents a failure on multiple levels: (1) the wrongful conviction and imprisonment of an innocent person; (2) the true perpetrator(s) evading punishment and potentially committing more crimes; and (3) the re-victimisation of the victim's family who had a sense of closure with the conviction and now must cope with a reopened emotional wound.

In various countries such as Canada, the United Kingdom, and the United States, there has been a growing recognition of the need to address the issue of wrongful convictions and miscarriages of justice. One positive outcome of this recognition has been the establishment of commissions to investigate the causes of wrongful convictions and to develop strategies to prevent them from happening in the future. For instance, the Canadian Supreme Court has acknowledged the need to consider the risk of wrongful convictions and miscarriages of justice in its judgments on the admissibility of evidence. The commissions established in the above-mentioned countries have identified a range of factors that contribute to miscarriages of justice, with "tunnel vision" at the inquiry stage being a leading cause. These commissions have also made recommendations on how to prevent wrongful convictions and miscarriages of justice from occurring in the future.

Research Questions and Limitations

The following research questions have been examined to provide guidance and direction for the research conducted:

1. What are the root causes of miscarriages of justice?
2. How has this issue been addressed and combated?
3. What are the consequences of a failing criminal justice system?
4. What suggestions have been made for improvements?
5. What is the current state in Mauritius and what modifications are necessary for the current legal framework?

Analysing the efficiency of provisions related to miscarriage of justice in the local context has been challenging due to certain limitations. One major limitation is the absence of local cases that have been decided following the amendment of the Criminal Appeal (Amendment) Act. This makes it difficult to assess the effectiveness of the provisions. Additionally, the high threshold imposed by the law, specifically the "fresh and compelling evidence" test, limits the number of cases that are admissible, further complicating the situation.

Miscarriages of justice: A global phenomenon

Various commissions of enquiries, inquests and governments around the world have acknowledged the fact that Courts of Law have, on many occasions, wrongfully convicted (and sometimes executed) innocent people (Anderson & Anderson, 2011; Gross, Jacoby, Matheson, Montgomery, & Patil, 2005). There are countless other prisoners throughout the world who are serving sentences for crimes they did not commit (The Innocence Project, n.d.). Wrongful convictions as well as inquiries into their causes tend to expose the

various flaws of our criminal justice system: the amateurism level of police enquiries, police or prosecutorial misconduct and poor forensic practices are a few of these flaws (Innocence Commission, 2016; Tanovich, 2015). There have been a number of cases and commissions of enquiries which have brought the spotlight on the flaws of our justice system and the object of this part is to present a bird's eye view of the situation in different jurisdictions and also present the organisations and other institutions which have been set up to prevent and enquire into miscarriages of justice (Commission on Capital Cases, 2020; Innocence Project, n.d.). This will set the basis for the next part which aims to discuss the changes that may be brought to the Mauritian Criminal Justice System to fight wrongful convictions and miscarriages of justice.

The situation in England & Wales

In 1974, Judith Ward was convicted of murder of several people caused by a number of IRA bombings in 1973 (BBC News, 2003). Judith Ward spent 18 years in jail before her conviction was quashed in 1992 (The Guardian, 1992). Her lawyers argued the trial jury should have been told of her history of mental illness (BBC News, 2003). The Court of Appeal concluded that Ward's conviction had been "secured by ambush". They said government forensic scientists had withheld information that could have changed the course of Ms Ward's trial (The Independent, 1993). She was eventually set free in 1992 after having been wrongfully detained for more than eighteen years (The Guardian, 1992).

The 'Birmingham Six' refers to six men who were jailed for life in August 1975, after 21 people were killed by bombs in two Birmingham pubs (The Independent, 1991). In 1991, their appeal was allowed in the light of new evidence of police fabrication and suppression of evidence which successfully dismantled both the confessions and the 1975 forensic evidence (BBC News, 2015). Their conviction was quashed on appeal (The Independent, 1991). In 2001, a decade after their release, the six men were awarded compensation ranging from £840,000 to £1.2 million (The Guardian, 2001).

