Chapter - I

INTRODUCTION

If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy.¹

Law in many ways is identified as an instrument of social justice. It exists in the society mainly to defend its people and shun pain and suffering. Human life is invaluable gift of God and right to life and personal liberty is the first and foremost prerogative of an individual. Law is to come out of a harsh line of a statute book and to be more humane, caring, effective, natural and real. Superficial or verbal justice is no justice.² Lord Denning observed once:

“If the truth is recognized then we may have to escape from the dead hand of the past and

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1 Rudul Sah vs. State of Bihar, AIR 1983 SC 1086
consciously mould new principles to meet the needs of the present."\(^3\)

When there is a violation of any right of an individual or group in the society, the legal mechanism comes into action. The person authorised to exercise the power whether it is a state or its instrumentality, should always be accountable to dictate of laws. Brazan acts of public servant and abuse of power, excesses committed by the police, military and para-military forces are common happening today. Even the protection of vital human rights and fundamental freedoms have been exposed to unpardonable abuse by the authorities.\(^4\)

In society like India there are lot of examples of violation of law resulting into harm to property or violation of the rights of innocent people. It is the duty of the organ of the State to protect its individuals and citizens. If State is not able to protect the property and rights of its citizens they shall have to be compensated for it. This gave a birth to new concept of compensatory jurisprudence which gained a lot of importance during 20\(^{th}\) century.

\(^3\) Ibid.
\(^4\) Id; also see, Legal News and Views, I. XI July 1997.
The object of justice is to protect the society against unwarranted acts of violation of individual's rights and to punish the offender.

The Constitution of India is termed as social document and it speaks justice of different kinds in different context. Thus, the Preamble is to secure justice—social, economic and political and shall have precedents over 'liberty', 'equality' and 'fraternity'. To this end the duty of State is not only to minimize the inequalities, but also to eliminate inequality in status, facilities and opportunities among individuals and group of people. Article 142 of Indian Constitution authorises the Supreme Court of India to ensure that, 'complete justice is meted out in every cause or matter pending before it.'

The word justice is derived from Latin word 'justia' meaning 'the virtue' by which we give to every man what is his due, opposed to injury, loss or wrong. And 'compensation' means, 'making things equivalent'. Australian High Court also defined the term compensation as "compensation prima facie means recompense for loss, and when an owner is to receive compensation for being deprived of real or personal property, this pecuniary loss must be ascertained by

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determining the value to him of the property taken from him."\(^6\)

The Supreme Court of India also held that compensation means anything given to make things equivalent, a thing given to make amends for loss, recompense, remuneration or pay.\(^7\) Thus, the compensation means remedy for alleviating the suffering of the victim of crime and to help them to lead a normal life in the present system. The Indian criminal justice system is based mainly on the concept of justice to the society at large in the criminal jurisprudence in India. It means that the criminal justice system is more confined to the guilt of accused then the welfare of the victims in the criminal matters generally.

The concept of justice in Indian criminal justice system radiates the cherished concepts, namely justice and the just compensation. So, the law must be dynamic, positive and rational for the pragmatic need of the society in a democratic country like India.

When an offence is committed in the society, two kinds of actions lie against the offender, he is to be prosecuted and punished, if he is found guilty in a criminal court he can be sued for damages in a civil

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6 Nelungalo (Pvt.) Ltd. vs, Commonwealth, (1948), 75 Colombia Law Report, p. 495.
7 State of Gujarat vs. Shantilal, AIR 1969 SC 634-44; For more details also see State of West Bengal vs. Mrs. Bela Benerjee, 1954 SCR 558
court and at the same time compensation may also be awarded by the court. There are more than 175 legislations which hold relevance while constructing the meaning that the law imparts to concepts such as costs, computability, loss-bearing, loss-spreading, no fault liability, no fault compensation, State responsibility and accountability, etc. Fatal Accident Act, 1855 provides such provisions, the victim who is interested to assert his right under this Act, is to bear the additional burden and expenses through and independent proceeding. In order to do away with the claim in Civil Court causing unnecessary worry and expense to both the parties of the suit, Section 357 of the Code of Criminal Procedure, 1973 was introduced. By the insertion of Section 357 in Code of Criminal Procedure, the concept of paying compensation to the victim is incorporated in the course of criminal proceedings. A court while passing an order for the conviction, has discretion to grant compensation under Section 357 for any loss or injury caused by the offender. Under sub-section (1) of Section 357, the Court is empowered to award compensation only when it imposes a sentence of fine or sentence of fine which forms a part. So there cannot be direction for

9 See, Code of Criminal Procedure, 1973, Section 357.
compensation under sub-clause (1) where there is no sentence of fine.

