(I) PRELUDE

"Compensation" means, any actual loss suffered by a party. For example, if trees had to be cut or certain structure had be altered or demolished. In that case a question of paying compensation would arise but the question as to what loss a party would suffer in case he was prevented from making any construction or using the roof would not come within the meaning of the word "Compensation." It would come under the wider definition of the word "damages."¹

The term "compensation" means amends for the loss sustained. In Law, it applies, primarily to a transaction between two or more persons and does not enter into, or arise from, a unilateral transaction, purpose or undertaking. As commonly understood, it carries, with it, the idea of making whole, or giving an equivalent or substituting material payment, but imports a recompense, or equivalent, to one party and has no relation to any advantage to the other.²

The expression compensation is not ordinarily used as equivalent for damages. It is used in relation to a lawful act which has caused injury, therefore, that word would not ................... include damages at large.³ There is an evident distinction almost etymological in nature between terms damages and compensation, which is not to be ignored. While the term "damages" is used in reference to pecuniary recompense awarded in reparation for a loss or injury caused by a wrongful act or omission, the term "compensation" is used in relation to a lawful act which caused the injury in respect of which an indemnity is obtained under the provisions of a particular statute.⁴

1. Union of India v. Ram Chandra, AIR 1975 All. 221 at 225.
Generally the concept of monetary compensation is to make good the loss, suffered through a wrongful act, in the form of money. In cases of irreversible damage it remains a sole effective remedy for enforcement of a right. On violation of human rights through the agency of a state, their redressal through monetary compensation has acquired peculiar significance than more making good the loss suffered by an aggrieved person. It is internationally recognised principle that enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right.\(^5\)

The concepts of compensation and damages occupy an important place in the programme of justice to victims. Though these terms are sometimes used interchangeably, the words compensation and damages have subtle distinction in their application. While “Damages” connotes the measure of loss caused to the victims in monetary terms, the word “compensation” indicates the form and occasion to pay damages.\(^6\)

When right of a person is infringed he can approach the courts for enforcement of his right and where such right is a fundamental right enshrined in Part-III of the constitution the person can file a writ petition in Supreme Court or High Court.\(^7\) The Constitution does not provide for a separate right to claim compensation for infraction of fundamental right. The Supreme Court had made it clear long back that the court has the jurisdiction and power to pass any order including a declaratory order and to provide adequate relief to the aggrieved person.\(^8\)

The Supreme Court has in recent years invoked the concept of victim restitution in appropriate cases. The court has realised the merit of compensating the victim

---


7. See Articles 32 and 226 of the Constitution.

for the losses incurred by them. There is an emergent trend in penology to reassure
the victim that he/she is not a forgotten species in the criminal justice system, a mea­
sure of responding appropriately to crime as well as reconciling the victims with the
offender. On the other hand, the courts felt that the amount affixed should be reason­
able depending upon facts and circumstances of each case.⁹

England was the first to agitate the question of compensation. A committee
was set up in 1959 to decide on the question of compensation to crime victims and
the report of the committee was issued in the year 1961. In March, 1964, the conser­
ervative Government issued a white paper on the criminal injuries compensation plan
and it passed through Parliament and became law in August of the same year. In
pursuance of this law a Compensation Board was set up.¹⁰ As the writers of the 1966
British compensation programme noted: "Compensation will be paid ex-gratia. The
government does not accept that the state is liable for injuries caused to people by the
acts of others. The Public does, however, feel a sense of responsibility for the inno­
cent victim and it is right that this feeling should find practical expression in the provi­
sion of compensation."¹¹ Compensation are payable in the United Kingdom under the
Criminal Injuries Compensation Board is constituted. The basis of quantum of com­
pen­sation is the same as that of damages in civil injuries and the money payable is for
pain and suffering, loss of earning capacity and out-of-pocket expense.¹²

The Criminal Justice Act, 1972 introduced the idea of payment of compensa­
tion by the offender ....... The Criminal Justice Act, 1982 made it possible for the first
time to make compensation as the sole penalty for the offence. It further provided that
where fine and compensation orders were given together compensation is to take
priority over fine. The Criminal Justice Act, 1988 required the Court to consider the
aspect of compensation in every case of death, injury, loss or damage.¹³

⁹. Dr. Lacob George v. State of Kerala, 1994, 3 SCC p.430; Venkatesh v. State of Tamil Nadu,
1993 supp (3) SCC p.301; see also Mundrathi, Sammaiah, op. cit. p. 145.
¹¹. Meiners, Victim's Compensation, p.3.
¹³. Ibid., p. 41.
The Penal Code\textsuperscript{14} in India is more than a Century old, is offender oriented and does not say any thing about the victim. In India there is no statutory right to claim compensation under criminal law but certain provisions have been made in Criminal Procedure Code\textsuperscript{15} under which court can order payment of compensation in deserving cases.\textsuperscript{16}  

It can be said that the Criminal Procedure Code is the first and probably the oldest legislation doesnot in India to deal with the subject of compensation to victims of crime. Though the compensation scheme envisaged under the Criminal Procedure Code is not of limited purpose, it has definitely paved the way of improving the principle of compensatory jurisprudence by providing the statutory status with the growing importance of the subject of victim compensation, the world over, the provision of Criminal Procedure Code concerning victim compensation occupy a prominent place in the progressive development of the law relating to victim compensation.\textsuperscript{17}

In this Chapter the provision concerning compensation under the provision of Cr.P.C., 1973, philosophy of Compensation to the accused person under Indian Constitution and the Protection of Human Rights Act, 1994 and judicial approach relating thereto will be examined thread bare.

In this context the compensation for accusation without reasonable cause,\textsuperscript{18} power of the court is award compensation for loss or injury suffered by offence\textsuperscript{19} and compensation for the groundless arrest are to be discussed in their proper perspective.\textsuperscript{20} The Constitutional provisions under Article 32 and 226 and powers of the Supreme Court and High Courts would be discussed with case to case development. The Protection of Human Rights Act, 1994 was enacted with the view to provide relief to the victims of violations of human rights and compensation can be awarded to the

\begin{itemize}
  \item \textsuperscript{14} The Indian Penal Code, 1860.
  \item \textsuperscript{15} The Code of Criminal Procedure, 1973.
  \item \textsuperscript{16} See Sections 237,250, 357 & 358 of Cr.P.C., 1973.
  \item \textsuperscript{17} Mundrathi, Sammaiah, op.cit.p.73.
  \item \textsuperscript{18} Sec. 250, Cr.P.C., 1973.
  \item \textsuperscript{19} Sec. 357, Cr.P.C., 1973.
  \item \textsuperscript{20} Sec. 358, Cr.P.C., 1973.
\end{itemize}
victims by the government on the recommendation of the National Human Rights Commis­sion. The recent trends for awarding compensation will be highlighted. In the last, the judicial approach for awarding compensation for violation of human rights and fundamental rights will be discussed.

(II) COMPENSATION UNDER PROVISIONS OF CRIMINAL PROCEDURE CODE, 1973

(i) COMPENSATION FOR ACCUSATION WITHOUT REASONABLE CAUSE

Like Penal laws of other countries, the Penal law of India also provides for payment of compensation to victims of crimes.\(^{21}\) Compensation is anything given to make amends for loss, recompense, remuneration or pay.\(^{22}\)

Section 250, Cr.P.C., 1973 provides for compensation for accusation without reasonable cause.\(^{23}\) The provisions of the section apply to summons cases as well as warrants cases.\(^{24}\) The section may be applied to summons cases, whether tried summarily or not.\(^{25}\)

If in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magis­trate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or if such person is not present, direct the

---

21. Supra note 2 p.72.
23. Section 250, Cr.P.C.
24. Clause (8) of Section 250 Cr.P.C.
issue of a summons to him to appear and show cause as aforesaid.\textsuperscript{26} The object of the Section is not to punish the complainant, but by a summary order, to award some compensation to the person against whom, without any reasonable ground, the accusation is made - leaving it to him to obtain further redress against the complainant, if he seeks for it, by a regular civil suit or criminal prosecution.\textsuperscript{27} This provision is intended to prevent abuse of the process of court, by penalising frivolous accusation.\textsuperscript{28}

If the Magistrate is not satisfied by the cause shown by such complainant or informant, he may order the compensation of such amount, not exceeding the amount of fine he is empowered to impose be paid by such complainant or informant to the accused or each or any of them after recording the reasons.\textsuperscript{29}

The operation of this section is restricted to cases instituted by "complaint" as defined in the code, or upon information given to a police officer or a Magistrate; and consequently it has no application to a case instituted on a police report or on information given by a police officer.\textsuperscript{30} A case instituted by the police, on a complaint to them, is not instituted "upon complaint", in the sense of this section, and therefore, in such a case an order awarding compensation made under it is illegal.\textsuperscript{31}

The Magistrate trying the case should have found that the complaint or the information given was false and either frivolous or vexatious. It is for him to give the notice to show cause why complainant or informant should not be made to pay compensation. When a petition clearly shows that the object of the petition is not that the particular offence should be punished but rather the mention of the particular offence is made with a view to illustrate the kind of conduct which the accused person is supposed to be follow and against which the petitioner is seeking protection, such a

\begin{itemize}
  \item \textsuperscript{26} Section 250 (1), Cr.P.C., 1973.
  \item \textsuperscript{27} Beni Madhub Kurmi v. Kumud Kumar Biswas, (1902) 30 Cal. 123, 128, F.B.
  \item \textsuperscript{28} Bansi v. Dharam, (1975) CrLJ. 1355 (J&K).
  \item \textsuperscript{29} Sec. 250(2) Cr.P.C.
  \item \textsuperscript{30} Ramjeevan Koormi v. Durga Charan, (1894) 21 Cal. 979.
  \item \textsuperscript{31} Ishri v. Bakhshi, (1883) 6 All 96; Sarkar Jan Mahomed, (1897) 22 Bom. 934; see also Lal Ratan, Lal Dhiraj, Cr.P.C., 1973,(1984) Nagpur p.246.
\end{itemize}
petition is not a complaint and he is asking the Magistrate in his executive capacity to make an enquiry and protect him against the repetition of such conduct.32

But where a police officer appears before Magistrate and makes a formal complaint of a non cognizable offence, which is found to be false, the Magistrate can order him to pay compensation to the accused.33 The offence may be under the Penal Code or any special or local law. A person must be accused before a Magistrate of an offence triable by a Magistrate. The institution of proceedings under S. 107 is not an accusation of an offence triable by a Magistrate.34 An order for payment of compensation cannot, therefore, be made against a man who has petitioned a Magistrate to take action under S. 107 of the Code.35 The section reserves the power to award compensation to the Magistrate who has heard the case on setting aside the conviction and sentence against the accused person an appellate court or a court acting in revision has no power under this section to make an order awarding compensation to the accused as against the complainant.36 Where an offence is compounded it is not competent to a Magistrate to award compensation as there is neither a discharge nor an acquittal but only a composition.37

33. Sada (1901) 26 Bom. 150, 3 Bom L.R. 586 FB; There are three modes to set the law into motion as per Section 190 Cr.P.C., i.e. (i) by making complaint to the Magistrate, (ii) by giving information to police officer by lodging FIR and (iii) by the Magistrate himself upon his own knowledge. Compensation can be claimed or complaint is made to the Magistrate. When FIR regarding Commission of a Cognizable offence is lodged but police finds after investigation that non-cognizable offence is committee then the police officer is deemed to be a complainant in such cases; See also explanation to Section 2 (d) Cr.P.C., 1973.
In sub Section (1) of Section 250 CrPC the term "if the person upon whose complaint or information the accusation was made ....." has been used. It has been held that "A person includes a juristic person. Where a municipal peon charged the accused under the District Municipal Act and the Magistrate acquitted the accused and ordered the peon to pay compensation to the accused, it was held that though the peon acted under the orders of the executive body of the Municipality he was liable to pay the compensation. An executive body cannot authorize a servant to prefer a wrongful complaint and to screen the complainant from the legal authority." Compensation is awarded to the person who has suffered from the accusation and not his relative. The words "The Magistrate shall record" used in sub Section 2 of Section 250 Cr.P.C. "are imperative and require that before making any direction for payment of compensation the Magistrate shall record and consider any objection which the complainant or informant may urge against the making of the direction."