'The Guildford Four' were convicted of bombings carried out by the IRA, and the 'Maguire Seven' were convicted of handling explosives found during the investigation into the bombings (The Independent, 1991). Both groups' convictions were eventually declared "incorrect and unsatisfactory" and reversed in 1989 and 1991 respectively after they had served 15-16 years in prison (BBC News, 2015). However, they were not compensated for these years in prison (The Guardian, 2005).

The Criminal Cases Review Commission and Innocence Network UK

The Criminal Appeal Act 1995 established the Criminal Cases Review Commission (CCRC) following the recommendation of the Runciman Commission report (Home Office, 1993). The CCRC has the authority to assess and investigate applications for review made by individuals who claim that they have been wrongfully convicted (Criminal Appeal Act 1995). If the Commission is convinced that there is a "real possibility" that the conviction might be overturned by referring the matter back to the court, and that the grounds for review are primarily based on fresh evidence, then the Commission may refer the case to the Court of Criminal Appeal (Criminal Appeal Act 1995).

The Scottish Criminal Cases Review Commission, which was established in 1999, has referred 107 cases to the courts for review, and 58 of these cases have resulted in the quashing of convictions or the reduction of sentences between 1999 and the present (Scottish Criminal Cases Review Commission, 2023).

To help the factually innocent victims of wrongful convictions, the Innocence Network UK (INUK) was established to help them unearth the truth in their cases, provide legal assistance, and present arguments before the CCRC (INUK, 2023). INUK also organises workshops on all aspects of understanding wrongful convictions to reduce their occurrence (INUK, 2023).

The Canadian Justice Jystem on Trial

The case of Truscott put the Canadian justice system on trial. In 1959, Steven Murray Truscott, was sentenced to death for the murder of 12-year-old Lynne Harper. He was only 14 at the time and his death sentence was commuted to life imprisonment (Lyon, 2008). Truscott was scheduled to be hanged on December 8, 1959 but a temporary reprieve on November 20, 1959 postponed his execution to February 16, 1960 to allow for an appeal (Lyon, 2008). On January 22, 1960, his death sentence was commuted to life imprisonment (Lyon, 2008).

In 2001, Truscott sought a review of his 1959 murder conviction. Hearings were heard at the Ontario Court of Appeal. In 2007, after review of new expert pathology and gastroenterology evidence, as well as archival documents that relate to the credibility and reliability of the evidence of the doctor who performed the autopsy on the body of Lynne Harper the court concluded that this material, which was not considered at trial, qualifies as fresh evidence which significantly undermines the medical evidence relied on by the prosecution in the prior proceedings (R v Truscott, 2007). The court declared that Truscott's conviction had been a miscarriage of justice and the court acquitted Truscott of the murder (R v Truscott, 2007).

On July 7, 2008, the government of Ontario awarded him $6.5 million in compensation (Globe and Mail, 2008).

The Criminal Convictions Review Group

The Department of Justice in Canada published a consultation paper on the topic of wrongful convictions in 1998, leading to amendments to the Criminal Code that created a mechanism for wrongfully convicted individuals to seek a review of their case based on sufficient grounds. This review may lead to a new trial or referral to the Court of Appeal, as decided by the Minister of Justice under the Canada Inquiries Act (Department of Justice Canada, 2018).

The Impact of the Advance in DNA Technology in the United States of America

According to the Innocence Project, there have been 325 post-conviction DNA exonerations in the United States alone. Despite the growing prevalence of these cases, there is no evidence that the justice system is correcting itself (Innocence Project, n.d.).

In 1994, Damien Echols, Jessie Misskelley Jr., and Jason Baldwin were convicted of the murder of three young boys. Their convictions were based on poor police work, unreliable forensic evidence, coerced confessions, jury misconduct, and fabricated evidence (PBS, 2011). However, in 2011, after 17 years in prison, new DNA evidence was discovered that proved their innocence (Eggers, 2011). Top pathologists found that much of the forensic evidence presented at trial was false and inconsistent with the cause of death and wounds on the victims' bodies (PBS, 2011). Although the three men pleaded guilty in exchange for their release, they maintained their innocence (Eggers, 2011).

