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Powers of Arrest, Detention, and False Imprisonment by State Actors

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This study provides an overview of false imprisonment as a fundamental violation of personal liberty and constitutes both a tortious wrong and a criminal offence. It occurs when an individual is intentionally and unlawfully deprived of freedom of movement without legal justification, consent, or lawful authority. As a cornerstone of democratic societies, the right to personal liberty is protected under Article 21 of the Constitution of India, making any arbitrary restraint on an individual's movement a matter of serious legal concern. This article examines the concept of false imprisonment, its essential elements, and the legal principles governing liability for unlawful detention. Particular emphasis is placed on the powers exercised by police and judicial authorities in relation to arrest, detention, and remand. Although these authorities are empowered by law to restrict personal liberty in certain circumstances, the exercise of such powers must strictly conform to constitutional and statutory safeguards. Any arrest or detention made without lawful authority, procedural compliance, or reasonable justification may amount to false imprisonment and give rise to legal liability against the State and its officials. Victims of false imprisonment can be compensated in three ways: habeas corpus, damages, and self-help.

Keywords: *false imprisonment, illegal arrest, custodial violence, wrongful restraint, unlawful detention.*

INTRODUCTION

False imprisonment is when a person's right to freedom is restrained intentionally by another person without any legal right or justification. The offence is of wrongful confinement, defined under Sections 126 and 127 of the BNS 2023.¹ False imprisonment is dealt with in India, in both civil law (Law of Torts) and criminal law (BNS 2023).

Law of Torts: False Imprisonment is restraining a person in a bounded area without justification or consent. The aim is to protect an individual's right to their freedom.² To prove a false imprisonment claim as a tort in a civil lawsuit, total restraint on the movement, willful detention without consent, and unlawful detention must be present.³ An individual can be held liable for damages for unlawful restraint.

The Bharatiya Nyaya Sanhita 2023 –

Section 126: Wrongful restraint.—

(1) Whoever voluntarily obstructs any person to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Section 127: Wrongful confinement.—

(1) Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said “wrongfully to confine” that person.

Sections 331 and 333 of the act deal with House-trespass after preparation for hurt, assault or wrongful restraint.

Total Restraint in False Imprisonment: False imprisonment occurs when a person is completely deprived of the freedom to move from a particular place without lawful justification. Mere inconvenience or obstruction is not sufficient; the restraint must be absolute and not partial.

¹ Bharatiya Nyaya Sanhita 2023, ss 126 and 127

² 'CHAPTER 9: Trespass to Person' (*Manupatra*) <<http://student.manupatra.com/academic/abk/law-of-torts/chapter9.htm>> accessed 17 May 2026

³ R K Bangia, *The Law of Torts* (27th edn, LexisNexis 2025) 174-182

In *A.D.M. Jabalpur v Shivkant Shukla*,⁴ imprisonment was described as a total restraint on a person's liberty, however brief the duration, rather than a mere obstruction causing inconvenience. In *Maharani of Nabha v Province of Madras*,⁵ the court held that denial of a preferred mode of travel does not amount to false imprisonment.

The distinction between total and partial restraint is illustrated by *Bird v Jones*.⁶ The claimant was prevented from walking along a particular section of a public footpath on Hammersmith Bridge, but alternative routes remained available. The court held that there was no false imprisonment.

If the plaintiff has a reasonable means of escape and can move freely through another route, the restraint is not considered total. However, the means of escape must be known, practical, and reasonably available to the detained person. A victim of unlawful confinement may use reasonable force to secure release and is not liable for resulting damages.

The protection of personal liberty has also been recognised under constitutional law. In *Chitranjan Singh v State of M.P.*,⁷ the court observed that even a partial deprivation of personal liberty can violate fundamental rights and may entitle the victim to compensation.

