Chapter III

CONSTITUTIONAL PERSPECTIVE OF COMPENSATORY JURISPRUDENCE IN INDIA

I. Introduction

In every democratic and welfare State like ours it is the duty of the state to protect the interests of its citizens. However, it has been observed that the various Fundamental Rights provided to the citizens under the Constitution\(^1\) are being violated by various governmental agencies in exercise of their administrative powers. In some cases, the Fundamental Rights of the victim which are infringed may be restored, but in each and every case as well as in every circumstance the restoration may not be possible. In such situations he is to be compensated in terms of money for the loss suffered by him. The Constitution of India does not provide any remedy to the victim of Fundamental Right specifically, except in the form of writs under Articles 32 and 226. The Supreme Court has now taken a liberal view in such situations to award monetary compensation to the victims.

\(^1\) For details see, The Constitution of India, 1950 (Part – III).
In case of violation of human rights, Supreme Court departed from the ordinary civil law where the right to claim compensation is only through a civil suit instituted by the aggrieved party before the civil court. In view of expansion of writ jurisdiction and award of compensation in writs, the rule of procedure and evidence have been relaxed. It has now become an accepted principle that where the Fundamental Rights are in consonance with human rights, the former must be given functional application rather than to be merely on papers. The Supreme Court has rightly observed that

“when Fundamental Rights, vital for the maintenance of human rights are at stake, the functional realism are not the facial cosmetics must be the diagnostic tool for constitutional law must seek the substance and not the form.”

The Supreme Court for the last few years has attempted to evolve an innovative new constitutional jurisprudence based on the necessity for giving new meaning to the rights of the people. An entrenched set of individual rights like Fundamental Rights embodied in Part-III of the Constitution of India requires awareness of its existence on the part of the general masses of the people, if it is to constitute an effective limitation on the

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power of the State. But unfortunately, this part is lacking in India. The Court has tried to get over this seemingly insurmountable barrier through the creation of a legal regime conducive to the agitation of issues which are of vital importance to the disadvantaged section of the Indian society.

Against the increasing tendency towards irresponsibility on the part of the executive organ of the State, leading to a State of “government lawlessness” where little importance is given to the rule of law, and the traditional public law remedies available in the courts do not seem capable of combating this evil. The Supreme Court has addressed itself to this situation. The Court has fixed monetary liability on the State for a gross violation of the petitioner’s Fundamental Right to life and personal liberty under Article 21 of the Constitution. The implications of the unanimous opinion of the Supreme Court have served notice that it will create new remedies in its original jurisdiction under Article 32, where such remedies are indispensable to the vindication of the Fundamental Rights.

5 Rudal Shah vs. State of Bihar, AIR 1983 SC 1086
6 Ibid
To examine whether the Fundamental Right guaranteed in Part-III of the Constitution do form a substantive basis for the creation of positive remedies like compensation or damages. Chief Justice Chandra Chud (as then) observed:

"It is true that Article 32 cannot be used as substitute for the enforcement of right and obligation which can be enforced efficaciously through the ordinary processes of Courts, Civil and Criminal. A money claim has, therefore, to be agitated in and adjudicated upon in a suit instituted in a court of lower grade competent to try it. But the important question for our Consideration is whether in the exercise of writ jurisdiction under Article 32, this court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of Fundamental Right."

The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full-dressed trial. He filed a Habeas Corpus petition in the court for his release from illegal detention. He obtained the relief. The

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7 Id. at 1089
court was of the view that his detention in the prison after his acquittal was wholly unjustified. The petitioner contended that he is entitled to be compensated for his illegal detention.

Most of the cases of gross governmental misconduct and violation are relating to right to life and liberty or the property of citizen. But in the period of globalization, the activities of State extend into all the areas of the individual's life, it is not impossible, although it is improbable, that flagrant infringements of the other Fundamental Rights might also occur.

The Supreme Court of India considered the changes which occurred in the concept of 'sovereignty' and the Apex Court declared that after the commencement of the Constitution of India the distinction between sovereign, and non-sovereign powers of the State is not relevant.\(^8\) The Court observed that the concept of sovereignty underwent a drastic change and sovereign immunity has no relevance in the present context. There are several State agencies which are vested with heavy powers at different levels and under certain circumstances are abusing it more than using it. The police force and the prison authorities are such agencies who often indulge in abuse of power and in the process harm the

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individuals despite the fact that constitutional and statutory provisions aim at safeguarding the personal liberty and the life of citizens. The State machinery which is the custodian of the Constitution oftenly themselves is responsible for breaking such laws.9

The State is to maintain law and order and to ensure the safety and security of its members. But with the advent of modern welfare State, it has assumed the role of guardian to bring sufficient economic well-being of the human beings and this resulted in so many activities and social tensions. In present society, violation is also visible in every sphere of life. It starts from panchayat level and goes right up to the national and international levels.

II. Constitutional Perspective of Compensatory Jurisprudence

(a) Introduction

After Independence India adopted its Constitution which inter alia guaranteed Fundamental Rights to its citizens. Democracy, in any sense, cannot be established unless certain minimal rights, which are essential for existence, are assured to every citizen of the country. The Preamble to the Constitution depict these

aspirations and Part-III of Indian Constitution provide these right to every citizen within territory of India.¹⁰

Part-III of the Indian Constitution deals with right to life and personal liberty and certain other rights. It provides for protection of personal liberty against arrest and detention to save human dignity.¹¹ Rule of law is the essence of the Indian Constitution where a person cannot be prosecuted or convicted except with the procedure established by law.¹² If conviction of person is held unconstitutional, he is entitled to all the rights, whether inside prison or outside, and shall not be deprived of his guaranteed freedom, save by method fair, just and reasonable. Every activity which facilitates the exercise of the life and personal liberty may be considered integral part of this right. Simultaneously, the judicial approach towards interpretation of right to personal liberty under Article 21 has moved from narrow restricted view to the broader view. In view of the interpretation given to Article 21 by the Indian judiciary, relevant and coherent approach of compensatory jurisprudence is not only the demanding task of the day but is also consonance with the constitutional spirit.