Darryl Hunt was another victim of a wrongful conviction. Despite there being no evidence connecting him to the murder of Ms. Sykes, an all-white jury found him guilty and he was sentenced to life in prison (Kurtzleben, 2016). However, ten years later, crucial DNA evidence that was not available at the time of trial demonstrated that he was innocent (The Innocence Project, 2019). Willard Brown later confessed to the murder after DNA evidence linked him to the crime (Kurtzleben, 2016). After serving 19 years for a crime he did not commit, Hunt was finally released (The Innocence Project, 2019).

The table below presents the factors that have contributed to the first 325 wrongful convictions that were overturned through DNA evidence.

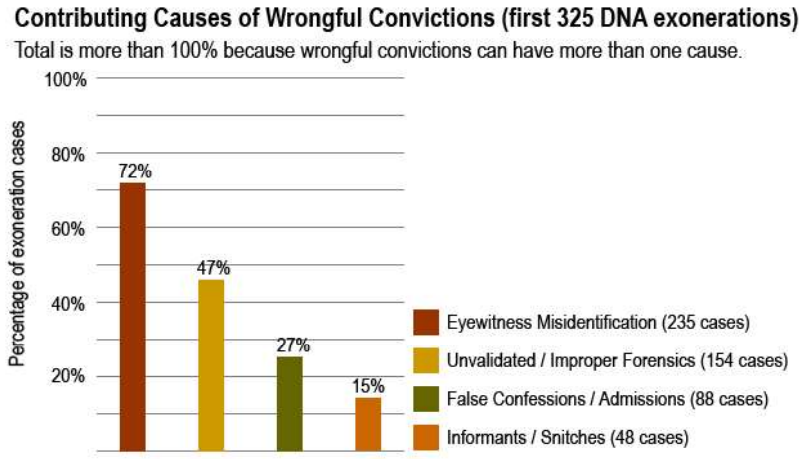

Figure 1: Contributing causes

The Innocence Project

In the United States, the Innocence Project (IP) was established as a non-profit legal clinic with the goal of using DNA testing to exonerate wrongfully convicted individuals and to bring about reforms in the criminal justice system to prevent future injustices (Innocence Project, n.d.). The use of DNA technology to free innocent people has been ground-breaking and has provided undeniable proof that wrongful convictions of the factually innocent are not isolated or rare events but are instead the result of systemic flaws within the system (Innocence Project, n.d.). The Innocence Project's mission is to free the large numbers of innocent people who remain incarcerated and to bring about meaningful reform to the system responsible for their unjust imprisonment (Innocence Project, n.d.).

It is important to note that there is a distinction between the situation in England and Wales, where a conviction may be quashed on the grounds that it is unsatisfactory following a referral from the Criminal Cases Review Commission (CCRC). In this context, a person may be successful in having their conviction quashed by establishing their legal innocence, rather than their actual innocence. Conversely, in the United States, the innocence projects seek to establish factual innocence through DNA exonerations (Griffin, 2013). As noted by Lissa Griffin, "the United Kingdom defines the problem as 'righting miscarriages of justice,' and the United States defines it as 'correcting factually erroneous convictions'" (Griffin, 2013, p. 87).

Australia and New Zealand

In Australia, Richard Doney was wrongly convicted for the offence of importation of cannabis resin in 1984, with the Prosecution's case heavily relying on the testimony of an alleged accomplice and an expert witness confirming Doney's handwriting. He was sentenced to 20 years in prison. However, subsequent court proceedings found the accomplice's testimony to be unreliable and an eyewitness gave evidence contrary to the expert witness. After two trials and three appeals, Doney was released on parole in 1995 after serving over six and a half years in jail. In 2001, the Court of Appeal found that fresh evidence had established the conviction was unsafe and that there had been a wrongful conviction, resulting in Doney's acquittal. The Innocence Project, which is aimed at helping factually innocent convicts prove their innocence, also exists in Australia and is run by Griffith University.

