FALSE IMPRISONMENT AS A TORT IN INDIA

Hari Priya, NALSAR University of Law

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TITLE:
FALSE IMPRISONMENT AS A TORT AND ITS REMEDIES

BY:
HARI PRIYA
NALSAR UNIVERSITY OF LAW,
SHAMIRPET, R.R. District,
HYDERABAD-500 078.
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Chapter 1: INTRODUCTION

1.1 RESEARCH METHODOLOGY

This project has required consultation to an assorted range of books and websites that are a part of the secondary sources. Some research papers and journals too have been referred to. The various sites referred to include the official sites of Supreme Court of India and Manupatra for research on cases of Indian origin, while the other cases can be traced back to various books referred to thereby.

1.2 RESEARCH PLAN

This rest of this project has been divided into five main parts that are as follows:

**Introduction** : This section briefly highlights the basics of what is false imprisonment and who can be held liable for the tort of false imprisonment.

**False imprisonment as a Tort** : This part has been included to explain the concept of false imprisonment as a tort with the help of various case laws, both Indian and Foreign.

**Ingredients of false imprisonment** : This section focuses on explaining the elements of false imprisonment as a tort, i.e., of what constitutes the tort of false imprisonment.

**Remedies** : This division seeks to list out the available remedies for the tort of false imprisonment and of when and how they can be availed.

**Conclusion** : This component endeavours to summarise the project as a whole and to give the concluding remarks and opinion about the topic, i.e., “False Imprisonment and its Remedies”
1.3 AIMS AND OBJECTIVES OF THE PROJECT

✓ To define and to understand the concept of false imprisonment as a tort

✓ To know about the evolution of the notion of false imprisonment as a tort, with reference to Indian and foreign cases.

✓ To understand who and when can one be held liable for the tort of false imprisonment

✓ To comprehend the various rudiments of the false imprisonment as a tort

✓ To become aware of the remedies under the tort of false imprisonment

✓ Lastly, to analyse the project in totality and address the issues raised thereon.
Chapter 2: PREAMBLE

1.1 WHAT IS FALSE IMPRISONMENT

False imprisonment is a restraint of a person in a bounded area without justification or consent. False imprisonment is a common-law misdemeanor and a tort. It applies to private as well as governmental detention. It is dealt with under the topic of “wrongful confinement” in the Indian Penal Code under S. 340. The Indian Penal Code deals with other matters related in this regard from S. 339 to S. 348. When it comes to public police, the proving of false imprisonment is sufficient to obtain a writ of habeas corpus.

It may also be defined as an act of the defendant which causes unlawful confinement to the plaintiff. For imprisonment it is not necessary that the person should be put behind bars, but he should be confined in such an area from where there are no possible ways of escape except the will of the person who is confining the person within that area. It is not the degree of the imprisonment that matters but it is the absence of lawful authority to justify unlawful confinement which is of relevance. The internment and non movement of any chattel, i.e., goods is also considered to be a part of the concept of false imprisonment.

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1 Garner, p. 636
2 Wrongful confinement
3 Section 339: Wrongful Restrain
Section 340: Wrongful Confinement
Section 341: Punishment for wrongful restraint
Section 342: Punishment for wrongful Confinement
Section 343: Wrongful confinement for three or more days
Section 344: Wrongful confinement for ten or more days
Section 345: Wrongful confinement of person for whose liberation writ has been issued
Section 346: Wrongful confinement in secret
Section 347: Wrongful confinement to extort property, or constrain to illegal act
Section 348: Wrongful confinement to extort confession, or compel restoration of property
4 http://en.wikipedia.org/wiki/False_imprisonment
5 http://www.legalserviceindia.com/articles/fal_torts.htm
False arrest is the arrest of the individual by the police officer or private person without lawful authority. False arrest is a part of false imprisonment only, and both are virtually indistinguishable except in their terminology and have been held by the courts as a single tort. False imprisonment is an intentional tort, like those of assault, battery, unlawful harassment and invasion of privacy. These are termed as torts of trespass to a person.

The defences of false imprisonment include consent of the plaintiff or voluntary assumption of the risk, probable cause and contributory negligence. The defence of consent of the plaintiff and probable cause are complete defences while the defence of contributory negligence is used only for mitigation of damages. Reasonable care and acting in good faith are no defences for this tort.

There are three remedies for false imprisonment, which include damages, habeas corpus and self help. Being a tort, the basic remedy for false imprisonment is an action for damages which can be due to physical or mental suffering, loss of reputation or even malicious intent on behalf of the defendant. If a person is unlawfully confined than he can be released from such confinement by the Writ of Habeas Corpus. A person can also use reasonable force in order to escape from the confinement.