(b) Remedy for Compensation under Constitutional Law

The Constitution of India which has guaranteed Fundamental Rights to the citizens against the State, also grants for the constitutional remedies in the mode of writs\(^1\) under Article 32 and 226. Under these Articles not only the victim gets his right enforced in an expeditious manner but can also claim compensation for the violation of Fundamental Right by the State. To give better protection to the citizens, judiciary is always alert and vigilant. In this direction the judiciary has opened new chapter in the field of compensation and contributed to the progressive development of compensation law.

(i) Compensation under Writ Jurisdiction

The framers of the Indian Constitution had decided to provide for certain basic safeguards for the people in the new set up, which are called the Fundamental Rights. Evidently, it is necessary to provide a quick and inexpensive remedy for enforcement of such rights.\(^2\) Even in England finding the Prerogative Writs which the courts developed and used whenever urgent necessity

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\(^1\) For more details see, Constitution of India, Arts. 32 and 226.

\(^2\) Election Commission of India vs. S. Venketta Subha Rao, AIR 1953 SC 210 at p. 212.
demanded immediate and decisive interpretation which were peculiarly suited for this purpose. Under the Constitution of India wide powers have been conferred on the Courts to issue directions, order or writs, primarily for the enforcement of Fundamental Rights. The power to issue such directions, 'for any other purpose' being also included.\textsuperscript{15}

During the British period in India the power to issue writs was given to the Presidency High Courts established under the Charter Act of 1861. However, the power to issue writs by the High Courts was restricted to the original jurisdiction of these Courts. Later on when Constitution of India came into force, the Supreme Court and various High Courts have been conferred powers to issue writs under Articles 32 and 226 respectively for the enforcement of Fundamental Rights.

The Supreme Court delivering the judgement in T. C. Bassappa vss. T. Naggappa\textsuperscript{16} observed:

"In view of the express provision in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference of opinion expressed in

\textsuperscript{15} Ibid.
\textsuperscript{16} AIR 1954 SC 440.
particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in a appropriate manner as long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English Law.\textsuperscript{17}

Hence, the Courts in India have accepted the above position in deciding cases and followed the broad and fundamental principles of English law governing these writs but avoiding technicalities of English Law. So it is clear that the power of the Supreme Court of India and the State High Courts in the matter of issuing writs is much wider than that of the King's Bench Division of the High Court of Justice in England.\textsuperscript{18}

(ii) Compensation under Public Interest Litigation

The Public Interest Litigation in India has been initiated by some of the judges of the Supreme Court. It is pertinent to admit that Public Interest Litigation was the result of active, innovative, almost explosive, role played by Indian judiciary to ameliorate the miseries of masses.

\begin{footnotes}
\item[17] Ibid. As per J. Mukherji.
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(1) **Traditional Doctrine of Locus Standi**

One of the important methods by which courts saved themselves from spurious or vicarious litigation was of ascertaining that the person who approached the court had the *locus standi* to do so. Such persons must show that he or she is adversely affected by the impugned action and his or her right has been violated. For instance, if there is a dispute between two private parties, and one hurts another, then in that case latter has *locus standi* to get a determination of the legality of former's action. But then question arises that why should not law be the same. Whether former party, who is accused is the government, or an agency, or an officer, or a private party and also whether the injury is to the victim's person or to his property or to his intangible interest? It is very simple to say that injury in fact is enough for the person having *locus standi*. Such question about the *locus standi* in the determination as to what interests deserve protection against an injury, and what should be enough to constitute an injury? Whether certain interests deserve legal protection depends upon whether they are
sufficiently significant and whether good policy calls for, protecting them or denying them the protection.19

Keeping this in view, the courts have enunciated various rules to confine the "right to access" to those persons possessing certain interest in the issue. Doctrine of *locus standi* has been one of the major obstacles in the way to access to justice as far as poor are concerned.

According to traditional rule, *locus standi* is that judicial redress available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action.20 The basis of entitlement of judicial redress is personal injury, violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress.21

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The question of ‘locus standi’ or ‘standing’ to sue or initiate proceedings in a court of law assumed great importance in the domain of public Interest litigation and the role of State has increased manifold with its concomitant duties and obligations of public nature. Justice Krishna Iyer aptly commented that:

"Restrictive rule about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good cause is turned away, merely because he is not sufficiently affected personally, that means some government agency is left free to violate law, and that is contrary to public interest. Litigants are unlikely to expand their time and money unless they have some real interest at stakes. In the rare cases where they wish to sue merely out of public spirit why should they be discouraged." 

The existence of right conferred under Part-III of the Constitution is the foundation of the exercise of the jurisdiction of the Supreme Court under Article 32. In other words, the right that could be enforced under

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22 Known in USA ‘Locus Standi’ as ‘Standing’.  
23 Municipal Corporation, Ratlam vs. Vardhichand, AIR 1980 SC 1622; Also see, Fertilizer Corporation Kamgar Union vs. Union of India, AIR 1981 SC 344.  
24 Ibid.
Article 32 must ordinarily be the right of the petitioner himself who complains of infringement of such rights and approaches the court for relief. The same principle applies to the exercise of jurisdiction under Article 226 by High Courts also. The Supreme Court of India observed that:

"The Article in terms does not describe the classes of persons entitled to apply there under; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must come to enforce a legal right ...... The right that can be enforced under Article 226 also shall ordinarily be personal or individual right of the petitioner himself who complains of infraction of such right and approaches the Court for relief."

(i) Person must be Aggrieved

In order to have locus standi, the petitioner should be as 'aggrieved person'. Aggrieved person means the person whose right has been infringed. Similarly, it means that which is based on diverse, variable factors such as the content and intent of the statute of which

25 Charanjit Lal vs. Union of India, AIR 1951 SC 41.
26 Calcutta Gas Co. Ltd. vs. State of West Bengal, AIR 1962 SC 1044.
27 Ibid; p. 1047.
contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and interest of the prejudice or injury suffered by him.