Willful Detention: An Intention Factor: An essential element of false imprisonment is the intentional and willful detention of a person. Generally, a person is liable for false imprisonment only when they deliberately act in a manner that restricts another individual's freedom of movement. The intention to confine need not be accompanied by malice; it is sufficient that the defendant knowingly performs an act that results in the complete restraint of the plaintiff. Whether the detention was intentional or an accidental act is a question of fact to be determined by the court on the basis of the circumstances and evidence presented.

False imprisonment is recognised as an intentional tort, allowing the aggrieved person (plaintiff) to bring a civil action against the wrongdoer (defendant) and seek compensation for the unlawful deprivation of liberty.

⁴ *Additional District Magistrate, Jabalpur v Shivkant Shukla* AIR 1976 SC 1207

⁵ *Maharani Gurucharan Kaur of Nabha v The Province of Madras* AIR 1942 Mad 539

⁶ *Bird v Jones* [1845] 7 QB 742

⁷ *Chitranjan Singh S/O Khushal Singh v State of M P and Anr* (1996) 0 MPL J781

Knowledge of the Plaintiff: There is no need for the person accused of false imprisonment to be aware of this freedom restriction. For instance, in the case of *Meering v Graham White Aviation*,⁸ the claimant was asked to go to a room with two work policemen from the Aviation company. He asked why and stated he would leave if not told. When told it was on suspicion of theft, he agreed to stay, and the work's police stood outside until the metropolitan police arrived. Unknown to him, they were asked to prevent him from leaving. It was held that an act that fulfils the requirement for false imprisonment, even if the claimant is unaware at the time, still counts. Meering was entitled to damages.

In the case of *Herring v Boyle*,⁹ it was held that such information was necessary, in which case the schoolmaster wrongly refused to allow the schoolboy to go with his mother until the mother had paid the sum that she believed was due to him. The discussion between the mother and the schoolmaster had taken place in the absence of the boy, and he was not aware of the restraint. It was believed that the refusal of the mother in the absence of the child, and without his being conscious of the restraint, does not amount to anything.

False imprisonment does not require a literal prison, but a restriction of the claimant's freedom of movement (complete restraint). According to the *Termes de la Ley*,¹⁰ 'Imprisonment is the restraint of a man's liberty, whether it be in the open field, or in the stocks, or in the cage in the streets or in a man's own house, as well as in the common goal'. Where a defendant might position themselves in a doorway to prevent someone from leaving a room, as in *Walker v Commissioner of the Police of the Metropolis*,¹¹ or where a defendant might threaten violence if the claimant leaves, which could thus be both false imprisonment and assault, as seen in *Collins v Wilcock*.¹² Or where a defendant ensures someone stays in a room simply by asserting their authority, as in *Harnett v Bond*¹³ and *Meering v Grahame-White Aviation Co Ltd*.¹⁴ Where a

⁸ *Meering v Graham-White Aviation Co Ltd* (1920) 122 LT 44

⁹ *Herring v Boyle* [1834] 149 E R 1126

¹⁰ John Rastell, *Les Termes de la Ley: Or, Certain Difficult and Obscure Words and Terms of the Common and Statute Laws of This Realm, Now in Use, Expounded and Explained with the Addition of Many Other Words* (William Rastell tr, Lawbook Exchange Ltd 2012)

¹¹ *Walker v Commissioner of the Police of the Metropolis* [2014] EWCA Civ 897

¹² *Collins v Wilcock* [1984] 3 All ER 374

¹³ *Harnett v Bond* [1925] AC 669

¹⁴ *Meering v Grahame-White Aviation Co Ltd* (1920) 122 LT 44

claimant accedes to authority, that does not necessarily mean they consent to being detained, as in *Warner v Riddiford*.¹⁵

POWERS DURING STATE CUSTODY AND FALSE IMPRISONMENT

Valid Arrest: When a person is arrested by a police officer or any authorised person in accordance with the law and on reasonable grounds, such detention cannot be regarded as false imprisonment.