New Zealand

In 1995, David Cullen Bain was convicted of the murders of his parents and sibling and was sentenced to life imprisonment. However, following new evidence, Bain was successful in his appeal to the Privy Council in 2007, resulting in his conviction being quashed and a retrial being ordered. In June 2009, Bain was acquitted on all five charges after a five-hour, fifty-minute deliberation. The case has become one of the most well-known examples of a wrongful conviction being overturned due to DNA evidence. (BBC News, 2009)

Leading Causes of Miscarriages of Justice

The fact that the criminal justice system in the United States is flawed is widely acknowledged (Pew Research Center, 2021). However, the question of what causes this system to go off track remains unanswered. While the Magistrate or Judge may be perceived as the primary parties responsible for such failures, there are several intervening factors that contribute to the system's shortcomings, both before and during trial (Finnane, 2002). Such factors include but are not limited to, the haste in completing investigations, errors at the trial level, witnesses who intentionally perjure themselves to serve their own interests, errors from the bench, police's deliberate manipulation of evidence, or any combination of these factors (Shelton, 2005).

In analysing these factors, it is useful to classify them into two groups: factors that may be attributed to individuals and factors that are imputable to the system as a whole (Finnane, 2002). By understanding the root causes of these factors, the criminal justice system can be reformed and made more effective.

Factors which may be Imputed to the System

The pressure exerted by society to find and punish those responsible for heinous crimes often has a significant impact on the integrity and conduct of investigations (Petherick & Turvey, 2013). The police force is responsible for meeting society's demands for justice, and the burden of this responsibility falls on the investigating officers (Zimmerman, 2019). Failure to bring accused persons to trial may result in the police force being viewed as inefficient, and this pressure can be difficult to overcome. However, providing training to investigating officers and police officers in general can equip them to work effectively under extreme pressure and deliver the best possible outcome (Wolfe, 2004).

The media is another significant factor that contributes to miscarriages of justice and can be attributed to the broader criminal justice system (Wolfe, 2004). Reports on crimes and investigations can have a direct impact on the jury members' perceptions of the case. Such reports can influence the public and create a presumption of guilt before a trial has even begun (Greer & McLaughlin, 2010). It is common for previous convictions of accused parties to be disclosed to the public before the trial has taken place, creating a prejudice against the accused party that is difficult to overcome (Muncie & McLaughlin, 2001).

To avoid these issues, it is crucial to adhere to the golden rule of presumption of innocence and to ensure that the media refrains from conducting a trial by the press (Greer & McLaughlin, 2010). Furthermore, legal systems can be reformed to allow for greater impartiality and reduced public influence on trials, including measures such as sequestering juries (Muncie & McLaughlin, 2001).

Factors which may be Attributed to Persons

A confession is often considered a powerful piece of evidence in proving a person's guilt during a trial. However, false confessions can also occur due to a variety of factors. For instance, being deprived of personal liberty and being detained can prompt individuals to admit to crimes they did not commit in order to regain their freedom. Obtaining a confession may also make an enquiring officer's job easier, which can be tempting. Unfortunately, in some cases, enquiring officers resort to illegal means, such as police brutality, to obtain a confession. In Mauritius, there have been allegations of police brutality in cases such as the deaths of Michaella Harte and Iqbal Toofany. False testimonies can also be a factor in miscarriages of justice. Witnesses may provide false testimonies for various reasons, including personal gain or retribution, which can influence the sitting Judge or Magistrate. Additionally, witnesses can make honest mistakes or misidentifications, leading to wrongful convictions (Harel Mallac, 2015; Innocence Project, n.d.; Kassin, 2016).

Tunnel Vision

One particular cause of miscarriages of justice which shall be discussed in greater detail is ‘tunnel vision’. Tunnel vision, which has been identified as a major cause of wrongful convictions worldwide, occurs when one particular case theory is over focused upon, causing the whole investigation to be drawn in one particular direction with two major consequences: the ignorance of potentially crucial pieces of information and evidence on the ground that it does not fit in with the case theory and the unreasonable evaluation interpretation and sometimes manipulation of information and evidence to make it fit with the case theory. (Gudjonsson, 2003)

The following is a passage from the judgment of Boucher v. The Queen, where Rand J said: ‘It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is represented; it should be done firmly and pressed to its legitimate strength but it must also be done fairly. The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.’ (Boucher v. The Queen, 1954)