In general, a person aggrieved has been understood as one, "who has a genuine grievance because an order has been made which prejudicially affects his interest."^{28}

The Supreme Court in a leading case of **S.P. Gupta vs. Union of India**,^{29} where a preliminary objection about the *locus standi* of the petitioners who were practicing lawyer was raised has observed that the petitioner being lawyers had sufficient interest to challenge the constitutionality of the circulation letter issued by the Law Minister. The Supreme Court negivated the contention of the Union of India and upheld the *locus standi* of the petitioners. It was held by the Supreme Court that:

"It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any

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constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker sections of the community are concerned, such as undertrial prisoners languishing in jails without a trial inmates of the Protective Home in Agra or Harijan workers engaged in road construction in the Ajmer District, who are living in poverty and destitution who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an
exploitative society and who do not have easy access to justice, this Court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. This Court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Art. 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a writ petition and act upon it. Today, a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has
to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged Position are unable to approach the Court for relief. It is in this spirit that the Court has been entertaining letters for Judicial redress and treating them as writ petitions and we hope and trust that the High Courts of the country will also adopt this pro-active, goal-oriented approach. But we must hasten to make it clear that the individual who moves trial Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political
motivation or other oblique consideration, the Court should not allow itself to be activised at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. We may also point out that as a matter of prudence and not as a rule of law the Court may confine this strategic exercise of jurisdiction to cases, where legal wrong or legal injury is caused to a determinate class or group of Persons or the constitutional or legal right of such determinate class, or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases.”

In *People Union for Democratic Right vs. Union of India*, the Supreme Court further elaborated the concept of *locus standi*:

“... the workmen whose rights are said to have been violated and to whom a life of basic

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30 Ibid.
31 AIR 1982 SC 1473.
human dignity has been denied are poor, ignorant, illiterate humans who by reason of their poverty and social and economic disability, are unable to approach the Courts for judicial redress and hence the petitioners have under the liberalised rule of standing, locus standi to maintain the present writ petition espousing the cause of the workmen."32

To deal with the constitutional provisions under Part-III of the Constitution, the Supreme Court of India as protector and guarantor of rights of the people, most of whom are ignorant and poor, liberalized the rule of locus standi. The Apex Court came out with the following considerations: Firstly, to enable the court to reach the poor and disadvantaged sections of society who are denied their rights and entitlements; Secondly, to enable individuals or groups of people to raise matters of common concern arising from dishonest or inefficient governance and; Lastly, to increase public participation in the process of constitutional adjudication.33

Thus a qualitative twist has been taken by the Court to the traditional rule of locus standi and paved

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32 Ibid; p. 1483.
33 Id.
the way for Public Interest Litigation. All these litigations are inspired by public interest.

(2) **Innovative Role Played by Indian Judiciary in Present Context**

Whenever a legal wrong or legal injury is caused to a person by reason of violation of any constitutional or legal right and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 of the Constitution. Further, for the violation of any Fundamental Right of such person or determinate class of person remedy lies in the Supreme Court under Article 32 for seeking judicial redress for the legal wrong or injury caused to such persons or determinate class of persons.

It was only in the year 1976, when Justice Krishna Iyer while granting *locus standi* to an association of

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workers as such on behalf of individual workers for the claim of some bonus in **Mumbai Kamgar Sabha vs. Abdul Bhai**\(^{35}\) initiated the concept of Public Interest Litigation. In the present case, Krishna Iyer J. rightly observed:

"**Test litigation, representative actions, pro bono publico, broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral, procedural shortcomings. Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher court where the remedy is shared by a considerable number, particularly when they are weaker, less litigation, consistent with fair process, is the aim of adjutive law.""\(^{36}\)

So, in this manner, the traditional rule of *locus standi* has been made more liberal. The Court in such

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\(^{35}\) AIR 1976 SC 1465

\(^{36}\) *Ibid.*
cases put aside all technical rule of procedure and entertains even a letter addressed by an individual acting *pro-bono publico*. Krishna Iyer, J. observed:

"Law, as I conceive it, is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction."

Hence, the liberal approach of *locus standi* allowed Public Interest Litigation against the violations of human rights, on behalf of the victims of political oppression, social tyranny and economic exploitation to be made by persons or organization. The court further entertain Public Interest Litigation into the allegations of the killing of innocent people or suspected accused through false encounters, the death of persons in police custody because of torture, cases of the blinding of prisoners by the police, against inhuman working condition, for controlling occupational health hazards, etc. The Courts took full advantage of the opening words of Articles 32 and 226 of the Constitution. Both these Articles give freedom to the

37 Bandhua Mukti Morcha vs. Union of India, AIR 1984 SC 802.
38 Fertilizer Corporation Kamgar Union vs. Union of India, AIR 1981 SC 344 at 354.
42 Bandhua Mukti Morcha vs. Union of India, AIR 1984 SC 802.
Courts to mould the remedies and even invent new remedies for the enforcement of the rights. Traditionally, the writ jurisdiction was supposed to be exercised only for stopping or preventing a mischief, not for providing relief for the mischief already done. If a person was illegally detained, a Court could set him free but could not provide compensation for wrongful confinement or punishment for the wrongdoer. The persons concerned have to prosecute or sue the police or any other authority responsible for such illegal detention.

In India, the tort litigation is very less, because of delays, high costs of litigation and Indian Judges tendency to award meager compensation. The Apex Court rightly felt that mere release of person from illegal detention would not be an adequate relief for him and would not deter irresponsible police officers from riding roughshod over people rights. The Supreme Court, therefore, used the writ-jurisdiction for awarding token compensation to the aggrieved person.\textsuperscript{44}

\textbf{III. New Dimensions added to Article 21}

In Constitution of India the Right to Life and Personal Liberty has witnessed different phases at different point of time. Article 21 of the Constitution

\textsuperscript{44} AIR 1983 SC 1086.
lays down "No person shall be deprived of his life or personal liberty except according to procedure established by law." 45

The expression personal liberty in Art. 21 of the Constitution is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given an additional protection under Art. 19. 46 Now if a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Art. 21 has to stand the test of one or more of the fundamental rights conferred under Art. 19 which may be applicable in a given situation, ex hypothesi it may be able to be tested with reference to Art. 14. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Art. 14 like a brooding omnipresence and the procedure contemplated by Art. 21 must answer the test of reasonableness in order to be in conformity with Art. 14. It must be 'right, just and fair' and not arbitrary fanciful or oppressive, otherwise, it would be no

procedure at all and the requirement of Art. 21 would not be satisfied.47

Through the Public Interest Litigation the Court has given real, practical and enlarged meaning to the right to life. The Constitution enacted Article 32 as Fundamental Right and permitted persons to approach the Supreme Court under Article 32, and the High Court under Article 226 to enforce Fundamental Rights.