Sub Section (3) section 250 reads that "The Magistrate may, by the order directing payment of the compensation under Sub-Section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days." In addition, the person directed to pay compensation is not exempted from any civil or criminal liability in respect of complaint made and amount paid under this section is to be taken into account in awarding compensation in subsequent civil suit. If the direction to pay compensation executing one hundred rupees is passed by second class Magistrate the person can file an appeal as if he has been tried and convicted by such Magistrate. Where the complainant was directed to pay compensation of rupees one hundred each to

---

41. Clause 3 of Section 250 Cr.P.C.
42. Clause 5 of Section 250 Cr.P.C.
seven accused persons i.e. rupees seven hundred in all it was held that an appeal lay to session’s court.\textsuperscript{44} When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub Section (6), the compensation shall not be paid to him before the period allowed for presentation of the appeal has elapsed or if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.\textsuperscript{45} This sub section provides for the time for payment of compensation where the original case is appealable and also cases where it is not. The words “and where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order” provide for cases in which though there cannot be an appeal, the acquittal or discharge of the person to whom compensation has been awarded may be set aside in revision. The period of one month is given for making application to the superior court.\textsuperscript{46}

Section 237 Cr.P.C. provides for the payment of compensation to the victims of crime by Sessions Court in cases involving defamation of a person.\textsuperscript{47} The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or each or any of them.\textsuperscript{48} The compensation awarded is recoverable as if it were a fine imposed by a Magistrate.\textsuperscript{49} The person directed to pay compensation is not exempted from any civil or criminal liability in respect of complaint made under Section 237.\textsuperscript{50} The orders of awarding compensation under Sec. 237 are appeal

\textsuperscript{44} Sarab Dial v. Bir Singh, (1928) 9 Lah. 462.
\textsuperscript{45} Clause (7) of Section 250 Cr.P.C.
\textsuperscript{47} See Section 199 Cr.P.C. pertaining to prosecution for defamation.
\textsuperscript{48} Clause(4) of Section 237 Cr PC.
\textsuperscript{49} See Clause (5) \textit{Ibid}.
\textsuperscript{50} See Clause (6) \textit{Ibid}. 
able in High Court.\footnote{See Clause (7) \textit{Ibid.}} When an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or if an appeal is presented, before the appeal has been decided.\footnote{Clause (8) \textit{Ibid.}} The maximum compensation that the court may award under the Section is Rs. 1000. Here again the criteria, for award of compensation is that the accused must have been discharged or acquitted on the ground that no reasonable cause for making the accusation against the accused exists.\footnote{Supra note, p. 78.}

\section*{(ii) COMPENSATION BY THE SENTENCED PERSON}

Chapter XXVII of CrPC deals with 'judgement'. In this chapter certain procedural rules have been provided which are to be observed by the Magistrates and Judges while writing judgement of a case. Section 357 deals with order to pay compensation. "The compensation under this section is to be paid to the victim of crime out of the fine recovered from the accused person who has been sentenced by the court."\footnote{See Sec. 357 and Chapter XXVII Cr.P.C.}

When a court imposes a sentence of fine or a sentence (including a sentence of death) of which five forms a part, the court may, when passing judgement, order the whole or any part of the fine recovered to be applied:\footnote{Clause (i) of Section 357.}

\begin{enumerate}
  \item[(a)] in defraying the expenses properly incurred in the prosecution;
  \item[(b)] in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a civil court.
  \item[(c)] When any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such
\end{enumerate}
an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) When any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide purchaser of such property of the loss of the same if such property is restored to the possession of the person entitled thereto.56

The object of the section therefore, is to provide compensation payable to the "persons who are entitled to recover damages from the person sentenced even though fine does not form part of sentence. Though 545 (Now Section 357 of New Cr.P.C.) enabled the court only to pay compensation out of the fine that would be imposed under the law, by S. 357 (3) when a court imposes a sentence, of which fine does not form a part, the court may direct the accused to pay compensation.57 In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay a compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default sentence for non-payment of fine would not achieve the object. If the accused is in a position to pay the compensation to the injured or his dependents to which they are entitled to, there could be no reason for the court not directing such compensation. When a person, who caused injury

56. Sub Clause (a) to (d) of Clause (i) of Section 357; Under Section 545 of the Code of Criminal Procedure, 1898, the compensation was payable only for substantial injuries. Word 'Substantial' has been deleted which has widened the scope.

due to negligence or is made vicariously liable is bound to pay compensation it is only appropriate to direct payment by the accused who is guilty of causing an injury with the necessary Mens Rea to pay compensation for the person who has suffered injury.\(^{58}\)

S. 357 (i) (c) of the new Code corresponds to S. 545 (i) (bb) of the Code of 1898 which was introduced by S. 110 of Amending Act 26 of 1955 the statement of objects and reasons of that Act shows that the joint committee took the view that, in suitable cases, the person who causes death should compensate the heirs and dependents of the deceased for the loss resulting from the death. The joint committee was in full agreement with the view that in case where death has resulted from homicide the court should award compensation to the heirs of the deceased because that would result "in settling the claim once for all by doing away with the need for a further claim in civil court, needless worry and expense to both sides of the party."\(^{59}\) The compensation can be awarded out of whole or part of fine recovered. The Supreme Court while discussing the principles governing imposition of fine in *Palaniappa Gounder v. State of T.N.*\(^{60}\) observed that In fact the common trend of sentencing is that even a sentence of life imprisonment is seldom combined with a heavy sentence of fine he cannot, of course, go so far as to express approval of the unqualified view taken in some of the cases that a sentence of fine for an offence of murder is wholly "in appropriate" (See for example *State v. Pandurang Shinde*, AIR 1956 Bom. 711 at p. 714) but before imposing the sentence of fine, particularly a heavy fine, alongwith the sentence of death or life imprisonment, one must pause to consider whether the sentence of fine is at all called for and if so, what is a proper or adequate fine to impose in the circumstances of the case. As observed by this court in *Adam Ji Umar Dalal v. The State of Bombay*, 1952 SCR 172 (AIR 1952 SC 14) determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down. It being a matter of discretion which is to be guided by a variety of

\(^{58}\) *Ibid*, p. 1529.


\(^{60}\) AIR 1977 SC 1323.
considerations but the court must always bear in mind the necessity of maintaining a proportion between the offence and the penalty proposed for it. Speaking for the Court Mahajan J., observed in that case that "in imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused persons as to the character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases (page 177). Though that cause related to an economic offence this court reduced the sentence of fine from Rs. 42,000/- to Rs. 4,000/- on the ground that due regard was not paid by the lower court to the principle governing the imposition of a sentence of fine."\(^{61}\)

In *Sarwan Singh v. State of Punjab*,\(^{62}\) the Supreme Court imposed fine with imprisonment under Sec. 304 (i) IPC and awarded compensation out of fine to the widow of deceased. The court observed that "It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation. After consideration of all the facts of the case, we feel that in addition to the sentence of 5 years rigorous imprisonment, a fine of Rs. 3,500/- on each of the accused under S. 304 (i) I.P.C. should be imposed. The fine will be paid as compensation to the widow of the deceased, Mewa Singh."\(^{63}\) The Supreme Court has also cautioned not to award 'unduly excessive' compensation\(^{64}\) and the court should first calculate amount to be awarded and then impose fine higher than the compensation.\(^{65}\)

In a recent case of *Hari Kishan and State of Haryana v. Sukhbir Singh*\(^{66}\) two parties in the course of fight inflicted injuries to each other. One Joginder was

\(^{61}\) *Ibid*, at p. 1327.
\(^{62}\) AIR 1978 SC 1525.
\(^{63}\) *Ibid*, p. 1527.
\(^{64}\) *Supra note* 57, p. 1525.
\(^{66}\) AIR 1988 SC 2127.
aggrieved party in the case. The court observed that "The High Court has directed each of the respondents to pay Rs. 2,500/- as compensation to Joginder. The High Court has not referred to any provision of law in support of the order of compensation."\textsuperscript{67} By referring to Section 357 (i) Cr.P.C. the Supreme Court observed "Sub. Section (i) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub Section (i). We are concerned only with Sub. Section (3). It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgement of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.\textsuperscript{68} It is purely within the discretion of the criminal Courts to order or not to order payment of compensation and in practice they are not particularly liberal in utilising this provision.\textsuperscript{69} The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of the accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon

\textsuperscript{67} Ibid, p. 2130.
the acts of each accused. Reasonable period for payment of compensation, if neces­
sary by instalments, may also be given. The court may enforce the order by imposing
sentence in default. The court hold that compensation awarded by High Court was
inadequate having regard to the nature of injury suffered by Joginder. The Court while
awarding compensation to the aggrieved person observed, “with due regard to all the
facts and circumstances of the case, we consider that Rs. 50,000/- compensation to
Joginder would meet the ends of justice. We direct the respondents to pay the bal-
ance within two months in equal proportion.”

If the fine is imposed in a case which is subject to appeal, no such payment
shall be made before the period allowed for presenting the appeal has elapsed, or, if
an appeal be presented, before the decision of the appeal. When a court imposes a
sentence, of which fine does not form a part, the court may, when passing judgement,
order the accused person to pay, by way of compensation; such amount as may be
specified in the order to the person who has suffered any loss or injury by reason of
the act for which the accused person has been so sentenced.

In Guruswami v. State of Tamil Nadu the attitude of court was somewhat
different and it was held that in case of murder it is only fair that proper compensation
should be provided for the dependents of the deceased. In this case appellant had
murdered his father and brother in some family feud and was sentenced to death. In
appeal, the Supreme Court reduced the punishment to life imprisonment and a fine of
Rs. 10,000/- on offender to be paid to the heirs of the deceased. The apex court also
asserted that the requirement of social justice demands that heavy fine should be
imposed in lieu of reduction of sentence, compensate the victims of crime.

70. Ibid.
71. Ibid.
72. Clause (2) of Section 357.
73. Clause (3) Ibid.
74. 1979, 3 SCC, p. 799.
75. See Mundrath, Sammaiah, op.cit., p.145; see also Sukhdeo Singh v. State of Punjab, 1982,
76. Mundrath, Sammaiah, opcit p.92; See also P. P. Sah v. Bihar AIR 1977 SC 704; N. B. Pant
v. State, AIR 1977 SC 192; Guruswamy v. Tamil Nadu, AIR 1979 SC 1177; Hari Kishan &
Section 357 (3), in Cr.P.C. provides for ordering of payment by way of compensation to the victim by the accused. It is an important provision and it must also be noted that power to award compensation is not ancillary to other sentences but it is in addition thereto.77

The court has thus, a very limited discretion under Section 357 (i); it can award compensation only out of the fine, if imposed on the offender. The courts have, however, much more discretion under Sub-Section (3) of Section 357, though only if fine does not form a part of the sentence. Theoretically, the power of the court is unlimited, though practical considerations would prevail. A Magistrate can order for higher compensation than the amount of fine he can impose.78

In Balraj v. State of U.P.79 the court convicted the person under Section 302 IPC and also ordered for compensation. The court held "we confirm the conviction of the appellant under Section 302 IPC but reduce the sentence of death to imprisonment for life. We further direct that the appellant Balraj shall pay Rs. 10,000/- by way of compensation to PW-2 Smt. Laxmi Devi and if the appellant fails to pay this amount within three months from today, same may be collected as provided under Section 431 Cr.P.C. and be paid to PW-2."80 An order under Section 357 may also be made by the appellate court or by High Court or Court of Session when exercising its powers of revision.81 At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.82

Thus, Section 357 virualises a wide range of situations under which compensation may be ordered to be paid to the victims of crime. Under this Section the complainant, victim, any person who has suffered loss or injury because of the offence

78. Mundrathi, Sammaiah, op. cit. p. 144.
79. Ibid.
80. Ibid., p. 1938; Section 431 Cr.P.C. read with Section 421 provides for procedure for recovery of fine and compensation ordered under Section 357 Cr.P.C.
81. Clause (4) of Section 357 Cr.P.C.
82. Clause (5) Ibid.
when he can recover compensation in civil court, under the Fatal Accidents Act, and when there is a conviction causing death or abetment thereof, a bonafide purchaser of property etc. becomes entitled to claim compensation. It is significant to note that Section 357 also empowers the court in its discretion to order the payment of compensation to the victims of crime who have suffered any loss or injury, even where no fine is imposed. This is the one provision where a victim can get compensation without any conditions precedent, and this provision obviously gives more scope for the courts to do justice to the victims.\textsuperscript{83}