Therefore, within the context of tunnel vision, Prosecutors and State Counsel ought to try to regularly assess the police investigation and the evidence against a suspect in way that is fair and just. In a report on the prevention of miscarriages of justice which is published on the website of the Department of Justice of Canada, the following factors were identified as potential contributors to State tunnel vision, that is, impairing the proper role of the State Counsel: a. Close identification with police and/or victim; b. Pressure

by the media and/or special interest groups; and c. Isolation from other perspectives. (Department of Justice Canada, 2011)

The Commissions of Enquiry

There have been three Commissions of Inquiry into wrongful convictions in Canada, and all three have emphasized the dangers of tunnel vision and provided recommendations for preventing it (Mullins, 2005). The Royal Commission into the Donald Marshall trial was the first of these commissions, and it stressed the need for a separation between police and prosecuting functions (Mullins, 2005; Royal Commission on the Donald Marshall, Jr., Prosecution, 1989). The Sophonow Inquiry, which followed the Royal Commission, recommended regular, mandatory training for police officers on tunnel vision (Mullins, 2005; Manitoba. Public Inquiry into the Administration of Justice and Aboriginal People, 1991). The Kaufman Report extended this recommendation to include Crown Attorneys (Mullins, 2005; Ontario. Report of the Inquiry into the Re-Trial of James Driskell, 2008).

MacFarlane (2009) analysed two features that are typical of cases of wrongful convictions: environmental factors or “predisposing circumstances” that foster wrongful convictions in the first place, and “tunnel vision” (p. 381). He described “noble cause corruption” as an ends-based police and prosecutorial culture that justifies misconduct as legitimate because it is in pursuit of justice (MacFarlane, 2009). Tunnel vision, on the other hand, causes justice system participants to focus prematurely on a single suspect, eliminating other potential suspects and ignoring evidence that does not support their theory (MacFarlane, 2009; Manitoba. Public Inquiry into the Administration of Justice and Aboriginal People, 1991). MacFarlane recommended that police officers, counsel, and judges receive mandatory annual training on tunnel vision and its effects (MacFarlane, 2009; Manitoba. Public Inquiry into the Administration of Justice and Aboriginal People, 1991).

In a paper titled "Wrongful Convictions: The Effect of Tunnel Vision and Predisposing Circumstances in the Criminal Justice System," Bruce A. MacFarlane QC discussed two common features in cases of wrongful convictions. He stated that despite the diverse legal, political, and social environments of these jurisdictions, "the similarity in causal patterns and trends is at the same time both chilling and disconcerting" (MacFarlane, 2003, p. 3). Firstly, he analysed the existence of environmental factors or "predisposing circumstances" that facilitate wrongful convictions, including "noble cause corruption," an ends-based police and prosecutorial culture that legitimizes misconduct under the guise of bringing the guilty to justice. Secondly, he examined "tunnel vision," which leads justice system participants to prematurely focus on a single suspect (MacFarlane, 2003).

MacFarlane's paper also highlighted the Kaufman Report, which extended the above recommendations to include Crown Attorneys (MacFarlane, 2003). He argued that criminal investigations and trials take place in the context of the social, political, and economic conditions of the time, and despite the objective pursuit of the truth, "many subjective factors influence the course of events" (MacFarlane, 2003, p. 2). Justice may be blind in theory, but in reality, the various players making up the justice system bring their own perspectives, experiences, biases, aspirations, and fears to the decisions they make (MacFarlane, 2003).

According to a report by the Law Reform Commission of Mauritius, the issue of tunnel vision is a concern in the country's justice system. The report noted that, "There are currently no established mechanisms to help reduce the occurrence of tunnel vision in Mauritius," and that unless stakeholders, including defense counsel, are warned and guided, there is a risk of wrongful convictions. The report emphasized the importance of addressing this issue, stating that "innocents will unfortunately be jailed while the real culprits [remain] on the loose because of that particular cause" (Law Reform Commission of Mauritius, 2014, p. 6).