This is wholly satisfactory in the case of people with the means or ability to secure legal assistance and move to a court. Permitting Public Interest Litigation and even entertaining post-cards and letters48 as petition enabling hundred of thousands of helpless persons, undertrails, bonded labourers, etc. to obtain justice, and enforce their Fundamental Rights.

Restructured Article 21 is a by product of judicial dynamism and activism of the Supreme Court of India. The emergence of the Indian Supreme Court as a custodian of people's right in a democratic way is the most significant and important development in the judicial history of independent India. It is being envisaged not as a redressal forum of elite class in the society, but it is perceived as a forum for raising,

47  Ibid.
redressing and articulating the problems of have-nots, deprived, oppressed, downtrodden, women and children, environmental groups, exploitation and abuse of powers and position by persons holding high public office.49

Further, Article 32 says about remedies for enforcement of rights conferred by Part-III of the Constitution. It is established that remedy under Article 32 is available only for the violation of Fundamental Rights guaranteed by it. As a result of the liberalised view taken by the Supreme Court in the interpretation of Article 21, a new approach to protect the interest of the aggrieved person has been developed by it. This power under Articles 32 and 226 shaped the destiny of the compensatory jurisprudence to provide a monetary compensation to the aggrieved party in order to provide him adequate relief.

IV. The Role of Indian Judiciary in Conceptualising the Concept of Compensatory Jurisprudence

The earlier view taken by the Indian judiciary that no compensation or monetary relief can be awarded by the court under Article 32 of the Constitution. But, now

in a number of cases,\(^50\) the court has awarded compensation to the victims of the infringement of Fundamental Rights. In \textit{Khatri vs. State of Bihar}\(^51\) popularly known as the \textit{Bhagalpur blinding case} Justice Bhagwati countered the question of compensation. Why should the court not be prepared to forge new tools and devise new remedies for the purpose of indicating the most precious Fundamental Right to life and personal liberty? A new interpretation was accorded to Article 32 and Article 21 of the Constitution, the court ordered the State to meet the expenses of housing those men in blind homes in Delhi.

The Supreme Court in case of \textit{Rudul Shah vs. State of Bihar}\(^52\) observed that in the exercise of its jurisdiction under Article 32, payment of money in the nature of compensation consequential upon the deprivation of a Fundamental Right to life and liberty of a petitioner. The court further observed that Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of the


\(^{51}\) AIR 1981 SC 928.

\(^{52}\) AIR 1983 SC 1086.
Supreme Court were limited to passing orders of release from illegal detention. On the telling way in which the violation of that right can reasonably be prevented and due compliances with the mandate of Article 21 secured, is to mallet its violation in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of Fundamental Rights cannot be corrected by any other method open to the judiciary to adopt.

The right to compensation is some palliative for the unlawful acts of the State instrumentalities which act in the name of public interest and presents for their protection the power of the State as a shield. Respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's right. It may have recourse against those officers.

In the instant case the petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full dressed trial. He filed a Habeas Corpus petition in the Supreme Court for his release from illegal detention. He obtained that relief, his detention in the prison after his acquittal being wholly unjustified. He further contended that he was entitled to be compensated for his illegal detention and that the
Supreme Court ought to pass an appropriate order for the payment of compensation in the *Habeas Corpus* petition itself.

Taking into consideration the great harm done to the petitioner by the Government of Bihar, the Supreme Court ordered the State to pay to the petitioner a further sum of Rs. 30,000/- as an interim measure in addition to the sum of Rs. 5,000/- already paid by it. The order of compensation was in the nature of a palliative and it did not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials. Chandrachud C. J. further observed that:

"The important question for our consideration is whether in the exercise of its jurisdiction under Art. 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation. Consequential upon the deprivation of a Fundamental Right the instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full dressed trial. He filed a *Habeas Corpus* Petition in this court"

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53 Ibid.
54 Ibid; p. 1087.
for his release from illegal detention. He obtained that relief. Our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this Habeas Corpus Petition itself."

Hence, compensatory jurisprudence took a clear shape in Rudal Shah case although the foundation was laid down in Khatri's case. So in this way the Supreme Court of India by way of compensatory jurisprudence gave a different colour to right to life as a human right under Article 21 and provide an opportunity to the judicial managers to show a ray of hope to victims in the form of compensation to negate a wrong and injustice heaped upon them by the State and its officers.

In Sebastian Hongary vs. Union of India, where the Supreme Court by a writ of Habeas Corpus required the Government of India to produce two persons before it, who were taken to the military camp by the Jawans of

55 Ibid; p. 1089
56 Id.
58 AIR 1984 SC 1026.
army and allegedly killed by them. Since the government failed to provide relief to the aggrieved wives of the killed persons, the court keeping in view the torture, agony and mental oppression through which the wives of the persons in question had to pass, directed the Union Government to pay Rs. one lakh each to the two women.

Further, in Bhim Singh vs. State of J & K and Others, the Supreme Court observed that when a person comes to this Court with a complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases the court has the jurisdiction to compensate the victim by awarding suitable monetary compensation. The Supreme Court further said that where a member of the Legislative Assembly was arrested while enroute to seat of Assembly and in consequence the member was deprived of his constitutional right to attend the Assembly Session and responsibility for arrest laid with higher echelons of the Government and award of compensation amounting to Rs. 50,000/-. 