Article 21 of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person whether he is a national or foreigner. Any violation of this right attracts the provisions of Article 14 of the Constitution which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with specifically by the Prison Act, 1894. If any excesses are committed on a prisoner, the prison administration is responsible for that.
However judicial and executive authorities have some amount of immunity for liability in false imprisonment cases. For example a judge exercising his judicial powers for the arrest the imprisonment of a person cannot be sued for damages for false imprisonment on the ground that his order was illegal or without jurisdiction, provided he believed in good faith that he had jurisdiction. There is protection conferred by the Judicial Officer’s Protection Act. Nevertheless, if the act is done in a 

\textit{mala fide} or in a recklessly manner, the magistrate or judge shall be liable for false imprisonment.

\footnote{6 \textit{Kemp vs Neville} (1861) 10 CBNS 523
\footnote{7Act 18 of 1850}
1.2 WHO IS LIABLE FOR FALSE IMPRISONMENT

A person may be liable for false imprisonment not only when he directly arrests or detains the plaintiff, but also when he was “active in promoting or causing” the arrest or detention\(^8\). Apart from this liability can be fastened vicariously, or through instrumentality of some officer. Also, if a person gets another arrested by police on a false complaint, he is liable for damages of false imprisonment\(^9\). In cases where the plaintiff was arrested on a charge of theft on *bona fide* but wrong information given by a shop detective and here the police officers gave evidence that they had exercised their own judgement in arresting the plaintiff, the shop-owner would not be held liable\(^10\).

The plaintiff is arrested without a warrant and produced before a Magistrate who remands him in custody; his remedies for detention before and after the remand are different. For detention prior to the remand he can sue for trespass for false imprisonment whereas after it he can sue for malicious prosecution. When a wrong person is arrested and imprisoned under a decree to which he is not a party, the person setting the court in motion is not liable for false imprisonment\(^11\).

In case of false imprisonment the burden to prove justification lies on the defendant who made or caused the arrest.

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\(^8\) *Altken vs Badwell (1827) Mood & M 68*

\(^9\) *Sakik Hussain Khan vs Taffazal Khan (1939) 43 CWN 1080*

\(^10\) *Grinham vs Willey (1859) 4 H & N 496*

\(^11\) *Bheema vs Chapman (1848) 8 MHC 38*
Chapter 2: FALSE IMPRISONMENT AS A TORT

False imprisonment is a trespass to person wherein the liberty of a person is curbed. A landmark judgment in this regard is the Bird v. Jone’s case, wherein it was held that in case there are other ways open for the plaintiff to escape, then, the mere obstruction of one of the ways does not activate the scope of the tort of false imprisonment. In this case, it was held that there must be total restrain, for howsoever short time, on the liberty of a person without any lawful justification;

This was followed with two contradicting judgements that are discussed below.

In the Herring case, a 10 year old boy was detained as his fees has not been paid. Here the action for false imprisonment failed as the boy had knowledge of the same. But in the Meering case, a boy was suspected of stealing from his employer and was kept waiting and later, arrested by the police. Here the lack of knowledge of the person that he was in the detention has no consequence on the fact that he was under false imprisonment failed.

The Robinson case, a ferry company, which ran ferries, charged a penny to enter and leave the premises. Robinson entered upon the payment of a penny but was restrained to exit on denying paying the exit fee. The court did not observe false imprisonment in his case. In the Herd’s case, a miner was barred from coming out of the mines on demanding to be let out as he felt the mine was unsafe to work in. Here emphasis was laid on his breach of employment contract and false imprisonment was ruled out. As held in Grainger v. Hill \(^{12}\), “if the deprivation of liberty is complete it amounts to an imprisonment and need not be confinement in a prison”\(^ {13}\), e.g., a person prevented from leaving his ship or house \(^ {14}\), or detention of a person in a public street against his

\(^{12}\) (1826) 6 B&C 528
\(^{14}\) Warner v. Riddiford (1858) 4 CBNS 180
will\textsuperscript{15}, etc. In Parankusam v. Stuart\textsuperscript{16} the court held the superintendent liable of false imprisonment, for having issued a false and illegal letter to the plaintiff asking him to present himself before the magistrate.

It has also been held that a prison official shall not hold a prisoner beyond his term\textsuperscript{17} or places him in a wrong part of the prison\textsuperscript{18} or with a wrong class of prisoners, acts in excess of his authority and is liable for false.