The compensation can be allowed out of "whole or any part of the fine recovered."\textsuperscript{84} Any person is entitled to compensation for the loss or injury caused by the offence, and it includes the "wife, husband, parent\textsuperscript{85} and child" of the deceased victim.\textsuperscript{86}

(iii) COMPENSATION FOR GROUNDLESS ARREST

The Police have drastic powers under Cr.P.C. and other laws to arrest a person without warrant\textsuperscript{87} for having committed a cognizable offence or concerned with them or for preventive measures\textsuperscript{88}. A civilian can also make arrest of the person when some cognizable and non-bailable offence has been committed in his presence, however, such arrested person is to be made over to the nearest police officer.\textsuperscript{89} The liberty of a person is infringed if a person is arrested groundlessly or on false information. Moreover, arrest is a social stigma on the reputation of a person. Article 9 of International Covenant on Civil and Political Rights, 1966 provides that "Anyone who

\begin{itemize}
\item \textsuperscript{83} Mundrathi, Sammaiah, \textit{op. cit.}, p. 74.
\item \textsuperscript{84} Yamana Rao, (1900) 24 Mad 305, 307.
\item \textsuperscript{85} Tythappa, (1967) AIR Mys. 51; See also Rattan Lal, Dhiraj Lal, CrPC, Nagpur, 1984 p. 347.
\item \textsuperscript{86} Morgan, (1909) 36 Cal. 302.
\item \textsuperscript{87} See Secs. 41 (1), 107, 151, 132 of CrPC. Such powers and also available under Section 34 of Police Act, 1861 and various Armed Forces Special Powers Acts, Disturbed Areas Acts and number of Local and Special Laws.
\item \textsuperscript{88} See Sec. 107/151 Cr.P.C., National Security Act, 1980 and Public Safety Acts enacted by State Govts.
\item \textsuperscript{89} See Section 43 Cr.P.C.
\end{itemize}
is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.\textsuperscript{90} Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.\textsuperscript{91}

Section 358 Cr.P.C. provides for compensation to persons groundlessly arrested. The Section provides that, "Whenever any person cause a police officer to arrest another person if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit."\textsuperscript{92} In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one hundred rupees, as such Magistrate thinks fit.\textsuperscript{93} All compensation awarded under this Section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.\textsuperscript{94}

The compensation under Section 358 can be ordered by the Magistrate for payment to the person who has been groundlessly arrested and such arrest has been caused by a person other than a police officer and such arrest has been made by the police officer. Secondly the amount can be upto Rupees one hundred each to one or more persons so groundlessly arrested. The objective of compensation under the section is to recompense the arrested person for loss of time and expenses.\textsuperscript{95}

A person can cause the police officer to mark arrest in following circumstances.

\begin{itemize}
\item \textsuperscript{90} Clause 4 of Art. 9 of the International Covenant on Civil and Political Rights, 1966.
\item \textsuperscript{91} Ibid. Clause 5
\item \textsuperscript{92} Clause (1) of Sec. 358 Cr.P.C.
\item \textsuperscript{93} Clause (2) of Sec. 358 Cr.P.C.
\item \textsuperscript{94} Clause (3) Ibid.
\item \textsuperscript{95} See Clause (1) Ibid.
\end{itemize}
Section 358 of the Code of Criminal Procedure thus, covers only those specific cases where the person has been arrested by the police groundlessly. It is significant to note that Section 358 of the Code obviously aims at protecting the constitutionally guaranteed personal liberty of the persons and save them illegal and arbitrary arrest, even without reference to any accusation or charges levelled against such persons. This is definitely a progressive piece of legislation which upholds the rule of law and the democratic values.96

(i) By giving false information pertaining to commission of a cognizable offence under Section 154 Cr.P.C. and causing arrest.97
(ii) By misleading a police officer regarding identity of a person sought to be arrested by the police officer and causing arrest of wrong person.
(iii) When some cognizable and non billable offence is committed by the person is presence of a private person and he makes arrest under Section 43 CrPC and hands over the person to the police officer and later on it is found to be false.

Section 358 Cr.P.C. enables payment of compensation but this is granted for misuse of power by the State, like compensation for groundless arrest or when a police force acts contrary to its duties. In such cases, it is for the State to proceed against the erring officials and realise the amount awarded as compensation.98

In all the three Sections i.e. 250, 357 and 358 CrPC, the award of compensation for accusation without reasonable cause, compensation to victim for injury or loss causing because of some criminal act and compensation for groundless arrest, depends on the discretion of the court and accused person cannot claim it as a matter of right. The court has to consider facts and circumstances of each case while ordering payment of compensation.

96. Mundrathi, Sammaiah, op. cit., p.75
97. Public is duty bound to give information of certain offences under Section 39 Cr.P.C. Under Section 40 Cr.P.C. officers employed in connection with affairs of the village are bound to make report about matters relating to offences, prevention of offences etc.
A survey of the available empirical studies, though scanty, also reveals very rare use of the legal provisions in awarding compensation and inadequacy of the compensation awarded. The law commission of India has admitted the fact that they (courts) are not particularly liberal in utilising these provisions. It also observed, “It is regrettable that our court do not exercise their statutory powers under this Section as freely and liberally as could be desired.”

(III) PHILOSOPHY OF COMPENSATION TO ACCUSED UNDER INDIAN CONSTITUTION

The Constitution of India aims at securing for all citizens social, economic and political justice, liberty of thought, expression, belief, faith and worship and equality of status and of opportunity. To fulfill these objectives, certain fundamental rights have been provided for citizens and other persons in Part-III of the Constitution from Article 12 to 35. All fundamental rights are enforceable in Supreme Court and High Courts. Article 32 which provides for Constitutional remedies is itself a fundamental right. Clause (1) of Article 32 reads. “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”

Article 32 has been described as the corner stone of the democratic edifice raised by the Constitution and the Supreme Court “as protector and guarantor of


102. See Preamble to the Constitution of India, 1950.

103. All fundamental rights are provided in Part-III of the Constitution. Rights under Articles 14, 20, 21, 22, 25, 27 and 28 are available to persons and rights under Articles 15, 16, 19 and 29 are available to citizens. The definition of person also includes natural and juristic persons.

fundamental rights." The Supreme Court in *Daryo Singh v. state of U.P.* observed that the expression "appropriate proceedings" has reference to proceedings which may be appropriate having regard to the nature of the order, direction or writ which the petitioner seeks to obtain from this court (Supreme Court). The appropriateness of the proceedings would depend upon the particular writ or order which he claims and it is in that sense that the right has been conferred on the citizen to move this court by appropriate proceedings. The requirements of appropriateness must be judged in the light of the purpose for which the proceeding is to be taken namely, the enforcement of a fundamental right. In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court said that the Constitution makers deliberately did not lay down any particular form of proceeding for enforcement of a fundamental right nor did they stipulate that such proceeding should conform to any rigid pattern or straight jacket formula because they knew that in a country like India where there was so much of poverty, ignorance, illiteracy, deprivation and exploitation, any insistence on a rigid formula of proceeding for enforcement of a fundamental right would become self defeating. The court explained that so long as purpose of proceeding in enforcement of a fundamental right and it is related with enforcement of rights of poor, disabled, ignorant by public spirited person "even a letter addressed to him (to the court) can legitimately be regarded as an "appropriate proceeding." It was held in *Romesh Thapar v. State of Madras* that Article 32 does not merely confer powers on the Supreme Court, as Article 226 does on the High Court to issue certain writs for the enforcement of the rights conferred by Part-III or for any other purpose, as part of its general jurisdiction. The Article provides "guaranteed" remedy for the enforcement of those rights and this remedial right is itself a fundamental right

106. AIR 1961 SC 1457.
107. Ibid.
109. Ibid.
110. Ibid; see also Kumar, Narender, Constitutional Law of India, Delhi (1997), p. 287.
111. See supra note 8.
112. AIR 1950 SC 124
by being included in Part-III. The Supreme Court is thus constituted the protector and guarantor of fundamental rights and it cannot consistently with the responsibility so laid upon it, refuse to entertain application seeking protection against infringement of such rights, on technical grounds.

Article 32 enshrines a very valuable right. As observed by the Supreme Court, if the prisoner's fundamental right is flouted or legislative protection is ignored, the Supreme Court's writ will run, breaking through stone walls and iron bars to right the wrong and restore the rule of law.\(^{113}\) Clause (2) of Article 32 is of wide amplitude. It does not confine the power of the Supreme Court to the issuance of the named writs, but the Court may issue any direction or order which ever may be appropriate for the enforcement of the fundamental rights.\(^{114}\) Clause (2) of Article 32 does not require the court to observe all procedural technicalities which were relevant for the issuance of writs under English Law.\(^{115}\) Clause (2) of Article 32 reads:

The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for enforcement of any of the rights conferred by this part.\(^{116}\)

The court have the vast powers to issue orders or directions in addition to writs for enforcement of rights conferred by Part-III of the Constitution.\(^{116}\) Even if the conditions for issue of any of the writs are not fulfilled, the court may still issue a writ in appropriate cases.\(^{117}\) It has been held that the power of the court under Article 32 is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and empowers court to grant relief against a breach of a fundamental right already committed.\(^{118}\)

\(^{114}\) M C Mehta v. Union of India, AIR 1987 SC 1086
\(^{115}\) Rashid Ahmed v. Municipal Board, Kairana, AIR 1950 SC 210; T C Basappa v. T Nagappa AIR 1954 SC 440
\(^{116}\) Clause (2) of Article 32.
\(^{117}\) Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
The court held that under Article 32 it has power to grant remedial relief which includes the power to grant compensation in appropriate cases where the fundamental rights of the poor and disadvantaged person are violated. However, Article 32 cannot be used as a substitute for claiming compensation for the infringement of fundamental rights through the ordinary process of a civil court. It can only be done where the violation of fundamental right of poor is “gross and patent” and “affects persons on a large scale” or where it appears to be unjust or unduly harsh or oppressive on account of their property or disability of socially or economically disadvantaged position to seek remedy in the civil court.\(^{119}\)

Dr. B.R. Ambedkar while emphasizing importance of Article 32 had rightly observed that “if I was asked to name any particular article of the Constitution as the most important an article without which this Constitution would be a nullity - I would not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it.”\(^{120}\)

The Supreme Court of India while exercising its jurisdiction under clause (2) of Article 32 have awarded compensation in number of cases\(^{121}\) where fundamental rights have been infringed by the governmental agencies. The Supreme Court have awarded compensation considering facts and circumstances of the case.\(^{122}\)

In India, the “legislature and the Judiciary have taken the steps gradually to evolve the necessary principles by which compensation could be paid to the victims of crimes. The legislature has done it by exacting two different kinds of laws, namely,

\(^{119}\) M C Mehta v. Union of India, AIR 1987 SC 1087.
\(^{120}\) (1948) VII, C A D 953.
\(^{122}\) Ibid.
the General Laws and the Special Laws. The judiciary has through the cases decided by it propounded a set of principles to provide the remedy of compensation where the law is not adequate to provide a remedy to the victim particularly the victims of abuse of power.”^23

High Courts of States have also the identical powers to issue writs for enforcement of fundamental rights and for any other purpose.^24 Clause (i) of Article 226 provides that “Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose.^25

The five writs named in Article 226 (i) are known in English law as, prerogative writs, since these had originated in the Kings prerogative power of superintendence over its officers and courts. The writs named herein are extra-ordinary remedies intended to be invoked in exceptional cases in which ordinary legal remedy are found to be inadequate.^26

Article 226 of the Constitution empowers the High Court to issue directions, orders or writs including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* for the enforcement of fundamental rights and also for any other purpose. The jurisdiction thus conferred on a High Court is to protect not only the Fundamental Rights but even any other legal rights as is clear from the words ‘any other purpose.’^27 Writ jurisdiction conferred by Article 226 (i) on High Courts in wider, for a High Court may issue writs not only for the enforcement of fundamental

---

rights (Article 32) confines it to fundamental rights only) but also for any other purpose.