The Local Context

Finality of the Law v/s the Interests of Justice

The principle of the presumption of innocence is a fundamental right that individuals enjoy until they are convicted. Once a conviction is obtained, the person is generally presumed guilty, and if they happen to be innocent, proving their innocence can be a long and arduous journey filled with obstacles. At the appeal stage, the appellant carries a heavy burden of establishing that their conviction was unsafe. However, the courts are reluctant to interfere with the interpretation of facts by the trial courts, who have the benefit of

firsthand observation of witnesses when they testified. Once conventional legal avenues have been exhausted, and the person finds themselves in prison with limited or no resources to fight for their innocence, establishing innocence becomes even more challenging.

While the finality of the law is critical to maintaining due process, it also means that once the last court of appeal has rejected an appeal, it becomes exceedingly difficult for a wrongfully convicted person to establish their innocence. However, in countries such as the United Kingdom, the United States, and Canada, institutions have been set up to address wrongful convictions due to the recognition that the criminal justice system is not infallible.

In Mauritius, until 2013, a person who had been found guilty by the trial court and failed in their appeal had no further legal avenues to challenge their conviction, even if compelling fresh evidence demonstrated their innocence. The finality of the law was applied without exception. The appeal to the Supreme Court in its appellate capacity or the Court of Criminal Appeal dealt only with the safety of the conviction, and no precedent exists in Mauritius where someone was exonerated following fresh evidence demonstrating their innocence, a concerning issue (Law Reform Commission of Mauritius, 2014).

There is a consensus that, similar to criminal justice systems worldwide, our justice system has made errors. The issue at hand is that we have chosen to ignore the problem. This method of avoiding the aftermath of our criminal justice system was inevitably going to conflict with society's expectation of honesty and impartiality. In this context, it is relevant to cite the renowned novelist and journalist Emile Zola who famously said: "If you shut up truth and bury it underground, it will but grow and gather to itself such explosive power that the day it bursts through it will blow up everything in its way" (Zola, 1898).

Thankfully, the situation in Mauritius did not reach such an extreme level. However, after the release of the report "Wrongfully Convicted," which aimed to prove that four individuals were wrongly convicted of a crime, there was a notable sense of frustration among certain sections of the population. It was during this time that modifications were made to the Criminal Appeal Act (Laws of Mauritius, 2019) to address the issue.

The 2013 Amendments

The report "Wrongfully Convicted" is a comprehensive analysis of the "Amicale" case, a 1999 arson that resulted in death, in Mauritius (Luchmun, 2016). Following the report's publication, a crucial question emerged: Can a conviction be overturned if new evidence is discovered? At the time, the answer was a resounding "no." Once an appeal had failed, there was no further recourse to challenge a conviction. In the "Amicale" case, the convicts sought relief by making an application to the Commission for the Prerogative of Mercy (CPM), as it was the most feasible option available. Such applications are governed by Section 75 of the constitution (Constitution of Mauritius, 1968).

The avenue of the Commission for the Prerogative of Mercy (CPM) is intended for cases where an individual is seeking clemency for reasons that may have arisen subsequent to their conviction. It is not equipped to address cases of purported wrongful convictions since it lacks the authority and resources to investigate claims of factual innocence (Kisten, 2020).

It was in that context that an amendment was brought to the Criminal Appeal Act: The amendment (The Criminal Appeal (Amendment) Act 2013) provides that:

- *Subject to certain conditions, the Director of Public Prosecutions may apply for a review of the proceedings following acquittals in certain cases;*
- *A person, after having been found guilty following a trial before the Supreme Court may equally make an application for a review of the proceedings and if successful the Court may then quash the conviction or order a retrial, as it thinks fit and proper in the circumstances. For the Court to make such an order, it must be satisfied that there is 'fresh evidence and compelling evidence' in relation to the offence.*

The legal definition of "fresh evidence" is evidence that was not presented during the original trial and could not have been presented with reasonable effort at the time. "Compelling evidence" is defined as evidence that is reliable, substantial, and highly probative with respect to the issues in question during the trial (R. v. Palmer, 2010).