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59 AIR 1986 SC 494.
The growing violation of the Human Rights by the police administration and armed forces is not only a danger to human being but also to the existence of humanity. The Supreme Court in *Saheli, A Women Resources Centre vs. Commissioner of Police, Delhi*\(^60\) departed from the settled law of State liability and added that the State is at liberty to realize the entire amount or part thereof from the erring officers. But in *State of Maharashtra and Others vs. Ravikant S. Patil*\(^61\) where the undertrial prisoner handcuffed and taken through the streets in a procession by police during investigation, the Supreme Court held it the violation of Human Rights under Article 21 of the Constitution and awarded Rs. 10,000/- as compensation to be paid by the State. The responsibility of erring police officers was defended by the Supreme Court by making the observation that Police Officer responsible for the act acted only as an official and even assuming that he exceeds his limits, still he could not be made personally liable to pay compensation to the victim i.e. undertrial.

It is also considered that prerogative writ is of highest constitutional importance, being a remedy available to the meanest against the mightiest. The

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\(^60\) AIR 1990 SC 513.

\(^61\) (1991) 2 SCC 373.
Supreme Court of India further considered that the technicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for *Habeas Corpus* if the basic facts are found.\(^{62}\) In this context as the approach of the court is concerned, anybody acting *pro bono publico* can knock the door of the court for his relief.\(^{63}\)

In another case of *Nilabati Behera vs. State of Orissa*,\(^{64}\) where deceased about 22 years of age with a monthly income of Rs. 1200-1500 died in police custody. The letter of the mother of the deceased was considered as writ petition. The Supreme Court awarded the compensation of Rs. 1,50,000 and ordered that the amount of compensation would not affect any other liability of the respondent or any other person flowing from the custodial death but could be adjusted in the amount of compensation in the event of any other proceedings taken by the petitioner for recovery of compensation on the same ground, so that amount to that extent might not be recovered twice by the petitioner.\(^{65}\)

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\(^{62}\) Sunil Batra vs. Delhi Administration, AIR 1980 SC 1579.

\(^{63}\) Kishore Singh Ravinder Dev vs. State of Rajasthan, AIR 1981 SC 625.

\(^{64}\) AIR 1993 SC 1960.

\(^{65}\) *Ibid.*
The Court further emphasized that the claim in public law for compensation for contravention of human rights, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights which is based on strict liability. The defence of sovereign immunity being inapplicable, alien to the concept of guarantee of Fundamental Rights, there can be no question of such a defence being available in the constitutional remedy. The impact of that historical ruling is that anyone whose fundamental right is adversely affected by the action of State can approach to the Supreme Court or High Court under Articles 32 and 226 respectively.

In view of the decisions of the Apex Court in **Rudul Sah**, **Sebastian M. Homgray**, **Bhim Singh**, **Saheli, A Women Resource Centre**, **Ravi Kant V. Patil**, the liability of State to pay compensation cannot be doubted and was rightly not disputed. The court observed that it should be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation. The Court further

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66 AIR 1993 SC 1086  
67 AIR 1984 SC 1026  
68 AIR 1987 SC 494  
69 AIR 1990 SC 513  
70 (1991) 2 SCC 373
mentioned straightway that award of compensation in a proceeding under Art. 32 by Supreme Court or by the High Court under Art. 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply.

The theme of compensatory jurisprudence was further developed in People's Union for Democratic Rights vs. Police Commissioner, Delhi\textsuperscript{71} where a labourer was taken to the police station for doing some work. He was severely beaten when he demanded wages and ultimately succumbed to the injuries. It was held that the State was liable to pay compensation and accordingly directed to the Government to pay Rs. 75,000/- as compensation to the family of the deceased. The Court awarded the compensation to the victim following the principle laid down in M.C. Mehta vs. Union of India case\textsuperscript{72} where the court observed:

"The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words 'in appropriate cases' because we must make it clear that it is

\textsuperscript{71} (1989) 4 SCC 730.

\textsuperscript{72} AIR 1987 SC 1086.
not in every case where there is a breach of a Fundamental Right committed by the violator that compensation would be awarded by the Court in a petition under Article 32. The infringement of the Fundamental Rights must be gross, patent, that is, incontrovertible and ex-facie glaring and either such infringement should be on a large scale affecting the Fundamental Rights of a large number of persons or it should appear unjust unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts.\textsuperscript{73} Anand J.\textsuperscript{74} emphasized:

"It is an obligation of the State to ensure that there is no infringement of the indefeasible right of a citizen to life except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in

\textsuperscript{73} Ibid.
\textsuperscript{74} Nilabati Behera vs. State of Orissa, AIR 1993 SC 1960 at 1972.
custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the action in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exception.”

The principle is further elucidated and re-affirmed by the Supreme Court in D. K. Basu vs. State of West Bengal. The Court observed:

“The claim in public law for compensation for unconstitutional deprivation of Fundamental Right of life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous act of the public servants. Public law proceedings serve a different purpose then the private law

75 Ibid.
Proceedings. Award of compensation for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizen that they live under legal system wherein their rights and interest shall be protected and preserved. 77

The Supreme Court as regard to the quantum of compensation has pointed out that the same will depend on peculiar facts and circumstances of each case and no straight jacket formula can be evolved in that behalf. 78 But it is in addition to the traditional remedy and not in derogation of them, the amount of compensation against any amount awarded to the claimant by way of damages in civil suit. 79

(a) Custodial Deaths and Police Atrocities

It has been observed over a period of time that police officials while interrogating the accused persons in police custody, sometimes causes death of the accused. Not only this at that time police force is alleged

77 Ibid.
78 Id.
79 Id.
to have caused atrocities on poor or downtrodden people in the garb of maintaining law and order in the society. Whether police officer responsible of causing death or injuring to the accused person under its custody is liable or not for the act? Whether State is responsible for the action of its employee the police officer, or can the accused or his legal heir claim compensation for the loss of life or injuries suffered by him from the hands of the police while in custody. These are some of the questions for which the following discussion provides the remedy.

In the case of Sewinder Singh Grover, re 80 the allegation of custodial death of Sewinder Singh Grover had been established by the report of Additional District Judge which had disclosed a prime facie case of investigation and prosecution of the police officers involved in the custodial death. The Apex Court in a petition under Article 32 not only directed Central Bureau of Investigation to lodge First Information Report (FIR) and start criminal prosecution against the offenders but directed the Union of India to pay Rs. Two Lakhs to the widow of deceased by way of ex-gratia payment.