A parallel writ jurisdiction has been conferred on High Court as well as on the Supreme Court for enforcement of fundamental rights. The High Court's jurisdiction is not in derogation of the Supreme Court's jurisdiction. Article 226 thus provides an important machinery for judicial review of administrative action in the country. Its scope can't be curtailed or whittled down by legislation. Even when the legislature declares the action or decision of an authority final, and ordinary jurisdiction of the courts is barred, a High Court is still entitled to exercise its writ jurisdiction which remains unaffected by legislation. The only difference between the writ jurisdiction of the Supreme Court and High Courts is that one can move the Supreme Court only for the enforcement of fundamental rights whereas in High Courts, it may be for the enforcement of fundamental rights or for any other purpose. For this point, the writ jurisdiction of the High Courts is wider in scope. However, one must remember that "the law declared by the Supreme Court shall be binding on all courts within the territory of India."!

The doctrine of 'Staire decises' are precedent under Article 141 of the Indian Constitution says that the law declared by the Supreme court is the Law of the land.

In fact, the jurisdiction of the High Courts under Art. 226 is much wider, because the High Courts are required to exercise this jurisdiction, not only for enforcement of a fundamental right but also for enforcement of any legal right and there are rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.

---

129. See Article 226 (2) of Constitution.
133. R Gandhi v. Union of India, Air 1989 Mad. 205 at p. 211.
However, it was classified that “award of compensation in proceedings for enforcement of fundamental rights can’t be claimed directly by way of writ petition under Article 226 of Constitution’ of India, particularly when alternative remedy of civil suit, which is available to the party should be availed of at the first instance...”

The observation of Bhagwati J. that why the courts should not be prepared to forge new tools and device new remedies for the purpose of vindicating the most precious fundamental rights to life and personal liberty has inspired the legal luminaries and paved way for awarding compensation in several cases of violation of “fundamental rights.” Where Constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for Constitutional law must seek the substance and not the form.... It must be remembered that the fundamental rights are Constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligations of the Fundamental Rights.

It is, therefore, settled law that in public law claim for compensation is a remedy available under Article 32 or 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is question of defence being available for Constitutional remedy. It is a practical and inexpensive mode of redress


136. Later on Compensation was awarded in Rudal Shah v. State of Bihar, AIR 1983 SC 1086 followed by other cases.

available for the contravention made by the State, its servants its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or for enforcement of any right or duty under the Constitution or the law.\textsuperscript{138}

Grant of compensation in proceedings under Article 32 and 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under the Constitution is an exercise of the courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the state which failed in the discharge of its public duty to protect the fundamental rights of the citizen. When the Constitutional rights are invaded, the invasion is not washed away merely by restoring of the Rights. In appropriate cases, the Supreme Court has jurisdiction to award monetary compensation by way of exemplary costs or otherwise. The persons who are unlawfully deprived of their personal liberty by the official of state are legally entitled to claim compensation/damages from the state for the harm done to them.\textsuperscript{139}

Though there is no express provision in Article 32 or 226 of the Constitution to award compensation but court is empowered to issue any writ or order under both the Articles. The right to compensation has developed and emerged after judicial interpretation by the apex court from case to case.

(IV) COMPENSATION UNDER THE PROTECTION OF HUMAN RIGHTS ACT, 1993

The Protection of Human Rights Act, 1993\textsuperscript{140} was enacted with the objective to constitute a National Human Rights Commission, State Human Rights Commissions and Human Rights Courts\textsuperscript{141} for better protection of human rights and for matters connected therewith or incidental thereto.\textsuperscript{142} The act extends to the whole of India but in respect of State of Jammu & Kashmir only in so far as it pertains to the matters

\textsuperscript{138} Consumer Education & Research Centre v. Union of India, AIR 1991 SC 922 p. 941.
\textsuperscript{139} Supra note, 2 pA50.
\textsuperscript{140} Act No. 10 of 1994, received assent of President on 8th Jan. 1994.
\textsuperscript{141} The Act provides for NHRC at national level, SHRC at State level and empowers the Govt. to establish special courts for trial of cases relating to Human Rights.
\textsuperscript{142} See Preamble to the Protection of Human Rights Act, 1993; see Sec. 2 (d) of the Act for definition of term "human rights".
relatable to any of the entries enumerated in List-I or List-III in the seventh schedule of
the Constitution. The Act provides for Constitution of a National Human Rights Com-
mission at national level to exercise the powers conferred upon, and to perform the
functions assigned to it, under the Act. The Chairperson and members are to be
appointed by the President by warrant under his hand and seal on recommendation
of a committee consisting of P.M. as chairman and speaker of House of People,
Home Minister, leader of opposition in House of People, leader of opposition in Council
of States and Deputy Chairperson of the Council of States. The Chairpersons of
National Commission for minorities, National Commission for the SCs and STs and
National Commission for women shall be deemed members of the Commission.
The State Human Rights Commission are also to be constituted on similar pattern by
the State Governments.

The National Human Rights Commission has been assigned multifarious func-
tions to perform under Section 12 of P.H.R. Act. The Commission has been invested
with wide functions to enquire into cases of violation of human rights, negligence in
prevention of such violations. The functions of N.H.R.C. among others are to:

- review the factors, including acts of terrorism that inhibit the employment
  of human rights and recommend appropriate remedial measures.

- Such other functions as it may consider necessary for the promotion of
  human rights.

The National Human Rights Commission while analysing its functions had
observed that “The complexity and variety of human rights issues facing our nation
has required another kind of discipline of the Commission in its efforts to maximise

143. Section 1 and proviso to Section 1 of the PHR Act, 1993.
144. Section 3 (1) *Ibid.*
148. See Section 12 (a) to (j) for details.
150. See Clause (a) to (i) of Section 12 of PHR Act.
151. Clause (a) and (j) of PHR Act.
the impact of its activities. While seeking to promote and protect all of the Fundamental Rights enshrined in the Constitution or covered by the treaties to which India is a party, the Commission has never-the-less considered it essential to focus at least initially on certain key human rights issues that are of very highest concern to the people of this country. This also required the setting of priorities, particularly in respect of its *suo-motu* activity even while recognising that all human rights are important."\(^{152}\) As per P.H.R. Act, the N.H.R.C is a recommendatory body.\(^{153}\) The Act does not specifically provide for compensation to be awarded by the National Human Rights Commission. There have been cases where the Human Rights Commission is ordering payment of compensation to the victims of Human Rights violations.\(^{154}\) The Commission can recommend to the Government for initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person(s).\(^{155}\)

During 1995-96, "on the basis of reports of investigation division, criminal prosecutions have been launched against 22 police officers and recommended against 29 others. Further more, departmental proceedings have been initiated in 26 cases and 79 police personnel have been placed under suspension. In addition, also on the basis of such reports, compensation ranging from Rs. 25,000 to Rs. 1,00,000 have been awarded to 22 persons in 13 cases."\(^{156}\) The National Human Rights Commission, an agency of the State and a statutory body created under the Act of Parliament, namely P.H.R. Act, \(^{157}\) has ever since its formation and functioning been actively engaged in the work of not only enquiring into the cases of violation of Human Rights and fundamental freedoms, but also awarding compensation to the victims of violation of Human Rights.\(^{158}\)

---

153. See functions of NHRC under Sec 12 of PHR Act.
154. Mundrathi, Sammaiah, *op.cit.*, p. 104; Violation of Human Rights has not been declared as an offence by the PHR Act yet NHRC & SHRC have been empowered to investigate cases of human rights violations.
155. See Section 18 (1) of PHR Act, 1974.
156. NHRC Annual Report for the year 1995-96, New Delhi, p. 45 para 9.15 and Annexure IX.
Section 18(3) of the Protection of Human Rights Act, 1993 empowers the NHRC to "recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary." In a case of custodial death of one Atal Mishra in Uttar Pradesh, the NHRC recommended payment of interim compensation to Shri Suresh Mishra, father of deceased resident of village Prem Raja, Police Station, Bhimpura, Distt. Balia (UP) to be paid within one month from the date of order, subject to private law rights of the dependents to bring an appropriate legal action for damages in which event the sum awarded by ay of interim compensation was adjustable. The Commission also recommended that Govt. of U.P. should sympathetically consider the prayer of the family for an appointment at an appropriate level, having regard to the eligibility and qualifications of a suitable member of the family, on compassionate grounds. The Govt. of UP stated that, as a case in connection with the murder of Atal Bihari Mishra was pending in the court of C.J.M., Balia against 21 police officials, compliance of the direction/recommendation of the Commission could only be possible after the police officials/accused persons were found guilty of the charges.

The N.H.R.C. examined "the question whether the award of "immediate interim relief" envisaged in Sub-Section (3) of Section 18 of the Protection of Human Rights Act, 1993 (Act for short) is dependent on the establishment of culpability of the public servant at the criminal trial" or whether the remedy is independent of such pettifoggery. The Commission observed that "it is well settled that the standards of proof in civil and criminal cases are not the same. It is equally well settled that a fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case .... In civil proceedings, a mere preponderance of probability, due regard being had to the burden of proof, is a sufficient basis of decision; but in the criminal trials, a much higher degree of assurance is required. In criminal cases, the prosecution must prove the charge beyond reasonable doubt. A conviction cannot be sustained even if the prosecution story is

159. Section 18(3) of PHR Act, 1993.
161. Ibid.
considered “may be true” until it is found that it ‘must be true’ but between ‘may be true’ and ‘must be true’ there is inevitably a long distance which has to be covered by legal, reliable and unimpeachable evidence. Therefore, even if an accused person is acquitted by a criminal court of a criminal charge, that, by itself, is no bar to the grant of compensation by a civil court if the offence is also a tort and there is evidence to establish the wrong on a mere preponderance of probability.”

By no stretch of imagination can it be argued that ward of this ‘immediate interim relief’ is dependent upon the strict establishment of criminal liability after a full dress court trial. If this view is accepted, the relief will then neither be ‘immediate’ nor ‘interim’. A meaningful and harmonious construction of this clause would have no doubt that the Commission is entitled to invoke its benevolent sweep on a *prima facie* view of the matter irrespective of whether there is any litigation - civil or criminal relating to the matter” (emphasis added). The Commission further observed that “victimology and victim assistance and protection are the current values of humanism permeating the administration of criminal justice. All civilised countries the world over have, in one form or the other, schemes for ‘criminal injuries compensation’ to the victims of crime. Section 18(3) of the Protection of Human Rights Act, 1993 incorporates and assimilates, at least in partial measure, this philosophy and recognised the state’s moral obligation to the victims of violations of Human Rights by public servants. The expression ‘relief’ in the context of the statute, presupposes the existence of conditions of human distress as justifying benevolent intervention. The ‘relief’ may be monetary-relief, medical relief, compassionate employment, etc., or all of them.”

In a number of cases the National Human Rights Commission has recommended payment of compensation. The cases of custodial deaths or torture where NHRC have recommended compensation are discussed below:

---

(i) AWARD OF COMPENSATION BY THE NATIONAL HUMAN RIGHTS COMMISSION FOR CUSTODIAL DEATHS OR TORTURE

On Deshraj with two others was illegally arrested by police between 3-5 September, 1994 by officer-in-charge Kunwargaon Police Station in U.P. on 12th Sept. 1994. Deshraj was burnt to death by pouring kerosene oil on him. The case was brought to limelight by Amnesty International. The N.H.R.C. observed about the incident that “it surpassed our imagination as to how, unless there be personal animosity a police officer should think of putting the accused to death by pouring kerosene oil on him and lighting a match-stick.” While recommending prosecution for brutal murder by police officials the Commission recommended payment of a sum of Rs. 3,00,000 to the next of kin of the deceased, the Commission asked the State Government to recover either the whole or a part of this money from the service dues of the errant police officials. The Commission also asked the State Government not to wait for this recovery while paying compensation.