The Inadequacy of the Current Provisions

The passing of the amendment created mixed feelings, some arguing that it was finally a step in the right direction but others pointing out to the extremely high threshold when it came to sifting admissible evidence. The test case was again the 'Amicale case'. An application under Section 4A of the Protection of Human Rights Act was made to the Human Rights Division of the National Human Rights Commission. The enquiry lasted over fifteen months and over forty witnesses came forward, some of whom had never deposed previously (Human Rights Division, 2015). The findings were published on 24th June 2015 and the Division was not satisfied that there existed fresh and compelling evidence in that case and therefore it did not refer the conviction to the Supreme Court for a review.

However, having come to the above-mentioned conclusion, the Division devoted an entire section to making certain general remarks about its mandate. It drew up a comparison between the CCRC and the situation prevailing in Mauritius. Quoting Michael Naughton, it stated 'In its review, the CCRC seeks to find fresh evidence that undermines the reliability of the evidence that led to the conviction, as opposed to the evidence of innocence or, even guilt.' (Human Rights Division, 2015, p. 22) It then proceeds by explaining that in Mauritius, the Division is faced with the same difficulty since it cannot explore the matters which have already been before the jury or which were canvassed on appeal or by way of motion following the conviction. In a gist, the limited mandate of the Division is highlighted.

Furthermore, having identified certain disquieting features in the case, the Division states that "these disquieting features could have become the ground for a reference had the amendment to the Criminal Appeal Act included "exceptional circumstances to lead to a reference". However, although the Criminal Appeal (Amendment) Act was drafted along the same lines as the legislation in England and Wales, the Mauritian legislation does not follow its English counterpart which also allows a reference in exceptional circumstances" (Human Rights Division, 2015, p. 23).

The Human Rights Division of the National Human Rights Commission in Mauritius has acknowledged that the 'Amicale case' contains disquieting features that may warrant a review by the Supreme Court, but the current law prevents such a review. Additionally, the threshold for fresh and compelling evidence is so high that it makes it highly unlikely for a person to successfully prove their innocence under the existing legislation. Therefore, the next section will explore potential changes that could be made to the current system.

Improvements that may be made to our System

We will address the improvements that may be brought to our system under two broad headings: (1) Legislative improvements and (2) Non-legislative improvements.

As stated in the preceding section, the current legislation in respect of miscarriages of justice and wrongful conviction is incomplete and in dire need of a few amendments. The most pressing of these amendments would be to loosen the stringent rules so that reviewing a conviction is practical rather than purely theoretical. One must not lose sight of the fact that the wrongfully convicted are often abandoned by relatives and close ones and also devoid of any means so that they cannot secure proper legal assistance (Rishy-Maharaj, 2016). Any amendments would need to ensure that not only the legal threshold for admitting new evidence is reviewed but also that the whole process of seeking a review is accessible for the lay person. In that respect, the legal aid act could be amended so that once a person qualifies for legal aid, that person can then obtain free legal assistance for the review proceedings (Rishy-Maharaj, 2016).

Yet another improvement that can be made lies in the passing of a Police and Criminal Evidence act (PACE) which will in effect impose certain conditions on police officers to work in a more disciplined and fair manner (Murphy, 2016). Finally, another improvement which could be made and which recently caught the headlines is the abolition of the 'provisional charge' system. There are countless persons who are arrested, detained and deprived of their liberty for days or weeks pending a bail hearing simply on the basis of an allegation. Often, these charges are dismissed at trial level but the mere fact that a person has, on the basis of a mere allegation, spent a few days in police cell is in itself a miscarriage of justice (Rishy-Maharaj, 2016).

Aside from the legislative front, there are a number of steps that may be taken in order to be pro-active in the treatment of the plague that is miscarriages of justice. First of all, there should be a commitment at State

level to combat the problem. This is of capital importance since a consequent investment is needed from the state to revamp our entire criminal justice system. This includes investing in the police departments so that out enquiring officers have the necessary tools and equipment to lead a proper enquiry. That also includes investment in the training of the said enquiring officers and police prosecutors alike (Rishy-Maharaj, 2016).