In another case of **Aravinda Singh Bagga vs. State of U.P.**,\(^{81}\) where there was police atrocities against a women, her husband and his family members. The Apex Court in a writ petition under Article 32 of the Constitution has also directed the State to pay Rs. 10,000/- each as compensation to the victim girl, and her husband and Rs. 5,000/- each to his family members who were being tortured by police. Over and above, the Court further directed the State Government to launch prosecution against offending police officers.

The Supreme Court again in the case of **Tirath Ram Saini vs. State of Punjab**,\(^{82}\) where wrongful confinement of two persons was done by the police, in which an enquiry conducted by the District Judge. But the report could not fix the responsibility to any particular police officer or officers. The Supreme Court directed the State to pay Rs. 10,000/- to each of two persons for violation of their Fundamental Right under Article 21 which would not preclude the victim in pursuing any other civil and criminal remedies against the offenders.

The Apex Court awarded compensation to the wife and dependents of an army officer, who while in service

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died in mysterious circumstances.³ In the case of **Smt. Kewal Pati vs. State of U.P.**⁴ on the petition of deceased wife, where deceased was convict under Section 302 Indian Penal Code was killed by co-accused in Varanasi Jail. It was observed that the deceased was a convict and was serving his sentence, yet the jail authorities were not absolved of their responsibility to ensure his life and safety in the jail. A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law. Therefore, he was entitled to protection. Since, the killing took place when he was in jail, it resulted in deprivation of his life contrary to law. His untimely death has deprived the petitioner and their children his company and affection. Since, it has taken place while he was serving his sentence, due to failure of the authorities to protect him, the legal representatives are entitled to be compensated to the extent of Rs. One lakh. Although there has been no provision in the U.P. Jail Manual for grant of compensation to the family of the deceased convict.

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In *(Smt.) Bheemamma vs. SHO, Police Station, Uppal Hyderabad*,\(^{85}\) there was an allegation that the deceased was killed on the instructions of the Jail Superintendent. The Court held that there was negligence on the part of the jail authorities in taking proper care. The Jail Superintendent himself informed that deceased was examined in custody and after that there was no medical treatment, nor any medical care. It was observed that when he was advised to be taken to hospital, there was delay in taking him to the hospital.

The Court after due consideration directed the Government to grant an amount of Rs. 20,000/- as *ex-gratia* to the petitioner.

**(b) Rape Victims**

Rape is sexual intercourse by a man with a woman without the latter's consent. Rape is by and large the most heinous offence of all the offences committed against women.\(^{86}\) The cases of molestation and rape of woman by the custodians of law namely the police while a woman comes into their custody during investigation are also on the rise.\(^{87}\)

\(^{85}\) 2002 Cr.L.J. 694
\(^{86}\) See, Indian Penal Code, 1860, Sections 375 and 376.
\(^{87}\) See, *supra* note 9 at pp. 122-123.
One of the serious problems in the Indian Legal System is lack of sufficient provisions to award compensation to victims of rape. There is a provision under Section 357(3) of Criminal Procedure Code, 1973 which contemplates the grant of such compensation. The provision is rarely invoked and even if granted, it is totally inadequate. The Supreme Court granted compensation through writ petition in rape cases where the State fails to defend the violation of dignity of a woman.

In *P. Rathnam vs. State of Gujarat*, a tribal woman was raped in police custody. The amount ordered to be paid as interim compensation was Rs. 50,000 by the Supreme Court. The Hon'ble Supreme Court observed:

"Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because

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88 1994 SCC(Cri) 1163.
she is a woman of easy virtue, her evidences cannot be thrown overboard. At the most, the officer called upon to evaluate her evidences would be required to administer caution up, to himself before accepting her evidence."

In Delhi Domestic Workmen’s Forum vs. Union of India, six women while traveling in the train were raped by seven army personnel. Neither the Central Government nor the State Government has bestowed any serious attention as to the need for the provisions of rehabilitory and compensatory justice for women. The Delhi Domestic Working Women’s Forum initiated a Public Interest Litigation under Article 32 of the Constitution of India to expose the pathetic plight of such victims. The petitioners prayed that the National Commission for Women (NCW) should draft a scheme and impress upon the Union of India to give effect to it. The court further observed:

"It is rather unfortunate that in recent times, there has been an increase in violence against women causing serious concern. Rape does not indeed pose a series of problems for criminal justice system. There are cries for harshest
penalties, but often times such cries eclipse the real plight of victim."\textsuperscript{92}

The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say that they considered the ordeal to be even worse than the rape itself. The Court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself.

Mohan, J. while delivering the Judgement drew the attention to the defects and inadequacies of the legal system. The Judgement laid down broad parameters to assist the victim of rape as under:\textsuperscript{93}

(a) Complaints of sexual assault should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice. The role of victim's advocate would not only be to explain to the victim the nature of proceedings to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or

\textsuperscript{92} Ibid.
\textsuperscript{93} Id.
mental assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainants' interest in the police station represents her till the end of the case.

(b) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(c) The police should be under a duty to inform the victim of her right to representation before any questions were asked to her and that the police report should state that the victim was so informed.

(d) A list of advocates willing to act these cases should be kept at the police station for victim who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(e) The Advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victim were questioned without undue delay,
advocates would be authorized to act at the police station before leave of the court was sought or obtained.

(f) A Criminal Injuries Compensation Board should be set up, under Article 38(i) having regard to the Directive Principles under the Constitution.

(g) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

The Supreme Court awarded compensation to four domestic servants who were sexually assaulted by their co-passengers while traveling by train.

The Supreme Court in another case of Gudalure M.J. Cherian vs. Union of India\textsuperscript{94} directed the State Government to pay compensation to the victim of rape. On one night, four miscreants entered into the residential building in the campus of St. Mary’s School at Gajraula through the kitchen by breaking open the window, where the missionary sisters were staying.

\textsuperscript{94} 1995 SCC (Cr) 925.
They committed rape on two sisters, assaulted others and looted away Rs. 1,11,000/-. The Apex Court while passing the orders observed as under:

"We further direct that the State of U.P. shall pay a sum of Rs. 2,50,000/- as compensation to each of two sisters A & B on whom rape was committed by the assailants. We further directed the State of U.P. to pay as sum of Rs. One lakh to sisters."  