The writ of habeas corpus can be filed in both the High Court by means of Article 226 and the Supreme Court as provided in Article 32 by the prisoner for immediate release in cases of false imprisonment. If the prisoner is not in a position to file a writ petition of habeas corpus, some other person may file it on his behalf. The writ of habeas corpus also offers compensation to the relatives of the victims in some cases. In the case of *Malkiat Singh v State of U.P.*,¹⁶ the son of the plaintiff was wrongly imprisoned and later killed by the police in an encounter. The Supreme Court of India, based on a writ of habeas corpus, awarded his family a monetary compensation of Rupees five lakhs.

*D.K. Basu v State of West Bengal*¹⁷ is a landmark case that arose from a public interest litigation concerning the increasing number of custodial deaths and incidents of police torture across the country. The Supreme Court recognised that custodial violence is a direct assault on human dignity and a violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution. To prevent abuse of power by law enforcement agencies, the Court laid down a set of mandatory guidelines and safeguards against arbitrary arrest, false imprisonment, and custodial torture in India.

In *Bhim Singh v State of Jammu and Kashmir*¹⁸, the petitioner, MLA of J&K, was to participate in the Assembly meeting. His opponents, in order to prevent him from attending the Assembly session, got him arrested wrongfully with the help of some executives and police. The Magistrate also granted remand to the police without compliance with the mandatory requirement of production of the accused in the Magistrate's Court before remanding him to police custody. He

¹⁵ *Warner v Riddiford* [1858] 40 ER 1052

¹⁶ *Malkiat Singh and Anr v State of Punjab* AIR 1970 SC 713

¹⁷ *D K Basu v State of West Bengal* AIR 1997 SC 610

¹⁸ *Bhim Singh, MLA v State of J & K and Ors* (1985) 4 SCC 677

was released after the Assembly session got over. The Supreme Court held the State liable for the wrongful arrest and detention of the petitioner and ordered that compensation be paid to the petitioner.

Arrest by a Policeman: A policeman is protected from liability when making an arrest based on a judicial order, despite jurisdictional defects. However, this protection doesn't apply if the warrant is executed irregularly or if the wrong person is arrested. When arresting without a warrant, police must inform the person of the true grounds for arrest. Failure to do so can lead to liability for false imprisonment. Police must follow guidelines to ensure lawful arrests.

In the case of *Austin v Commissioner of Police of the Metropolis*¹⁹ during the May Day riots of 2001 in London, the police detained the protesters to control a huge crowd. During this, the two appellants, Ms Austin, a peaceful protester, and Mr Saxby, a passerby not involved in the protest, were also detained. They filed a suit for damages for false imprisonment. The Court of Appeal held that, even though they were victims of false imprisonment, it was an exceptional situation employed to maintain peace and public order. A restriction on personal liberty imposed by the police for the prevention of imminent violence or public disorder will not amount to false imprisonment where it is exercised lawfully, in good faith, and is proportionate to the threat being addressed.

In the case of *Prison Officers' Association v Iqbal*²⁰ where a defendant could not leave their cell due to the prison officers being on strike, it was held that: 'It seems to me that the general rule that an omission or refusal to release the claimant from confinement will not amount to false imprisonment should not be overridden save in circumstances where the claimant has a legal right to be released and the defendant is under a positive obligation to release the claimant.' Thus, the defendants were liable for omission under the tort of false imprisonment.

Moreover, in the case of *R v Governor of Brockhill Prison, ex p Evans*²¹ where the claimant should be released from prison, but due to a genuine mistake, they were instead held in prison for longer, this was still held to be false imprisonment.

¹⁹ *Austin v Commissioner of Police of the Metropolis* [2007] EWCA Civ 989 [26]

²⁰ *Prison Officer's Association v Iqbal* [2010] QB 732

²¹ *R v Governor of Brockhill Prison, Ex parte Evans* [1997] QB 443

Imprisonment does not have to involve seizure of the claimant; touching and informing him that he is under arrest are sufficient.²² Tagging and an imposed curfew can be false imprisonment.