However, a person who is lawfully arrested and detained in a prison or a convict who is lawfully committed to prison cannot sue for false imprisonment if he is held under physical conditions so intolerable that his health suffers, but he will have a public law remedy of judicial review and a private law remedy for negligence\textsuperscript{19}. A prisoner in such conditions can avail of the public law remedy for violation of his fundamental rights under article 21\textsuperscript{20}.

In India the first case to be brought into light and decided upon by the Supreme Court with respect to false imprisonment was the A. K. Gopalan v. State of Madras. Union of India\textsuperscript{21} that highlighted the seminal significance regarding the interpretation of fundamental rights and their interplay.

The petitioner was detained under the Preventive Detention Act (Act IV of 1950) and he applied under Art. 32 of the Constitution for a writ of habeas corpus and for his release from detention, on the ground that the said Act contravened the provisions of Arts. 13, 19, 21 and 22 of the Constitution and was consequently ultra vires and that his detention was therefore illegal, and it was held that the Prevention Detention Act,

\textsuperscript{15} Mee v. Cruickshank (1902) 86 LT 708 \\
\textsuperscript{16} (1865) 2 MHCR 396 \\
\textsuperscript{17} Migguti v. Colwill (1879) 4 CPD 283 \\
\textsuperscript{18} Cobbett v. Gray (1852) 4 EX 729 \\
\textsuperscript{19} Hague v. Deputy Governor of Parkhurst Prison (1991) 3 All ER 733 (HL) \\
\textsuperscript{20} R v. Burnewood (1998) 1 All ER 634 (CA) \\
\textsuperscript{21} (1950 AIR 27, 1950 SCR 88)
1950, with the exception of Sec. 14 thereof did not contravene any of the Articles of the Constitution and, the invalidity of Sec. 14 did not affect the validity of the Act as a whole, and the detention of the petitioner was not illegal\textsuperscript{22}.

In the Hussainara Khatoon(I) v. State of Bihar\textsuperscript{23} case, it was held that speedy trial is an integral part of fundamental right of life and liberty as enshrined in Article 21 of the constitution. Further it laid down norms for speedy disposal of cases, after analyzing the fact that a large number of men and women had been held behind bars awaiting trial, for longer than periods that they would have to serve if their offence was proved, thereby depriving them of their freedoms.

In the Raj Deo Sharma vs The State of Bihar\textsuperscript{24} case, the question before the court was whether on the facts and circumstances of the case, the prosecution against the petitioner is to be quashed on the ground of delay in the conduct of trial. Allowing the appeal for bail, the Supreme Court gave the following directions:

1. In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case.

2. In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.

3. If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the

\textsuperscript{22} http://judis.nic.in/supremecourt/ Helldis.aspx
\textsuperscript{23} \textit{AIR} 1979 SC 1360
\textsuperscript{24} (1998) 7 SCC 507
prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case.

In Mathew Areeparmtil and other v. State of Bihar and other\textsuperscript{25} the court ordered that the cases which involve tribal accused concerning imprisonment of more than 7 yrs. should be released on execution of a personal bond. In the case where trial has started accused should be released on bail on execution of a personal bond. In case where no proceedings at all have taken place in regard to the accused within three yrs., from the date of the lodging of FIR, the accused should be released forthwith under S.169 Cr. P.C. if there are cases in which neither charge-sheet have been submitted nor investigation has been completed during the last three years, the accused should be released forthwith subject to reinvestigation to the said cases on the fresh facts and they should not be arrested without the permission of the magistrate.

In D.K. Basu v. State of West Bengal\textsuperscript{26} the petitioners raised important issues concerning the police powers and if monetary compensation should be awarded for established infringement of Fundamental Rights, as under Article 21 and 22 of our constitution. The court held that Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. To check the abuse of police power, transparency of action and accountability were the two safeguards laid down by the court. The D.K. Basu’s case contained 11 path-breaking directives where the court spelt out, in mandatory terms, the rights of an arrestee or a detainee and the manner in which the arresting or detaining authority is expected to behave, including the written record of arrest, informing of arrestee’s family of his arrest, medical examination on request, among the others.

\textsuperscript{25} AIR 1984 SC 1854
\textsuperscript{26} AIR1997 SC610
The case also high-lightened the power of arrest and whether monetary compensation should be awarded for established infringement of fundamental rights guaranteed by Articles 21 & 22. The Court laid down requirements of power of arrest in para 36 of the judgment and declared monetary or pecuniary compensation is an appropriate and indeed an effective and sometime perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is victoriously liable for their acts.\textsuperscript{27}

Sunil Batra v. Delhi Administration\textsuperscript{28}, looked into the Article 32 of the constitution and determined the power and responsibility of the court to intervene and protect prisoners from the torture they are put through by the jail authorities (“hands off doctrine”). The case also drew attention on the right against solitary confinement, along with the principle that said required a Prison Manual to be made available to the prisoners, in addition to keeping of grievance boxes in prisons and remedial action on grievances by the Session’s judge. The Supreme Court also recognized the right of the prisoners to be visited by their friends and relatives, and favoured their visits but subject to search and discipline and other security criteria.

In Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others\textsuperscript{29}, the Supreme Court ruled that the right to life and liberty includes the right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers, and as under article 14 and 21, the regulations must be reasonable and non-arbitrary, without severe restrictions. The case focused on death of a suspect in police custody, and use of third degree measures by police in investigation.

\textsuperscript{27} http://notorture.ahrchk.net/profile/india/case/1996_Shri_D_K_Basu_v_State_of_West_Bengal.pdf
\textsuperscript{28} 1980 AIR 1579 1980 SCR (2) 557 1980 SCC (3)
\textsuperscript{29} 1981 AIR 746 SCR
Bhim Singh vs State of Jammu & Kashmir\textsuperscript{30} was a case under article 32 of the constitution. The petitioner was an MLA, illegally arrested and detained to prevent him from attending the assembly session, and the defendant was held liable by the court.

Rudal Shah vs State Of Bihar\textsuperscript{31}, arose a petition under article 32, complaining prolonged detention of the petitioner even after his acquittal. The Supreme Court directed immediate release of the petitioner and directed the state to for the damages.

In Sebasitian M. Hongray\textsuperscript{32} two persons were taken into custody by the Army authority in Manipur, but were not produced in obedience to a writ of habeas corpus and it was held that those persons must have met an unnatural death while in army custody. The Supreme Court directed the Union of India to pay exemplary damages for the action of the army authorities in murdering the two persons\textsuperscript{33}.

\textsuperscript{30} 1985 INDLAW SC 20
\textsuperscript{31} AIR 1983 SC 1086: (1983) 4 SCC 141: (1983) 3 SCR 508
\textsuperscript{32} (1984) 3 SCC 82
\textsuperscript{33} G.P. Singh, “The Law Of Torts”, Wadhwa & Co., pg. 49
Chapter 3: **INGREDIENTS OF TORT OF FALSE IMPRISONMENT**

To ask at the outset if a convicted prisoner enjoys in law ‘residual liberty’, as if the extent of any citizen’s right to liberty were a species of rights in rem or a matter of status, is to ask the wrong question. The action for false imprisonment is maintainable in personam. The various constituents of false imprisonment include:

1. **PERIOD OF CONFINEMENT**

   Whatever may be the period of confinement, the tort of false imprisonment arises. But time period is of essence while determining the amount of compensation to be awarded to the injured party. An otherwise lawful detention may become unlawful if the detention is prolonged for an unreasonable period of time.

2. **THE INTENTION FACTOR**

   There are very few torts that consider the intension (“mens rea”) of the defendant, and false imprisonment is one of these i.e., a person is not liable for false imprisonment unless his or her act is done for the purpose of imposing a confinement. To reveal the element of intent, the defendant must only intend to accomplish the act that causes the confinement, and need not contend that the confinement was unlawful; as the defendant’s actual motives are immaterial. Even negligent acts of confinement amount to false imprisonment.

3. **KNOWLEDGE OF THE PLAINTIFF**

   There is no requirement that the plaintiff alleging false imprisonment was aware of the restraint on his freedom at the time of his confinement, e.g., the Meering Case discussed earlier. If the person is confined in a room, with one of

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the entries known to the plaintiff closed, and the room has more than one entry-exit door, but the plaintiff has no knowledge about the same, the defendant will still be held liable. Thus, the person confined does not have to be aware of the confinement or be harmed by it as it is actionable per se - Meering v Grahame-White Aviation Co

4. PLACE OF CONFINEMENT

To constitute the wrong, there may be no actual imprisonment in the ordinary sense- i.e. incarceration. Any confinement in the ordinary sense whether be it prison or any place used temporarily for the purpose of confinement constitutes false imprisonment. An unlawful arrest too amounts to false imprisonment.
Chapter 4: REMEDIES

1. Action for Damages

Damages in false imprisonment are those which flow from the detention. A person injured is entitled to compensatory damages. The damages for false arrest are to be measured only to the time of arraignment or indictment. There is no legal rule for the assessment of the damages and this is entirely left on the court to measure damages.

Elements of the injury to the person which are included in the purview of recovery of damages include injury to the person and physical suffering, mental suffering and humiliation, loss of time earnings and interruption of businesses, reasonable and necessary expenses incurred, injury to the reputation and generally the deprivation of any right caused by the loss of liberty such as the plaintiffs loss of the family company during the period of arrest.