The Court further ordered:

"The amount directed by us as compensation be paid to the above mentioned girls within two months. The State Government, if so advised may recover the amount from the officers who are held guilty of lapses and misconduct."  

In the case of Bodhisattwa Gautam vs. Subhra Chakraborty, the Supreme Court held that when a criminal case for offences under Section 376 Indian Penal Code and allied offences has been filed in Court which has jurisdiction to award interim compensation to the victim. The Court dismissed the special leave petition preferred by the appellant accused. The Apex Court has held that it has jurisdiction to pass order

95 Ibid.
96 Id.
97 AIR 1996 SC 922.
compelling the accused to pay maintenance to the victim during the pendency of the criminal case and directed the appellant to pay Rs. 1,000 per month as interim compensation to the respondent. In the instant case the Court observed:98

"When the Court trying the offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation which should also be provided in the scheme for rape victims to be evolved by the Supreme Court under Delhi Domestic Working Women's case." 99

In Chairman, Railway Board and Others vs. Mrs. Chandrima Das and others,100 a Bangladeshi woman was gang raped by Indian Railway employees in a railway building. In this case, the Supreme Court awarded as sum of Rs. 10 lakh as compensation to the victim, though she was not a citizen of India.101 The court observed when public functionaries are involved and the matter relates to the violation of Fundamental Right or the enforcement of public duty, the remedy

98 Ibid.
99 Id.
100 AIR 2000 SC 988.
101 Fundamental Rights are available to all citizens of the country but few of them are also available to persons who are not citizens. Article 20 guarantees right to protect in respect of conviction for offences Article 21 guarantees right to life and personal liberty while Article 22 guarantees right to protection against arbitrary arrest and detention.
would still be available under the public law notwithstanding that a suit could be filed for damages under private law also. The court rightly rejected the argument that the victim was a foreign national and therefore no Fundamental Right is available to her. Right to life and personal liberty under Article 21 is not only available to citizens but also to non-citizens.

(c) Environmental Law

The positive signal of environment protection is manifest in judicial trend as set by Justice V.R. Krishna Iyer. Justice Iyer in Municipal Council, Ratlam vs. Vardichand,\textsuperscript{102} observed, that the human rights calling for unpolluted environment must be implemented irrespective of financial constraints. He further observed:\textsuperscript{103}

"Public nuisance because of pollutants being discharged by big factories to the determinant of poorer section is a challenge to the social justice, component of the rule of law."\textsuperscript{104}

Basically, the judiciary has concretized the right to live in clean environment through bold and innovative interpretation of Article 21 of the Constitution. The

\textsuperscript{102} AIR 1980 SC 1622.

\textsuperscript{103} Ibid: p. 1623.

\textsuperscript{104} Id.
Maneka\textsuperscript{105} wave-length has opened doors for neo-Fundamental Rights and in this dynamism developed the right to get compensation against environmental pollution.

The Supreme Court in \textbf{M. C. Mehta vs. Union of India,\textsuperscript{106}} took the stand that apart from issuing directions, it could force new remedies and fashion new strategies designed to enforce the Fundamental Right under Article 32. The Court specifically pointed out that a contrary position would probe Article 32 of the entire efficacy and render it important and futile.\textsuperscript{107} Emphasizing its role under Article 32, the Supreme Court made it clear that it could award compensation in writ petition itself. The court observed:

\textit{"We cannot adopt a hyper technical approach which would defeat the end of justice."}\textsuperscript{108}

The Court further reemphasized that the compensation must be given only in appropriate cases\textsuperscript{109} under Article 32 of the Constitution of India.

\textsuperscript{105} Menaka Gandhi vs. Union of India, AIR 1978 SC 597
\textsuperscript{106} AIR 1987 SC 1086.
\textsuperscript{107} \textit{Ibid}; p. 1091.
\textsuperscript{108} \textit{Ibid}; p. 1089.
The Supreme Court in the case of **Charan Lal Sahu vs. Union of India**\(^{110}\) observed from the jurisprudential point of view in the background of the Preamble to the Constitution of India and the mandate of the Directive Principles to take the claims of the victims of gas leak. It expressly postulates or indicates an obligation of granting interim relief or maintenance by the Central Government until the full amount of the dues of victims is released from the Union Carbide after adjudication or settlement and then deducting therefrom the interim relief paid to the victim. The Court held that:\(^{111}\)

> "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on."\(^{112}\)

The Court further resolved that the industries are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to

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110 AIR 1990 SC 1480.
take all necessary measures to remove sludge and other pollutants lying in the affected areas.

The Court further held that the 'Polluter Pays' principle as interpreted by it means that the absolute liability for harm to the environment extends not only to compensate the victim of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual suffers as well as the cost reversing the damaged ecology.\(^{113}\)

In *Union Carbide Corporation vs. Union of India*,\(^ {114}\) there were large number of claims under the Environment Act in the very nature of the situation, doubts that a sizeable number of them are either without any just basis or were otherwise exaggerated could not be ruled out. It was though not unreasonable to proceed on some *prima facie* undisputed figures of cases of death and of substantially compensable personal injuries. The particulars of the number of persons treated at the hospitals was an important indicator in that behalf. The Court had no reasons to doubt the bonafides of the figures furnished by the

\(^{113}\) *Id.*

\(^{114}\) AIR 1990 SC 273.
plaintiff itself in the pleadings as to the number of persons suffering serious injuries.