In another case National Human Rights Commission recommended the Tamil Nadu Government to pay Rs. 50,000 as compensation to the parents of a 15 years old boy Raja alias Murgan who died in police custody in Hosur Police Station in Dharampur District in 1995. In yet another case of custodial death (in police custody) the Commission recommended the Tamil Nadu Government to pay a sum of Rs. 25,000/- to the next of kin of Anthony Swami who died in policy custody. The Commission also gave the direction for recovering the amount from the delinquent police officials. The National Human Rights Commission has recommended the payment of interim compensation of Rs. 5 Lac. to the father of the victim in a case of custodial death of a youth in Balia Distt. of Uttar Pradesh as a politically motivated one and an instance of police high handedness.

166. Ibid.
A 22 years old Rahim Shah died and Ms. Suman Bai, was hit by a bullet on her right leg in an unprovoked firing by the police in Aurangabad Distt. of Maharashtra after demolition of Babri Masjid in 1992. National Human Rights Commission recommended a compensation of Rs. One Lakh to the victims of police excesses or next of kin of person killed. The Commission also directed the Maharashtra Government to take appropriate steps against the errant public servants.\(^{170}\)

In a case of death of one Kheshiha Sumi who was arrested by Assam Rifles from Purana Bazar, Dimapur on 12th Nov. 1994, in custody, the National Human Rights Commission recommended compensation of Rs. one lakh to the next of kin of deceased.\(^{171}\)

In Bengusarai, Bihar Police personal killed Nand Lal Paswan and Sikandar in a firing and injured Sunil Paswan and Rajbir Paswan on August, 1995 in the office of CPI(ML) in an over reaction to brick batting incident involving CPI (ML) activists. The Commission conducted inquiry and recommended payment of compensation of Rs. 50,000/- for each person killed, Rs. 10,000/- for those with serious injuries and Rs. 5000/- for other injured persons.\(^{172}\)

On 18th June, 1993 during the course of Panchayat elections, one of Joginder Singh fired with his rifle to disperse unruly mob in village Chak Saidokey, Distt. Firozepur, Punjab in which Harjinder Singh was killed. The Commission found it a clear case of negligence and recommended compensation of Rs. 1,00,000/- to be paid to Harkeerat Kaur, the widow of deceased and also a subsistence allowance of Rs. 1500/- per month during her life time.\(^{173}\)

One Jogi Thakur was picked up by police from his house in village Ahiman Chhapra under Police Station Kalyanpuri in Bihar on the night of 26th January, 1994 and killed in false encounter. A case of murder was registered against 32 police personnel and Commission recommended payment of interim compensation of Rs. one lac. to Smt. Urmila Kunwar, wife of deceased.\(^{174}\)

On 14th December, 1993, the Commission issued instructions to the Chief Secretaries of all states asking them to direct all District Magistrates and Superintendents of Police to report any instance of custodial death or rape directly to the Commission, within twenty four hours of occurrence. Failure to send such reports, it was made clear, would lead to a presumption by the Commission that an effort was being made to suppress the facts.175

Shri Bundoo was arrested by police on 13th Oct., 1995 in connection with a police case registered at Police Station Chandpur, Bijnore Distt. of Uttar Pradesh. According to police version when the said accused was being taken to place of incident and for recovery of weapon used in the offence, in a jeep alongwith police jumped out of jeep and fell before speeding bus thereby sustained injuries. Shri Bundoo ultimately died in Moradabad Distt. Hospital. The Commission recommended compensation of Rs. One Lac. to next of kin of deceased. The Commission left it to State Government to recover the amount from erring police officers if considered appropriate.176

Sh. Udayan was taken to Police Station Mannarghat in Kerala on 28th Jan. 1994. He was beaten up and later committed suicide in police custody. The matter was reported to N.H.R.C. by Dr. Xavier Paul and Amnesty International also published the incident in its report in March, 1994. The Commission recommended compensation of Rs. One Lac. to family of deceased besides ordering prosecution of erring police officials.177 In another case of custodial death, one Babul Rai alias Dhaniwal was brought to police outpost Bihaguir in Sunitpur Distt. of Assam on 20th June, 1995 alongwith six other persons. Reportedly police tortured Babul Rai and others to extort confession for theft of a fan. The said Babul Rai was found dead in lock up the following morning. The Commission ordered prosecution of police personnel involved and recommended that a sum of Rs. 50,000 be paid by way of compensation to the parents or other dependents of Babul.178

175. NHRC Annual Report, 1996-97, New Delhi p.15 Para 3.23
176. Ibid., p.66.
177. Ibid., pp. 67-68.
178. Ibid., pp.68-69.
Shri Tirath Singh was arrested under Excise Act and remanded to judicial custody for 15 days. As reported while entering central jail Firozepur the accused slipped due to an epileptic attack and jail authorities refused to accept him in judicial custody. He was admitted in Baghi Hospital Firozepur where he died on 8th Jan. 1996. The post mortem related the cause of death to grievous injuries on the head, spleen and other vital parts of the body. The investigation did not reveal that these injuries were result of alleged epileptic attack. The Commission inferred that those injuries were caused by torture when the deceased was in police custody resulting his death. The Commission directed that an interim compensation of Rs. 50,000 be paid for loss of life to next of kin of deceased.179

Sh. Mohd. Mansoor’s house was searched during investigation of a robbery case by policy personnel but the said Mohd. Mansoor escaped by the back door. However he was allegedly beaten by public and police and taken to police station. The accused died in hospital. The Commission felt that if the fatal injuries had been received from members of public, the police should have immediately taken Mohd. Mansoor to the hospital instead of keeping him in Police Station for a long period and only thereafter taking him for treatment. The Commission recommended payment of Rs. One Lac. as compensation to be paid to the widow of deceased. The State Government was asked to consider the propriety of taking steps for recovery of the amount from the concerned delinquent police officers.180

On 12th March, 1994 at about 10 p.m. Shri Ram Singh a member of Cuddalore Bar Association, Tamil Nadu was manhandled by police. The Commission while expressing its hope that the State Government would take serious views of the lapses of the concerned police officials and recommended to the state Govt. to pay a compensation of Rs. 5000 to Shri Ram Singh either out of the consolidated fund of the State Government or to recover the same from the erring police sub-Inspector.181

A young girl Ms. Sarika Hora died due to negligence of Railways in Madhya Pradesh. The plate in the vestibule connecting two coaches of the train was missing.

179. Ibid., pp. 69-70.
180. Ibid., pp. 70-71.
181. Ibid., p.73.
Sarika while moving from one coach to another, stepped on that particular area, which should have been covered with a metal plate. The area was covered only with a floor mat and she fell down and was run over. The Commission took *suo-motu* cognizance on a report published in newspaper on 18th November, 1995. The Commission recommended for payment of compensation of Rs. One Lac. to the parents of deceased.\(^{182}\)

One Shri Harjit Singh alias 'Harji' was admitted in Central Jail Indore, Madhya Pradesh on 9th March 1995 and he died in custody on 10th March, 1995. As per post mortem report, 57 marks of injuries were found on the body and the chest bones and ribs were found fractured in a Magisterial injury. The Commission felt that this was a fit case in which the dependents of the deceased should be awarded compensation and appropriate action taken against the guilty persons. Having regard to the circumstances of the case the Commission recommended to the Government of Madhya Pradesh to grant an interim compensation of Rs. 75000 to the dependents of the deceased within four weeks. The Commission also recommended initiation of disciplinary action against the doctor and jail authorities.\(^{183}\)

Asit Kumar Chaturvedi an undetrial prisoner in Distt. Jail, Agra as a result of alleged injuries inflicted while in jail custody. The prison authorities claimed that the person sustained body injuries as a result of convulsions arising out of high fever. The Commission inferred that this was a case in which there was a strong probability of custodial torture leading to the death of the undertrial and jail authorities could not escape their responsibility. On recommendation of Commission, State Government sanctioned compensation of Rs. One Lac. to the next of kin of deceased. The Commission also recommended prosecution of those found responsible for tragic death and subsequent attempt to cover up facts.\(^{184}\)

The National Human Rights Commission received a complaint from Smt. Hamida Begum resident of Nagpur (Maharashtra) on 7th October, 1995 alleging murder of her husband, Usman Ansari, who was taken forcibly by four policemen for preparation of food for a party organised to celebrate promotion of a Head Constable as

\[^{182}\text{Ibid., pp. 73-74.}\]
\[^{183}\text{Ibid., p.77.}\]
\[^{184}\text{NHRC annual Report for the year 1997-98, New Delhi pp. 50-51.}\]
Sub Inspector. Next morning dead body of her husband was found on a road near the place where party was held. They found the foul play as the post mortem report revealed that there was fracture of scalp which caused death. The Commission asked the Maharashtra Govt. to get the case investigated by CBI and to pay a sum of Rs. Two Lac. as compensation to next of kin of deceased. The Commission also directed that amount so paid may subsequently be recovered from police personnel found guilty after independent investigation. 185

One Laxman Somnath Verma, a 32 year old undertrial prisoner was admitted in hospital of Distt. Jail Kalyan, Maharashtra on 30th Nov. 1996 and remained there till 5th Dec. 1996. He was later shifted to Central Hospital Ulhasnagar where he died on 7th Dec. 1996. The N.H.R.C. found negligence in according timely medical treatment resulted in or at least precipitated and hastened the death of the undertrial prisoner who was suffering from tuberculosis. The Commission directed Maharashtra Government to pay an interim compensation of Rs. 25,000/- to the next of kin of deceased. 186

Shri Ashok Kumar an industrial prisoner of Roorkee Sub. jail, U.P. was put to hard labour and he sustained injuries and later on died. The Commission recommended on interim compensation of Rs. One Lac. to the parents of deceased and directed the State Government to conduct an inquiry to fix up responsibility and recover compensation money from those found responsible for the death of Ashok Kumar. 187

Shri B.K. Shelke, aged 35 years was arrested in connection with crime No. 42/96 U/s 66 (C) Bombay Prohibition Act on 28th July, 1996 and admitted in Yeravada Central Prison, Pune (Maharashtra) on 29th July, 1996. In prison, his condition became serious and he was sent to Sasoon General Hospital, Pune on 31st July 1996 for treatment where he expired on 2nd August, 1996. Post Mortem report revealed that death was due to 'shock following head injuries.' After investigation the Commission came to a reasonable presumption that B.K. Shelke died as a result of ante mortem injuries inflicted with a blunt weapon and that, as the injuries were inflicted

185. Ibid., pp.53-54.
186. Ibid., pp.57.
187. Ibid., p.58.
during custody, and were inflicted by the jail staff. The Commission recommended the payment of Rs. 50,000/- as immediate interim relief to the next of kin of deceased, without prejudice to other remedies under the laws.\textsuperscript{188}

Shri Kuldeep Singh of Golden Park, Delhi made a complaint to the NHRC alleging illegal detention by Punjab Police from 9th November, 1993 to 2nd Dec., 1993. It was alleged that he was implicated in a false case, maltreated and beaten. The investigation substantiated the illegal detention by Jagraon (Punjab) police. The Commission recommended an amount of Rs. 10,000 by way of interim relief to the complainant to be paid by State of Punjab. It was open to Government to recover the said amount from the officials found responsible for illegal detention.\textsuperscript{189} The Commission received a complaint dated 23rd June, 1995 pertaining to illegal detention from Shri I.R. Singh, Advocate, Delhi High Court alleging that three persons namely, Dhanraj, Amar Singh and Raisuddin, residents of D.D.A. flats Mata Sundari Road, New Delhi were arrested by police of Police Station Preet Vihar, Shahdara on 22nd June, 1995 at 8.30 p.m. when they were walking on the road and the police did not produce them in the court within 24 hours as enjoined by Article 22 of the Constitution of India.\textsuperscript{190} It was found that police had actually arrested them on 22nd June, 1995 and shown their arrest on 24th June 1995 and produced them before the Magistrate only on 25th June, 1995. The Commission recommended an interim compensation of Rs. 5000 to each of detenues to be paid by National Capital Territory, Delhi subject and without prejudice to their private law rights.\textsuperscript{191}