Sub-Section (3) of Section 357 empowers the court to award compensation for the loss or injury suffered by a person even in cases where fine does not form part of a sentence. This power to award compensation is not ancillary to other sentences but it is in addition thereto. Apart from Section 357, sometimes victims also invoked Section 482 of Code of criminal procedure, 1973 seeking compensation but it was rejected by the Supreme Court and in Palaniappa Gounder vs. State of Tamil Nadu and others, the Court observed:

“If there is an express provision in a Statute governing a particular subject matter, there is no scope for invoking or exercising the inherent power of the court because the court ought to apply the provisions of the Statute. Hence, the application made by the heirs of the deceased for compensation could not have been made under Section 482 since Section 357 expressly confers powers on the court to pass an order for payment of compensation in the circumstances mentioned therein.”

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10 AIR 1977 SC 1323
11 Ibid.
Thus, the concept of compensation as a part of relief, in the judicial processes, the jurisprudence and the judicial practice are yet to be well developed. The Government of India while ratifying the International Convention on Civil and Political Rights, made an express reservation to Article 9 of the Covenant entitling compensation, for a person claiming to be victim of unlawful arrest or detention against the State.\(^{12}\) As an outcome of this courts have been reluctant till Bhagulpur blinding case\(^{13}\) to award compensation to the victims of human rights violation at the hands of State officials. In Bhagalpur Blinding case referring to the claim for compensation which, hitherto had never been considered earlier, the Supreme Court observed:

"Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental rights to life and personal liberty."\(^{14}\)

The Court declared that it cannot remain helpless spectator of the violation of fundamental rights and tell

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\(^{13}\) Khatri vs. State of Bihar, AIR 1981 SC 928

\(^{14}\) *Ibid*, p. 930
the victim that it cannot give him any relief. This case thus, stirred the judicial conscious for providing substantive relief in the form of monetary compensation.

In *Rudul Sah vs. State of Bihar* the court decided the question of compensation for deprivation of fundamental rights, Chandra Chud (CJ) observed:

"Article 21 which guarantees the right to life and liberty will be denied in its significant content if the power of this court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured is to mulct its violation in the payment of monetary compensation."  

The Supreme Court has followed the practice of awarding compensation in so many cases. The remedy of compensation has been provided by the Supreme

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15 Ibid; p. 1074
16 AIR 1983 SC 1086
17 Ibid; p. 1089
Court in cases of violation of Article 21 not only by the State but also by the private persons like an industrial undertaking, where such persons are engaged in hazardous or dangerous activities possess a threat and danger to the safety of the person residing in the surrounding areas, it owes an absolute duty to ensure that no harm result to anyone on account of such activities, the establishment and factory must be absolutely liable to compensate for such harm.

In *M. C. Mehta vs. Union of India*, Court held that in such a case, the measure of compensation must be co-related to the magnitude and the capacity of the enterprise because such compensation must have deterrent effect. Thus the deterrent compensation in such cases is now the rule and to claim such compensation, regular suit is not necessary. Because such harm amount to violation of right to life, health, etc. The Supreme Court under Article 32 has expanded its power to include the awarding of compensation also. The Supreme Court while explaining the scope of its power to award compensation under Article 32 observed,

19 AIR 1987 SC 1086.
"The power of court to grant such remedial relief may include the power to award compensation in appropriate cases."^{20}

Thus, the compensation for the violation of fundamental rights is a new remedial relief which the court can grant under Articles 32 and 226 of the Constitution of India.

Keeping in view the role played by Indian judiciary to expand the ambit of Articles 32 and 226 in awarding compensation to the victims, the study has been divided into six chapters. Each chapter is the inevitable part of the central theme.

**Chapter - I** is an introductory part of the study.

In **Chapter - II**, an earnest attempt has been made to trace out the historical inception of compensatory jurisprudence into Indian legal system and part of this chapter deals with the meaning and definition of compensatory jurisprudence.

**Chapter - III** is devoted to the constitutional perspective of compensatory jurisprudence in India.

**Chapter - IV** deals with the legislative provisions of awarding compensation in India. Selective legislations have been discussed in detail to give the insight of provisions empowering courts to award compensation.

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^{20} Ibid.
Chapter - V, a sincere attempt has been made to throw light on the role of Indian judiciary for incepting the concept of compensation in Indian legal system. Few important decisions of the Supreme Court, which have had far reaching effects on the society have also been discussed in this chapter. Cases in which compensation is awarded by National Consumer Dispute Redressal Commission and National Human Rights Commission has also been discussed and presented in the study at respective places. A close scrutiny of the role played by Indian judiciary and other subsidiary bodies has critically been analyzed and properly quoted. Chapter also discussed how the horizon of compensatory jurisprudence is expanded by Indian judiciary.

Finally Chapter - VI is devoted to the conclusion and suggestions drawn during the course of study.