Rudul Shah v State of Bihar:²³ This landmark case concerned the illegal detention of Rudul Shah, who remained imprisoned in a Bihar jail for approximately fourteen years even after he had been acquitted by a criminal court. Aggrieved by this gross violation of his personal liberty, Rudul Shah filed a writ petition under Article 32²⁴ seeking his release and compensation. The Supreme Court held that his continued detention after acquittal was wholly unjustified and amounted to a clear violation of his fundamental right to life and personal liberty under Article 21. The judgment established the principle that courts can award compensation in cases of illegal detention and State misconduct.

In *Sebastian M. Hongray v Union of India and Ors*²⁵, two persons from Manipur were allegedly taken into custody by members of the armed forces and subsequently disappeared. Their relatives approached the Supreme Court through a habeas corpus petition seeking information regarding their whereabouts. Despite directions from the Court, the authorities failed to produce the missing individuals or provide a satisfactory explanation for their disappearance. The Supreme Court held that the State could not escape responsibility for persons taken into its custody and presumed that the missing persons had died while under State control.

Babloo Chauhan @ Dabloo v State Govt of NCT of Delhi:²⁶ The case involved allegations of illegal detention and custodial violence by police authorities. Whether the police authorities had violated the fundamental rights of the detainee through illegal detention and custodial torture, and are serious violations of human rights and constitutional guarantees under Articles 21 and 22 of the Constitution of India.

Judicial Authority: In our country, the Judicial Officers are protected from liability for doing a wrongful thing during the discharge of their duty, and so a Judicial Officer cannot be sued for false imprisonment.

²² Simon Deakin and Zoe Adams, *Markesinis and Deakin's Tort Law* (8th edn, OUP 2019)

²³ *Rudul Shah v State of Bihar and Anr* AIR 1983 SC 1086

²⁴ Constitution of India 1950, art 32

²⁵ *Sebastian M Hongray v Union of India and Ors* AIR 1984 SC 1026

²⁶ *Babloo Chauhan @ Dabloo v State Govt of Nct of Delhi* 247 (2018) DLT 31

Section 1 of the Judicial Officer's Protection Act 1850 says:

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

In the case of *Sailajanand Pande v Suresh Chandra Gupta and Anr*,²⁷ the plaintiff was harassed and wrongfully imprisoned by a magistrate who had no lawful authority to do so, and the area where the plaintiff resided was far from his own jurisdiction. The Patna High Court held that he was not entitled to the protections offered under the Act and was liable for the false imprisonment of the plaintiff.

State of Uttar Pradesh v Tulsi Ram:²⁸ The court held that the State was not liable for the plaintiff's detention as the act was performed in the discharge of official duties. However, since the judicial officer merely issued warrants, an executive rather than a judicial function, he could not claim protection under the Judicial Officers Protection Act of 1850, and was held liable for false imprisonment.

Probable Cause: Establishing probable cause by action completely fails the false imprisonment or false arrest. It is known that the conceivable cause test for detention is not based on any actual crime; instead, it is objective-based on real crime against individuals. It won't be a case of false imprisonment by preventing a man from leaving the premises since he has not fulfilled a reasonable condition subject to which he entered.

In *Enright v Groves*,²⁹ a woman sued a police officer for false imprisonment after being arrested for not producing her driver's license. The plaintiff was in her car when she was approached by the officer for not leashing her dog; she was arrested after being asked to produce her driver's license and failing to do so. She won her claim, despite having lost the case of not leashing her dog. The court reasoned that the officer did not have proper legal authority in arresting her, because he arrested her for not producing her driver's license (which itself was legal) as opposed to the dog leash violation.

²⁷ *Sailajanand Pande v Suresh Chandra Gupta and Anr* AIR 1969 PAT 194

²⁸ *State of Uttar Pradesh v Tulsi Ram* AIR 1971 ALL 162

²⁹ *Enright v Groves* [1977] 560 P 2d 851

In *R v Governor of Brockhill Prison, ex parte Evans*,³⁰ it did not matter if the decision to imprison the claimant was in good faith or considered lawful; it still constituted false imprisonment.