A complaint was received by National Human Rights Commission from Shri Baba Khan of Kota, Rajasthan alleging illegal detention and torture by police. It was alleged that he and his two brother-in-laws were forcibly taken away by the police, illegally detained and tortured. The allegations of illegal detention and torture were \textit{prima facie} established in findings of investigation division of NHRC. The Commission recommended payment of compensation to the victims, i.e., Rs. 15,000 to Shri

\begin{enumerate}
\item\textsuperscript{188} \textit{Ibid.}, pp.58-59 ; "Ante-mortem" is an injury caused before death of a person.
\item\textsuperscript{189} \textit{Ibid.}, p.64.
\item\textsuperscript{190} \textit{Ibid.}, pp. 65-66.
\item\textsuperscript{191} \textit{Ibid.}, p.66.
\end{enumerate}
Baba Khan, Rs. 20,000 to Shri Mirza Khan and Rs. 5,000 to Shri Yousuf Irani. The Commission also recommended action against erring police officials. The State of Rajasthan had made payment of compensation to the victims.\textsuperscript{192}

One Ram Bir Yadav was forcibly taken away by police on 23rd April, 1996 from his milk dairy located at Lal Kuan, Distt. Ghazibad (U.P.) and illegally detained till 27th April, 1996 purportedly for questioning him in regard to the murder of some Rajpal. The Commission after having satisfied recommended payment of Rs. 10,000/- as compensation to the victim. The Commission directed IGP, Meerut to inquire into the matter to fix up responsibility of officers for illegal detention and to recover amount so paid from guilty police officials if he so desires.\textsuperscript{193}

Some students were wrongfully confined assaulted by PAC personnel at ASI Ghat, Varanasi (U.P.) and Commission took suo motu cognizance on a newspaper report which appeared in the Pioneer on 15th August, 1997. After taking into account the unprovoked nature of the attack and wrongful confinement, the gravity of injuries caused to the person of the victims, the nature, extent and likely costs of the medical treatment that may be involved, as also the prospects of physical incapacitation, residual impairment of faculties and indeed, the violation of the dignity and integrity of the person, the Commission recommended interim compensation by way of “immediate interim relief” as per sub-Section (3) of Section 18 of the Protection of Human Rights Act, 1993, to the victims, the compensation amount to each of them ranging between Rupees ten thousand and twenty five thousand.\textsuperscript{194}

Shri Bakram Lama was brought to police station in Arunachal Pradesh on 18th June, 1996. having been suspected of committing a theft. The constable on sentry duty was reported to have found Bikram Lama hanging from a leather belt, which had been attached to the handle of the door of toilet. He was found dead, when inquest was held, the body was found to be in a highly decomposed condition. No external injury was noticed and post mortem mentioned that death had resulted from suicide by hanging, Bikram Lama having used his leather belt to attach himself to the

\begin{footnotes}
\footnote{192. Ibid., p. 68.}
\footnote{193. Ibid., pp. 68-69.}
\footnote{194. Ibid., p. 69.}
\end{footnotes}
handle of the door, which was just over a meter (3ft 6 inches) above the floor. The death resulted from the negligence on part of concerned police officials. The Commission was inclined to hold it a case of custodial death to which the concerned police officials were responsible. The Commission recommended compensation of Rs 50,000 to the dependents of the deceased within six weeks with liberty to the Government to recover the same from the concerned police officials.195

Shri Sher Mohammad Khan alleged in his complaint that on 8th March 1996, S.H.O. Police Station Sadar, Gurgaon alongwith 4-5 police constables and few others entered his house forcibly and mercilessly beat him with sticks, as a result of which he sustained injuries on his hand and back. He was allegedly taken to Police Station Sadar, Gurgaon and beaten up after wrapping him in a blanket and caused fracture of his leg. The victim got himself medically examined as Govt. Hospital, Gurgaon. He was falsely implicated in case under Section 448/506 I.P.C. According to complainant, the SHO resorted to unlawful acts to pressurise him to withdraw a complaint against some members of a Group Housing Society and to resolve a dispute relating to a plot of land in favour of his opponent. It was alleged that SP Gurgaon was also involved in the case. The complainant also filed complaint against the Inspector in the court of Addl. Chief Judicial Magistrate. The Commission (NHRC) recommended that a case against the then SHO, police station involved in the offence be registered and investigation be made over to State CID. The DGP, Haryana was asked by Commission to consider the necessity, desirability or advisability of placing the concerned police officer/s under suspension to prevent tampering with the investigation to ensure that no harassment is caused to the complainant and the witness. The Commission recommended that a sum of Rupees twenty five thousand (Rs. 25,000/-) by way of immediate interim relief be paid by the government of Haryana to the complainant Shri Sher Mohammad Khan.196

The NHRC took cognizance of a news items about torture by police and subsequent death in Rajasthan. The Commission found that Hussain Teli called to the Police Station Bonli in Rajasthan and detained illegally. As Hussain Teli died the very

---
195. Ibid., p.70.
196. Ibid., pp.71-72.
next morning after he was released from police custody and as it was found that blood was oozing from his mouth and nose, there was a nexus between the death and conduct of the police during investigation. Even though no external injuries had been noticed in the inquest and the post-mortem report, the circumstances indicated that Hussain was illegally detained and tortured during the police investigation. Having regard to the circumstances, the Commission directed payment of interim compensation of Rs. 50,000/- to the dependents of the deceased Hussain Teli. The Govt. is also taking steps for prosecution of concerned erring police officials.197

One Thimmaiah, had allegedly committed suicide using nylon rope in a Kolar Distt. Mulbagal Police Station in Karnataka. The National Human Rights Commission ordered the Karnataka Government to pay an interim relief of Rs. 2 Lakh to next of kin of victim who died in police lock up. The Commission also observed that the State Government would be at liberty to recover the sum from the policemen.198

Mrs. Rita Dhawan of Ranchi, Bihar filed a complaint before National Human Rights Commission alleging an outrageous violation of human rights by some police officials. According to petitioner, on Dec, 5, 1993 her husband Rajesh Dhawan, a businessman, along with his colleagues were returning from Varanasi in a Maruti van. The van was surrounded by six policemen led by Sub-Inspector Doodh Nath Ram near civil lines police station Ranchi and they demanded Rs. One Lakh from Rajesh Dhawan. On not satisfying the demand the occupants of car were shot dead at point blank range. Allegedly police officials removed the gold chain, rings and wrist watch of Rajesh Dahawan, and looted other valuable articles. Six police officials were tried , convicted and awarded death sentence by Addl. Sessions Judge, Gaya. In appeal Patna High Court confirmed death sentence of three and converted the sentence of death of three others into life imprisonment. The National Human Rights Commission recommended payment of Rs. Ten Lakhs as “immediate interim relief” under Section 18(3) of the Protection of Human Rights Act, 1993.199

197. Ibid., p.73.s
198. Law-Teller, October, 2002, p. 443; See also op.cit., p. 174; see also the Sunday Times of India New Delhi, dated 27th August 2000.
The National Human Rights Commission has directed the Bihar Government to pay compensation to two persons accused of murder, when the 'victim' was alive. The accused in their complaint to the NHRC alleged that they had been falsely implicated in a case of murder of Devki Kumari who later appeared in the Court. On a review petition both the persons were acquitted by the Addl. Sessions Judge. The Commission recommended payment of Rs. 20,000/- to each of petitioners as interim compensation for fault of the police officials who had implicated them in said murder case. The NHRC also asked the government to recover the amount from erring police officials.

The NHRC took *suo- motu* cognizance on a press report on 19th May 1999 about Army personnel going on rampage at Rythu Bazar, Hyderabad which led to the loss of property worth Rs. 12 Lakh. Four farmers who were protesters were beaten up. The defence ministry replied to the NHRC notice that Rythu Bazar belonged to the Army which was temporarily given to farmers to sell their produce on an understanding that no permanent structure would be made and it will be vacated as and when required by Army. The State Govt. backtracked on its assurance to get the land vacated within specified period. The ministry denied any violation of human rights. Ms. Rani Kumudini Distt. Collector, who was an eyewitness informed NHRC that 80 farmers were man handled and four seriously injured and the total damage came Rs. 11.26 Lakhs. NHRC directed the defence ministry to pay Rs. 12 Lakh as as compensation for loss of property, Rs. 10,000/- each to four injured farmers and Rs. 5000/- each of other farmers forcibly evicted.

Shri Punja Bhai Thakur (55 years) resident of Nepa, Gujarat died due to police beating. The NHRC recommended compensation of Rs. 2 Lakh for the dependents of the deceased. Shri Santosh Kumar Singh was killed by SI Mukh Lal Paswan, OC, PS, Barhara, Bihar. The Commission recommended compensation of Rs. 5 Lakh in the case. One Avtar Singh Mander was picked up by police men from his

201. *The Times of India, New Delhi*, Nov. 4, 2000 page 6 (Col. 1-3).
202 NHRC Report, 1998-99 s
house from Jalandhar on 23.9.1992 and the person was found untraceable. The Com-
mission have recommended compensation of Rs. 5 Lakh. Police arrested one
pardeep Sharma and demanded Rs. 2,500/- from her wife and she was called at
police station during night. When she came to police station with his son Rahul, po-
licemen misbehaved with her and on intervention of her son, he was beaten-up caus-
ing fourteen injuries. The Commission recommended compensation of Rs. 50,000/-
in the case.

The National Human Right Commission have recommended compensation of
Rs. 2 Lakh for torture and death of one Pinya Hari Kale in police custody in Baramati
Town Police Station.

The National Human Rights Commission have awarded compensation in num-
ber of cases of custodial deaths or torture. In addition the Commission has also re-
commended interim and immediate relief in other cases of sexual harassment, rape
etc. but none of them, was accused related compensation hence not being dis-

cussed here.

(V) JUDICIAL APPROACH TO RIGHT TO COMPENSATION OF THE
ACCUSED

India was ruled by Britishers upto 1947. In Britain the concept of State liability
for acts of its employees is influenced by the doctrine that ‘King can do no wrong’. East
India Company laws established in India as commercial company but later on it
acquired sovereign powers. It is after gaining such power that a distinction between
sovereign and non-sovereign functions came in light. Under the early English com-
mon law the crown was immune from the jurisdiction of Courts for its acts. This fol-
lowed from the ancient doctrine ‘The King can do no wrong’ and also the doctrine of
the immunity of the sovereign. Thus, under the early English law the liability of the state

204. Ibid.
205. Ibid.
206. Ibid., p. 64.
208. See Bank of Bengal v. United Company. (831), Bengal 87. (Supreme Court Calcutta judge-
ment); see also P & O Steam Navigation Co. v. Secretary of State, Bom. HCR App-I. This
Case came up under Section 65 of Govt. Of India Act, 1858.
for the acts of abuse of power, by its servants was limited. The state was made liable only in cases where the servants of the State have committed the wrongful acts while discharging the non-sovereign functions. In other words, the agencies of the State were liable for abuse of power only if the alleged wrongful acts where committed while discharging non-sovereign functions.\textsuperscript{209} In \textit{P \& O Steam Navigation Co. v. Secretary of State},\textsuperscript{210} court accepted action against the secretary of state for negligent acts of govt. workers. Sir Banes Peacock C.J. held that though the EIC is invested with sovereign functions, it does not make it sovereign authority and the liability of the negligent act of its officers would be same as that of an employer for acts of its employee. Two terms namely 'sovereign' and 'non-sovereign' were used in this judgment. It was also held that the doctrines of 'acts of state' and 'sovereign immunity' are not synonymous. The former flows from the nature of power exercised by the state for which no action lies in civil court and the latter was developed on the theory of the divine right of Kings. Under what circumstances the EIC is not liable for the act of its officials.\textsuperscript{211}

The Constitution of India came into force from 26th January, 1950. Article 300 of the Constitution deals with the extent of liability of Union of India and governments of states. Article 300 does not specify the liability in clear terms.