In assessing the quantum of interim compensation the Court did not adopt the standards of compensation usually awarded in fatal-accidents-actions or personal injury actions arising under the Motor Vehicle Act. Anyhow, the Court ordered the compensation the aggregate payable in fatal cases to a sum less than Rs. 20 crores in all. Applying the standards of compensation, the High Court proceeded to assess damages in the following manners:

"In the opinion of the court, it would not be unreasonable to assume that if the suit proceeded to trial the plaintiff Union of India obtain judgement in respect of the claims relating to death and personal injuries at least in the following amount:

(a) Rs. 2 lakh in each case of death.
(b) Rs. 2 lakh in each case of total permanent disability.
(c) Rs. 1 lakh in each of permanent partial disablement and ;
(d) Rs. 50,000 in each case of temporary partial disablement."\(^{115}\)
The quantum of compensation in industrial accident cases must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying of the hazardous or inherently dangerous activity by the enterprise. The Court further observed:

"In assessing the quantum of interim compensation the High Court did not adopt the standard of compensation usually awarded in fatal accidents actions of personal injuries, actions arising under Motor Vehicle Act. It is well known that in fatal-accident where children are concerned, the compensation awarded is in conventional sums ranging from 15,000 to Rs. 30,000/- in each case. In the present case, a large number of deaths were of children of very young age. Even in the case of adults, according to the general run of damages in comparable cases, the damages assessed on the usual multiplier method in the case of

116 M.C. Mehta vs. Union of India, AIR 1987 SC 982 at 1099-1100.
117 Union Carbide Corporation vs. Union of India, AIR 1990 SC 273.
income groups comparable to those of income
groups comparable to those of the deceased
person would be anywhere between Rs. 80,000/-
and Rs. 1,00,000/-.”

The Supreme Court in the case of M.C. Mehta vs.
Kamal Nath further applied the principle of ‘Polluter
Pays’. It was observed that once the activity carried on
was hazardous or inherently dangerous, the person
carrying on that activity was liable to make good the
loss caused to another person by that activity.

It was for this reason that motel was directed to
pay compensation by way of cost for the restitution of
the environment ecology of the area. The power of the
court under Article 32 is not restricted and it can award
damages in a Public Interest Litigation or Writ Petition
as has been held in a series of decisions.

(d) Sexual Harassment of Working Women

The Apex Court laid down exhaustive guidelines for
preventing sexual harassment of working women in place
of their work until a legislation is enacted for this

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118 Ibid.
120 Also see, Indian Council for Enviro Legal Action vs. Union of India, AIR 1996 SC 1446.
121 Ibid; also see, Vellore Citizens Welfare Forum vs. Union of India, AIR 1996 SC 2715;
122 M.C. Mehta vs. Union of India, AIR 2000 SC 1997; also see, M.C. Mehta vs. Union of
India, AIR 2002 SC 1515.
purpose. The Supreme Court in Vishaka vs. State of Rajasthan\(^\text{123}\) held that it is duty of the employer or other responsible person in work place and other institution, whether public or private, to prevent sexual harassment of working women. The judgement of the Court was delivered by Chief Justice J. S. Verma on behalf of Sujata V. Manohar and B. N. Kripal JJ in a writ petition filed by Vishaka a non-governmental organization working for 'gender equality' by way of Public Interest Litigation seeking enforcement of Fundamental Rights of working women under Article 14, 19 and 21 of the Constitution. The court relied that gender equality including protection from sexual harassment and right to work with dignity which is universally recognized as basic human right. The International Convention and norms are, therefore, of great significance in the formulation of guidelines to achieve this purpose. The obligation of this court under Article 32 of Constitution of India for the enforcement of this right in the absence of legislation must be viewed alone with the role of judiciary envisaged in the Beijing Statement of Principle of the Independence of Judiciary in the Law Asia Region. These principles were accepted by Chief Justices of Asia and the Pacific at Beijing in 1995. The court further

\(^{123}\) AIR 1997 SC 3011
relied on International Convention and norms to which India is a party and held that in absence of any domestic law on the point they can be relied on interpreting the guarantee of 'gender equality' in Article 14, 19 and 21 of the Constitution. It was held that the Court has the power under Article 32 to lay down such guidelines for effective enforcement of Fundamental Rights of working women at their work places and declared that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution. In the absence for specific legislation in this regard the court also suggested to provide compensation in sexual harassment cases. Through this no doubt the court has initiated new vista in the field of expansion of compensatory jurisprudence. The Court laid down as under:

"Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem, it is discriminatory when a women has reasonable ground to believe that her object would disadvantage her in connection with her
employment, including recruiting or promoting or when it creates a hostile working environment effective complaints procedures and procedures and remedies include compensation should be provided.”

The rights under the Constitution carry no meaning to its citizens unless they are implemented in true spirit. The Constitution of India recognizes Fundamental Rights and at the same time provides the mechanism for its enforcement. The executive which is concerned with the implementation and enforcement of the law often violates the law itself. When the constitutional rights are invaded, the invasion is not washed away merely by restoring of the rights. The restoration of the right may be in the shape of payment of compensation. The constitutional provisions cannot anticipate all the situations that may arise and come before the court. The gap in legislative scheme must be and are filled by judicial response. The concept has been developed by judiciary while mainly interpreting Article 21 of the Constitution of India. The judiciary has not only gone to the extent of paying compensation to the aggrieved person but has also diffused the concept of locus standi and has come forward to help the aggrieved person by

124 Ibid.
way of writ petition filed in the nature of Public Interest Litigation.

It is further clear that the principle of social justice enunciated in the preamble, guaranteed personal liberty under Article 21 and the scheme of Directive Principles of State Policy in the Part-IV of the Constitution irrevocably hold the State responsible for the misdeed committed by its agencies. The judicial approach led full support in this view. Hence the Apex Court and the High Courts have developed new jurisprudential parameters concerning payment of compensation to the victims.

It is crystal clear that the activist judiciary has brought in a new light to award compensation even in writ proceedings in the exercise of extra-ordinary jurisdiction of the courts under Articles 32 and 226 of the Constitution. The State liability to pay compensation to the victim of abuse of power by the State or its agencies, constantly flows from the provisions of the Article 21 of the Constitution. Keeping this in view, it is worthwhile to mention that this is an issue of great constitutional significance and involved the exploration of new dimension.

The activist role of the Supreme Court to award compensation enlarging and expanding its jurisdiction under Article 32 added a flavour of human rights in
humane decisions delivered by it. The spirit of Rudul Sah received a shot in the arm when Indian Parliament enacted, Protection of Human Rights Act in 1993; Environment Protection Act, 1986; Consumer Protection Act, 1986; Employees State Insurance Act, 1993; etc.