2. Nominal and Compensatory Damages

The general rule in personal tort action is that the plaintiff is entitled to recover such a sum that shall be fair and just, in the absence of circumstances justifying an award for exemplary damages. The mere unlawful detention constitutes the basis for the recovery of at least nominal damages, but an award of only nominal damages may be insufficient and flawed where the facts proved indicate a right to greater damages.

It has been held now that the person can now be imprisoned without knowing it. In such cases the plaintiff might obtain only nominal damages.

Mental suffering including fright, shame and mortification from the indignity and disgrace, consequent upon an illegal detention, is usually considered an injury for which compensation may be made in an action for false arrest or

35 B.M. Gandhi, “Law of Tort”, Pg. 418
false imprisonment. The fact that no physical injury was inflicted on one complaining of false imprisonment has been said to be no grounds for denying the recovery of reasonable compensation for mental suffering.

3. **Punitive, Exemplary and Aggravated Damages**

If an imprisonment is affected recklessly, oppressively, insultingly and maliciously with a design to oppress and injure, the court may award exemplary or punitive damages. Punitive damages are awarded in cases where the defendants conduct is recklessly indifferent to the rights of others or in intentional or wanton violation of those rights, and such damages are awarded to give a deterrent. In some circumstances exemplary damages may be provided as when there is abuse of power by the state. Aggravated damages may be awarded in a proper case as when the imprisonment in itself of a nominal character is offensive or hurt fell to the plaintiffs feelings. Courts have often held that malice will warrant an award for exemplary or punitive damages in an action for false imprisonment or false arrest. Punitive or exemplary damages will not be allowed where the false imprisonment was brought about in good faith, without malice in fact or in law and where there is no element of wantonness or oppression.

4. **Writ of Habeas Corpus**

This writ is considered to be a golden remedy by the English Law. The Supreme Court of India and High Court of states issue this writ under article 32 and 226 respectively. Subject to the rules framed by the High Courts, an application for habeas corpus can be made by the person in confinement or by any person on his behalf. The writ of habeas corpus is effective means of immediate release from unlawful detention, whether in prison or private custody. Where an unlawful
detention is continuing the plaintiff may seek this writ. This writ is also used in criminal cases of false imprisonment.

5. **Self Help**

A person who is unlawfully detained may use self-help to escape including reasonable force so as to defend him from unlawful arrest. The force used must be proportionate in the circumstances. This is risky course since the power to arrest is likely to depend upon not only in the commission of offence but in the alternative, in a reasonable suspicion thereof. Hence an innocent person who forcibly resists may be liable for battery if the arrester had reasonable grounds for his suspicion.
Chapter 5: CONCLUSION

The tort of false imprisonment is one of the most severe forms of human rights violation. Recognition of the human being in the convicted offender is necessary. The Indian socio-legal system is based on non-violence, mutual respect and human dignity of the individual. Even the prisoners have human rights because the prison torture is not the last drug in the Justice Pharmacopoeia but a confession of failure to do justice to living man. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. In fact Article 21 of the Indian Constitution also recognizes the same. Article 20, with its sub-clauses re-enforces the same, and seeks to protect convicts from being held down due to ex post facto laws (Art. 20 (a)), double jeopardy (Art. 20 (b)) and self incrimination (Art. 20 (c)).

Thereby, after analyzing the various case laws and going through the various principles of Tort Law, it can be concluded that:

- The right of a person to personal liberty, freedom and life with dignity has been guaranteed by the Constitution under the articles 19, 20 and 21, of which articles 20 and 21 cannot be abrogated even during emergency, and false imprisonment is incongruous of the same.

- The fact that a convict is imprisoned and has to serve a sentence, doesn't give the jail authorities any right to torment or torture him unnecessarily. It is a false notion that the prisoner subject to intolerable hardships is remediless.

- The term of imprisonment is a decisive and vital factor to be taken into consideration in order to compute and award damages. And while awarding damages for false imprisonment physical or mental injury has to be kept in mind.

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37 Protection of life and personal liberty
38 Protection in respect of conviction for offences

haripriya91@gmail.com
The mere fact that the person has been imprisoned raises the claim of nominal or compensatory damages if no other injury was caused to the plaintiff.

If the person is unlawfully confined by any police officer or government officer, than he or any person on his behalf can file for the writ of habeas corpus. This writ ensures the liberty of the person who is confined.

The person who is about to be falsely arrested or imprisoned can also use reasonable force in order to prevent false arrest. He can use force for self defence but has to make sure that the force used is reasonable according to the circumstances.
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