Article 300(i) lays down that until Parliament or Legislature of a state enact a law in this regard, the liability of the Union of India or a State Government is conterminous respectively, with that of the Union of India or a province before the Constitution.\textsuperscript{212} Article 300 refers back to Section 176 of the Government of India Act, 1935. This Section 176, refers Section 32 of the Government of India Act, 1915. Section 32 again refers Section 65 of the Act of 1858. Hence, Article 300 of the Constitution of India is to be interpreted in the lines of provisions contained in Section 65 of the Act of

\begin{flushleft}
\begin{enumerate}
\item[209.] Mundrathi Sammaiah, \textit{op. cit.}, p.138.
\item[211.] \textit{Ibid}.
\end{enumerate}
\end{flushleft}
1858.\(^{213}\) In India there is no exclusive legislation dealing with tortious liability of state.\(^{214}\) State of Rajasthan v. Vidyawati\(^{210}\) was the first case after independence involving tortious liability of State. The Supreme Court\(^{215}\) maintained that State is vicariously liable for torts committed by its official. The court held when India has to be constituted into a socialistic State with various welfare activities employing a large army of servants, it is not in the public interest that State should not be held vicariously liable for the tortious acts of servants. The ratio of this ruling seems to be that the distinction between sovereign and non sovereign functions is discarded.\(^{216}\)

The distinction between sovereign and non-sovereign functions had disappeared for some time but the same distinction again came to be recognised by Gajendragadkar C.J. of Supreme Court in Kasturi Lal v. State of UP, (AIR 1965 SC 1039), where in there is a clear finding regarding the gross negligence on the part of the police authorities in the matter of safe custody of gold as could be seen in the records. It is opined among the legal circles that this case had not correctly interpreted the concept of sovereign function and it is also commented that this case wrongly interpreted the “acts of state” as defined by Sir Barnes Peacock. The Supreme Court did not use the vague concept of sovereign and non-sovereign function in deciding the ambit of Section 244 (i) of Municipalities Act and held that State is liable for the damages for the illegal acts of its servants\(^{217}\) K.K. Mathew J. also pleaded for discarding the feudalistic doctrine of sovereign functions\(^{218}\).

\(^{213}\) See Srinivas M. S. V., op.cit, p. 169; Section 65 of Govt of India Act, 1858 lays down that on assumption of Govt of India by the British Crown, The Secretary of State for India-in-Council would be liable to the same extent as the East India Co. is liable.

\(^{214}\) The First law Commission had recommended that sovereign and non sovereign function should be no longer invoked to determine liability of State. Later on "The Govt liability in Tort" in 1965 and 1967 were introduced in Lok Sabha but same had lapsed. Hence Pre-constitutional Hangover continues; See also Bangia, R K; The Law of Torts, 1995, 146.

\(^{215}\) AIR 1962. SC.933.

\(^{216}\) Ibid; see the judgement generally.

\(^{217}\) Lala Bishambar Nath v. Agra Nagar Mahapalika, AIR 1973 SC 1289; see also Srinivas, M. S. V. opcit. p.169.

\(^{218}\) Shyam Sunder v. State of Rajasthan, AIR 1974 SC 890. This was a case under Fatal Accidents Act.
No major changes in the legal position has taken place and un-satisfactory State of affairs still subsists.\textsuperscript{219} However, the courts while interpreting Article 21 relating to “fundamental right to life and liberty”, have been holding state liable for tortious acts of its servants.\textsuperscript{220} Long back, the Supreme Court had held in \textit{K.K. Kochunni}\textsuperscript{221} that the courts’ power is not limited to issuing writs only, it can pass any order including a declaratory order or give any direction as may appear to it to be essential for providing adequate relief to the aggrieved persons.\textsuperscript{222} In a family dispute a person was murdered by his family members, the court took humanitarian view and ordered for payment of compensation to the wife and children of the deceased.\textsuperscript{223} The court held :-

We confirm the conviction of the appellant on the charge of murder. The offence was committed during a family quarrel and though the victims are the father and brother of the appellant we do not think, in the circumstances of the case, the extreme penalty is called for. The appellant has also been under sentence of death for a period of six years. But in reducing the sentence to imprisonment for life, we feel that the widow PW-1 and her minor children should be compensated for the loss they have suffered by the death of the second deceased. We therefore, while reducing the sentence to imprisonment of life impose a fine of Rs. 10,000/- which if collected will be paid to PW-1 and her children.\textsuperscript{224}

In \textit{Khatri v. State of Bihar},\textsuperscript{225} popularly known as Bhagalpur blinding case, the court Condemned the act of blinding as barbaric and crime against mankind. It observed than police were there to observe law and not to break it. The Court also realised as to “why should the court not be prepared to forge new tools and devise new

\begin{footnotesize}
\begin{enumerate}
\item[221.] AIR 1959 SC 725.
\item[222.] \textit{Ibid}.
\item[223.] Guruswamy \textit{v. State of Tamil Nadu}, AIR 1979 SC 1177.
\item[224.] \textit{Ibid}, at 1179.
\item[225.] AIR 1981 SC 928.
\end{enumerate}
\end{footnotesize}
remedies for the purpose of vindicating most precious fundamental right to life and personal liberty."\textsuperscript{226}

The Court observed "Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the state and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the court for enforcement of his fundamental right, the court cannot give him any relief."\textsuperscript{227} It is, however interesting that no compensation was awarded to the victims in this case.

In \textit{Sant Bir v. State of Bihar},\textsuperscript{228} the victim was a "criminal lunatic." He had become perfectly sane and fit for discharge but remained in detention illegally for over 15 years. The Court directed the release of prisoner and remarked that it was a matter of shame for the society as well as administration to detain a person for over fifteen years without any justification. The court appreciated the need to compensate the victims. The Court though expressed the concern for grant of compensation to the victims of State excesses but did not order grant of same.\textsuperscript{229}

Sometimes the Governmental agencies after lodging the person in their institution forget the person. In \textit{Oraon v. State of Bihar},\textsuperscript{230} one Bhooma Charan was illegally kept in Ranchi Mental Asylum for over thirteen years even after he was certified fit for release. A letter was written to justice Bhagwati Chairman of the Legal Aid Implementation Scheme of central government by the Free Legal Aid Committee of Ranchi. The Supreme Court through justices Bhagwati and Sabyasachi Mukherjee ordered the release of the person from mental asylum and ordered compensation of Rs. 15,000/- to be paid by the State.

\textsuperscript{226} \textit{Ibid} at 930.
\textsuperscript{227} \textit{Ibid} at 1018.
\textsuperscript{228} AIR 1982 SC 1470.
\textsuperscript{229} In \textit{Khatri v. State of Bihar}, (AIR 1981 SC 928) as well as in this case court did not award the compensation to the victims.
\textsuperscript{230} See \textit{Times of India} dated 13 August 1983. The case is not reported in All India Reporters; Oraon was arrested on the charge of attempt to murder in March, 1976. He was sent to a mental hospital of Ranchi. After few months he was cured and certified by the Superintendent of hospital sane and fit. The Jail Superintendent paid no heed and Oraon remained in mental hospital till 1982 when he was acquitted of all charges; see also Jain, S.N., "Money Compensation for administrative wrongs through Art.32", 1983, 25 JILI, 318-19; See also \textit{Jeevan Mal Mohar v. Union of India}, AIR 1983, SC 1107. See also Vibhute, K.I, "Compensatory Jurisdiction of the Supreme Court-A Critique", \textit{JCPS}, Jan-June, 1987, vol. XXI-Nos 1-2. p.136 of 144.
In *Radul Shah v. State of Bihar*, Radul Shah was acquitted by the Court of Session Muzaffarpur, Bihar on June 3, 1968. He was released from the jail on October 16, 1982 that is more than 14 years after the acquittal. He filed a writ petition before the Supreme Court for release from unlawful detention and claimed compensation for illegal incarceration. The court held “taking into consideration that great harm done to the petitioner by the Government of Bihar we are of the opinion that as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000/- (Rupees Thirty thousand) in addition to the sum of Rs. 5,000/- (Rupees five thousand) already paid by it, the amount shall be paid within two weeks from today.” The court also added that “this order will not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. The order of compensation passed by us is, as we said above in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Radul Shah. The Liviathan will have liberty to raise those points in that suit until then, we hope there will be no more Radul Shah in Bihar or else where.” The petitioner was not precluded “from bringing a suit to recover appropriate damages from the state and its erring officials.” The court further held “The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the state as a shield. If civilization 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 rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner’s rights. It may have recourse against those officers” (emphasis added).

---

231. AIR 1983 SC 1086.
232. Ibid.
233. Ibid.
234. Ibid.
235. Ibid.
In *Devki Nandan Pandey v. State of Bihar*, award exemplary cost of Rs. 25,000/- to the petitioner for harassment of petitioner by the officers of State.

The Supreme Court of India has made observations in number of cases where violations of fundamental rights have been found and in appropriate cases victims have been compensated. In *Sabastian M. Hongray v. Union of India*, a writ petition under Article 32 of the Constitution was filed by the petitioner, a student of Jawahar Lal Nehru University belonging to Naga community from Manipur for production of Shri C. David and Sh. C. Paul before Supreme Court, who were whisked away on March 10, 1982 from Huining Village to Phungrei camp and detained by 21st Sikh Regiment. Supreme Court issued the writ of habeas corpus and directed the government to produce them on 12th Dec., 1983. The Govt. eventually failed to produce them expressing its inability to do so and the assertion of the government that the persons left certain camp near which a Army Regiment was stationed alive, was found untenable and incorrect. The Govt. and other respondents were found guilty of civil contempt's because of their willful disobedience to the writ. The court held "now in the facts and circumstances of the case, we do not propose to impose imprisonment nor any amount as and by way of fine but keeping in view the torture, the agony and the mental oppression through which Mrs. C. Thing Kuila, wife of Shri C. Daniel and Mrs. C. Vangamla, wife of Shri C. Paul had to pass and they being the proper applicants, the formal application being by Sabastian M. Hongray, we direct that as a measure of exemplary costs as is permissible in such cases respondent No. 1 and 2 (GOI and MHA respectively) shall pay Rs. 1 Lakh to each of the aforementioned two women within a period of four weeks from today." On the question of registration of the offence and investigation, the court observed "As we are inclined to direct registration of an offence and an investigation, we express no opinion as to what fate had befallen Shri C. Daniel and Shri C. Paul, the missing two persons in respect of whom the writ of habeas corpus was issued save and except saying that they have not met their tragic end in an encounter as is usually claimed and the only possible inference that

---

236. AIR 1983 SC 1136.
237. AIR 1984 SC 1026.
238. Ibid.
can be drawn from circumstances already discussed is that both of them must have met unnatural death. Prima facie it would be an offence of murder - If this inference is permissible which we consider reasonable in the facts and circumstances of the case, we direct that the Registrar (Judicial) shall forward all the papers of the case accompanied by a writ of mandamus to the Supdt. of Police, Ukhrul, Manipur State to be treated as information of a cognizable offence and to commence investigation as prescribed by the relevant provisions of the Code of Criminal Procedure.\(^{239}\)

In *Shrimati Pyaro Bai v. Kamail Singh* and others the Punjab and Haryana High Court appointed a warrant officer to search the room in Police Station and detenue was found illegally detained in a room in Police Station. The Court ordered concerned Police officer to pay Rs. 3,000/- as compensation to the detenue.\(^{240}\)

In *Bhim Singh v. State of J & K*\(^{241}\), Shri Bhim Singh a member of Legislative Assembly, J & K was prevented by police from attending session of Assembly commencing from 11th September 1985. On the intervening night of 9th-10th September, 1985 he was proceeding from Jammu to Srinagar. Enroute at about 3.00 a.m. (on 10th Sept.), he was arrested at a place called Qazi Kund about 70 Kms. from Srinagar. He was taken away by police to some unknown place and he was not traceable. His wife Smt. Jayamala, acting on his behalf filed a writ petition in Supreme Court on 16th Sept., 1985 to direct the respondents to produce Shri Bhim Singh before the court, to declare the detention illegal and to set him at liberty. Shri Bhim Singh was released on bail by learned Additional Sessions Judge, Jammu before whom he was produced. Shri Bhim Singh filed supplementary affidavit on 20th Sept., 1985 in addition to what had already been stated by Smt. Jayamala. He asserted that he was kept in police lock up from 10th to 14th Sept. 1985. The Supreme Court while condemning highhandedness of police observed, "we can only say that the police officers acted in a most highhanded way. We do not wish to use stronger words to condemn the authoritarian acts of the police. If the personal liberty of a member of the legislative assembly is to be played with in this fashion, one can only wonder what may happen to

\(^{239}\) Ibid.

\(^{240}\) 1984, Cr L J p.57 (Punjab & Haryana High Court).