One very disturbing feature which is well embedded in our criminal justice system and which may well be one of the causes of miscarriages of justice in Mauritius is the fact that a vast majority of our magistrates are appointed in their post after a spell at the Office of the Director of Public Prosecutions (DPP). Without in any way whatsoever casting doubt on their integrity, there is an inherent risk that they are subconsciously viewing cases and interpreting facts like they have been used to in their previous role as prosecuting counsel. It is in that respect that a proposition can be made so that our magistrates follow a specific magistrate course before being appointed in their role (Varma, 2006).

Concluding Remarks

The concept of miscarriage of justice has been a topic of concern for many legal scholars and practitioners. According to Choo and Nash, miscarriages of justice occur when an innocent person is convicted or when a guilty person is acquitted due to errors or mistakes in the legal system (Choo & Nash, 2015). These errors can be caused by a variety of factors such as false confessions, unreliable witnesses, faulty forensic evidence, and biased investigations.

The impact of miscarriages of justice can be devastating, as innocent people may be deprived of their freedom, separated from their families and loved ones, and may suffer long-term psychological trauma. The compensation scheme for wrongful convictions is one way to address the harm caused by miscarriages of justice, but it is not enough. It is important to identify and address the root causes of miscarriages of justice to prevent them from happening in the first place.

In order to prevent miscarriages of justice, the legal system should strive to ensure fairness and impartiality in all stages of the criminal justice process. This can be achieved by implementing proper procedures for evidence collection, witness testimony, and jury selection. Additionally, legal practitioners and law enforcement officials must receive adequate training on how to avoid biases and errors in their work (Denov, 2019).

Miscarriages of justice are a real and ongoing problem in the criminal justice system. It is crucial to address the root causes of these miscarriages in order to prevent innocent people from being wrongfully convicted and to ensure that the guilty are brought to justice. By doing so, we can help to maintain the integrity and fairness of the legal system.

According to Kaur and Bal (2018), the cases of miscarriages of justice that have been examined represent only a small fraction of the actual number of such cases. This is due to an initial reluctance to accept such cases, motivated by the need to maintain public confidence in the justice system. However, several countries have established commissions and made legal amendments in an attempt to address the issue. The responsibility to prevent miscarriages of justice lies with all stakeholders in the criminal justice system, and requires regular self-assessment and critical examination of decisions at every stage of the process. Factors contributing to miscarriages of justice can be attributed to individuals or the system itself, and efforts should be made to reduce these factors. The Law Reform Commission, an independent statutory body responsible for proposing reforms and changes to the law, should also consider legislative changes to address the issue (Kaur & Bal, 2018).

The need for professionalism and adequate training among stakeholders is crucial in addressing miscarriages of justice, which are often the result of bad or incomplete decision-making based on insufficient information (Kaur & Bal, 2018). Enquiring officers must be trained to process information and base decisions on concrete evidence rather than hunches, and should maintain an open mind and discuss findings with superiors (Kaur & Bal, 2018). In emotionally charged cases, it may be necessary for an unconnected enquiring officer to lead the investigation to ensure fairness, balance, independence, and transparency (Kaur & Bal, 2018).

The English Criminal Cases Review Commission (CCRC) model provides valuable lessons for domestic changes, although concerns have been raised about its failure to distinguish between wrongful conviction of an innocent person and broader miscarriages of justice (Kaur & Bal, 2018). Any legislative changes should

therefore be limited to remedies for those claiming factual innocence, not those claiming a miscarriage of justice solely on a point of law (Kaur & Bal, 2018). It is important to remember that a conviction of a factually guilty person being overturned is also an injustice (Kaur & Bal, 2018).

Finally, the Supreme Court should play a more proactive role in addressing miscarriages of justice by acknowledging them and sanctioning appropriate action (Kaur & Bal, 2018).

According to Kaur and Bal (2018), the risk of miscarriages of justice in the criminal justice system is a continuous challenge due to the likelihood of human error. However, by involving all stakeholders in the criminal justice system, a system can be developed to minimize the risk of miscarriages of justice. This system should also provide appropriate remedies for victims of such miscarriages. In light of the progress made in other jurisdictions, it is hoped that Mauritius will quickly adopt similar measures to address this issue.

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