The Principle of Shopkeeper's Privilege: Many jurisdictions in the United States recognise this common-law under which a person is allowed to use reasonable force to detain a suspected shoplifter on store property for a reasonable period of time. The purpose of the shopkeeper's privilege is to discover if the suspect is shoplifting and, if so, whether the shoplifted item can be reclaimed. If a shopkeeper unreasonably detains the suspect, uses excessive force to detain the suspect, or fails to notify the police within a reasonable time after detaining the suspect, then the detention may constitute false imprisonment and may result in an award of damages.

Consent to Restraint: In this case, *Robinson v Balmain New Ferry Co. Ltd.*³¹ of the plaintiffs paid one penny to enter a ferry wharf through a turnstile operated by the defendant company. Notices clearly stated that anyone wishing to leave through the turnstile had to pay another penny. After entering, the plaintiff changed his mind and decided not to take the ferry. When he attempted to leave without paying the additional penny, the defendants refused to let him pass. The plaintiff then sued for false imprisonment. The court dismissed the claim, holding that there was no false imprisonment because the plaintiff had voluntarily entered the premises knowing the conditions attached to entry and exit. By entering through the turnstile, he consented to the restriction and accepted the risk that he would not be allowed to leave without paying the required fee. Therefore, the defendants' actions were lawful, and no false imprisonment had occurred.

The literal meaning of the Latin maxim *volenti non fit injuria* is that “to a willing person, it is not wrong.” Under this maxim, no plaintiff can enforce a right he willingly surrendered or consented to, except for medical professionals during their course of duty.³²

In *White v Blackmore*,³³ after a race had ended, Mr White voluntarily stood near the safety ropes instead of returning to the tracks. Another car became entangled, causing fatal injuries. The

³⁰ *R v Governor of Brockhill Prison, Ex parte Evans* [1997] QB 443

³¹ *Robinson v Balmain New Ferry Co Ltd* [1910] AC 295

³² *Laxman Balkrishna Joshi v Trimbak Bapu Godbole and Anr* AIR 1969 SC 128

³³ *White v Blackmore* [1972] 2 QB 651

court held that he was standing where he was not supposed to be and therefore the defence of *volenti non fit injuria* was not applicable.

Similarly, in *Cafest v Tombleson*,³⁴ the plaintiff, an inexperienced skater, entered a skating rink, avoided the beginner's rink, fell, and broke her wrist. The Court of Appeal accepted the defence of *volenti non fit injuria*, holding that a reasonable person would have been aware of the risks involved, especially since warning signs were displayed by the defendants.

Performance of a Contract: When a claimant is following a work contract, the employer may not be held liable for false imprisonment for not allowing them to leave early due to a breach of contract and potential losses that could result from their leaving. In the case of *Herd v Weardale Steel Coal*,³⁵ where the claimant was in a mine, they were working, and they wanted to leave the mine. The employer refused to let them leave at that time, and the court held that the employer was under no obligation to allow them to do so.

In the case of *Anowar Hussain v Ajoy Kumar Mukherjee*,³⁶ the Supreme Court of India held that to recover damages for false imprisonment, the plaintiff needs only to prove that he was falsely imprisoned by the defendant or his servants during the course of employment. If the plaintiff is successful in proving, the defendants should provide a lawful justification for their actions. Proving the wrong intention, malice or negligence is also not required for the plaintiff in false imprisonment.

³⁴ *Tombleson v Cafest Holdings Pty ltd* [2004] HCATrans 225

³⁵ *Herd v Weardale Steel, Coal and Coke Co Ltd* [1915] AC 67

³⁶ *Anowar Hussain v Ajoy Kumar Mukherjee and Ors* AIR 1965 SC 1651