\(^{241}\) AIR 1986 SC 494.
lesser mortals! Police officers are the custodian of law and order should have the greatest respect for personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness, custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct.”

The court held that “when a person comes to us with the 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 case we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case we direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000/- within two months from today. The amount will be deposited with Registrar of this court and paid to Shri Bhim Singh.”

On 19th April, 1986 police fired at a peaceful meeting of 600-700 peasants in Gandhi Library, Arwal in Dutt Gaya of Bihar resulting which 21 persons died, while entertaining a writ under Article 32 of the Constitution, the court observed on the question of compensation that, “ordinarily in case of death compensation of Rs. twenty thousand is paid. We see no reason as to why the quantum of compensation should be limited to rupees ten thousand we may not be taken to suggest that in case of death the liability of the wrongdoer is absolved when compensation of Rupees twenty thousand is paid. But as a working principle and for convenience and with a view to rehabilitating the dependants of deceased such compensation is being paid we direct that without prejudice to any just claim for compensation that may advanced by the relations of the victims who have died or by the injured persons themselves, for every case of death, compensation of Rs. twenty thousand and for every injured person compensation of Rs. Five thousand shall be paid where some compensation has already been paid the same be adjusted when the amount now is being paid.”

242. Ibid at, 499.
243. Ibid.
In C. Ram Konda Reddy v. State of A.P.\textsuperscript{245} one Challa Ram Konda Reddy and deceased Challa Chinappa Reddy were two accused in Crime No. 18(197) of Owk Police Station in Banganapalle Taluk of Kurnool district of Andhra Pradesh. They were arrested on 25-4-77 and remanded to judicial custody on 26-4-77 and lodged into cell No. 7 and killed the deceased. Challa Ram Konda Reddy escaped with injuries. It was alleged that incident took place, an account of malfeasance and misfeasance of the defendant State and its subordinate officials in guarding the sub jail premises. The deceased was a rich and influential person and his family is deprived of his guidance and experience in management. Though the deceased and C. Ramakonda Reddy (the plaintiff in the case) apprised the higher authorities of the danger to their lives in the jail but authorities failed to take appropriate care. The plaintiff along with 5 sons and wife of deceased late Challa Chinappa Reddy claimed damage of Rs. 10 Lakh from the state for breach of duty and callous negligence on the part of the State and its servants who facilitated the commission of the offence resulting in death of Chinnappa Reddy.

This is a landmark case in which the conflict between the concepts of "sovereign power or function" and "personal liberty" are dealt with. The question for determination before the Hon'ble Court was whether the state was liable to pay compensation when an undertrial prisoner in jail lost his life due to failure or neglect of its officers to perform their duties. The defence by the state was that the prisoner was put in jail in accordance with the procedure established by law. It was in exercise of sovereign function and therefore the state was under no obligation to pay compensation.\textsuperscript{246} The court further observed:

We are perfectly aware that the principle enumerated herein opens a new vista for individual claims for damages against the State. It may add to the present day difficult financial position of the State. But we are of the opinion that such a remedy is not only salutary but essential for good Government and for ensuring Rule of Law. The officials of the Government act in the name of, and for and on behalf of the State; it is but just that state is made liable for their act and defaults. It is no answer to say that the

\textsuperscript{245} AIR 1989 AP 235.

\textsuperscript{246} See editorial note to C. Ramkonda Reddy v. State, AIR 1989 AP 235 at 236.
aggrieved person can proceed against the official concerned; that is neither a practicable nor efficacious remedy. Firstly, the official does not act in his individual capacity, but as an agent or representative of the State. A civil remedy against an official may very often be a case of chasing a mirage. And a criminal action is no solace. Just as it is necessary to check evasion and violation of law on the part of citizens, it is equally necessary to ensure that the State officials do not act with gross negligence and do not abuse their powers, to the detriment of life and liberty of the citizens. Both are equally important. State power do not confer a license upon its officials to act contrary to law or to be grossly negligent in their duties to the detriment of life and liberty of the citizens. So long as the official act fairly and with reasonable care, no action lie only where they abuse their powers, act with gross negligence resulting in deprivation of life and liberty of the citizens does the state became liable for compensation... For the above reasons, we find that the claim for damages must succeed. Indeed this is the only mode in which the right to life guaranteed to the deceased by Art 21 can be enforced. The trial court has found that if the plaintiffs are found entitled to damages, it should be in a sum of Rs. 1,44,000/-. No material has been brought in our notice inducing us to disagree with the said determination. The plaintiffs are entitled to the said amount.\footnote{\textsuperscript{247}}

An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In cases of assault, battery and false imprisonment the damages are at large and represent a solarium for the mental pain, distress, indignity, loss of liberty and death.\footnote{\textsuperscript{248}} In \textit{Saheli, a Women's Resources Centre v. Commissioner of Police, Delhi}\footnote{\textsuperscript{249}}

\footnote{\textsuperscript{247}} Supra note 40.
\footnote{\textsuperscript{248}} Saheli, a Women's Resources Centre v. Commissioner of Police Delhi, AIR 1990 SC 513 at p. 516.
\footnote{\textsuperscript{249}} Ibid. writ petitions were filed on behalf of two women Maya Devi and Kamlesh Kumari who have been residing in one room tenant each on ground floor of house No. 408/5/Al Gali No. 29 Anand Parbat, Delhi were severely beaten up by the alleged landlord one Puran Chand and his two sons namely Shambhu Dayal and Prakash Chand in collusion with the SHO Shri Lal Singh and police of Anand Parbat Police Station. Shambhu Singh and his brother Prakash Chand
accompanied by Lal Singh in civilian clothes and Sham Lal, Sub Inspector in uniform accompanied by two brothers attacked Kamlesh Kumari on November 14, 1987. They tore clothes of Kamlesh Kumar and molested her. Her nine year old son clinging to her mother to protect her when Lal Singh took him away and forcibly threw him on the floor. Lal Singh also asked Shambhu Dayal to beat Naresh. Kamlesh Kumar was dragged to police station and criminal case of trespass was registered against her. She was sent to Tihar Jail and released on Nov. 16, 1987. On her return she found Naresh in precarious condition and got him admitted in Ram Manohar Lohia hospital on 18th Nov., 1987. A medico legal case was registered by ACP. Patel Nagar on Nov. 23, 1987 at 11.30 p.m. (FIR No. 143/87). On Nov. 26, 1987 Naresh died in hospital and news was published in Hindi News papers. Enquiry was conducted by Shri Vipul Mittra, SDM and report was not made public on the demand of the people’s Union for Democratic Rights. The court observed that the son of Kamlesh Kumar aged 9 years died due to beating and assault by the SHO, Lal Singh and as such she is entitled to get the damages for the death of her son. *It is well settled now that the state is responsible for the tortious acts of its employees.* The respondant No. 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of hers on due to beating by the SHO of Anand Parbat Police Station, Sh. Lal Singh**250** (emphasis added).

While making reference to Joginder Kaur v. Punjab State**251** and *State of Rajasthan v. Vidyawati***252** the court held that “on a conspectus of these decisions we deem it just and proper to direct the Delhi Administration, respondent No. 2 to pay compensation to Kamlesh Kumari, mother of deceased, Naresh a sum of Rs. 75,000/- within a period of four weeks from the date of this judgement. *The Delhi Administration may take appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found responsible, if they are so advised.* As the police officers are not parties before us, we state that any observation made by us in justification of this order shall not have any bearing in any proceeding

---

251. 1968 Acc 328 W 28 at p.32.
252. AIR 1962 SC 933 at p.940.
specially criminal prosecution pending against the police officials in connection with the death of Naresh"\(^{253}\) (emphasis added).

In recent years the Supreme Court by invoking Article 21 of Constitution, which guarantees life and liberty of persons has tried to give some compensatory relief to the poor victims of illegal detention at the hands of the executive.\(^{254}\)

In *Smt. Susheelamma v. State of Karnataka\(^{255}\)* where a lady was illegally detained in police custody, assaulted and ravished, the court directed the state to pay compensation of Rs. One Lakh.

The Apex Court upheld the compensation awarded by the Bombay High Court against the State for violation of fundamental right under Article 21 as an undertrial prisoner was handcuffed and paraded through the streets in a procession by police during investigation of an offence.\(^{256}\) However the Inspector of police was absolved from personal liability. S.P. Sathe has observed that the Supreme Court's decision in instant case (Ravi Kant's case) in absolving the Inspector of Police from personal liability appears erroneous and a retro gate step in compensatory jurisprudence.\(^{257}\)

While analysing the decision of apex court in *State of Maharashtra v. Ravi Kanth S. Patel\(^{258}\)*. The court held that delinquent police officer cannot be made personally liable, observed that the Inspector of police has acted only as an official and even assuming that he has exceeded his limits and thus erred in taking to under trial prisoner handcuffed, still we do not think that he can be made personally liable.\(^{259}\)

The Guwahati High Court have awarded compensation of Rs. 10000/- for custodial death of Md. Nazrul Islam alias Mantu Das, who was arrested on 5th August, 1988 by Madras Field Regiment personnel posted at Majbat Camp (near Mangaldoi). Army had contended that deceased was picked up from a meeting of Muslim United Liberation Tigers of Asom (MULTA), a militant organisation and arms were recovered from him.\(^{260}\)

\(^{253}\) *Supra note 43 at p.516.*
\(^{254}\) *Mundraith, Sammaiah, op. cit., p.32; See also Popular Jurist, 1984, vol-I p.26.*
\(^{258}\) 1994, 2 SCC p.373.
\(^{260}\) *The Shillong Times*, Tura, 15th Dec, 2001 p.3.
In *Kewal Pati v. State of Uttar Pradesh*, the court awarded compensation to the widow of a convict who was killed in jail by a co-accused while serving his sentence under Section 302 of I.P.C. as it resulted in deprivation of his life, contrary to law and in violation of Article 21 of the Indian Constitution. A prisoner does not cease to have constitutional right except to the extent he has been deprived of it in accordance with law. His death was caused due to the failure of jail authorities to protect him. Accordingly, the court directed the Government to pay a compensation of Rs. 1,00,000/- to the widow and the children of deceased.

The Andhra Pradesh High Court in a case has awarded Rs. 10,000/- to the husband of deceased victim and Rs. 25,000/- to the Cousin of victim. The victim lady, Mry Moa, was apprehended by Excise personnel under their Jurisdiction of Avanigadda, and subsequently she died in custody of Excise Authorities.

In *Smt. Chedabai Yada v. State of Madhya Pradesh*, the deceased was a mill worker and was among those workers of the Hutum Chand Mills Ltd., who were agitating against the closure of the said mill. As a part of 'Jail Bharo' Andolan, the deceased alongwith other were lodged in Central Jail, Indore where riot broke out among workers during riot deceased sustained severe injuries and succumbed to injuries and died in hospital. The court awarded compensation of Rs. 50,000/- to the heirs of deceased. In another case one Narendra Sinha, AIO, CID intelligence died in suspicious circumstances in police custody. Though it was projected as case of suicide, the court did not believe the version and took it as case of custodial death. The Gujarat High Court awarded compensation of Rs. 2 Lakhs as a measure of interim compensation.

---

261. 1995, 3 SCC, p.600.
262. Ibid.
265. Ibid.
In another case, the Gawahati High Court has awarded a sum of Rs. 1 Lakh as compensation to the dependents of the victim, holding the police authorities, negligent in performing their duties, in flagrant violation of personal liberty guaranteed under Article 21 of the Constitution. In this case, one Sudhir a hardcore ULFA member, sought to be apprehended by police, alive, though the police negligently killed him in cold blooded manner.

One Sunil Pawan died in police custody during remand for investigation. The court was convinced that it was clear case of custodial death, resulting from high handedness and disregard of State officials of constitutionally guaranteed rights of personal liberty and found it a fit case for awarding compensation to the tune of Rs. 1,50,000/- for payment to the wife of deceased. It is pertinent to note that in this case court also recommended for launching of criminal prosecution against the erring officials and to recover compensation amount from the purse of public personnel who are responsible and involved in custodial death.

In Smt. Nilabati Behra v. State of Orissa, one suman Behra aged about 22 years was picked up from his home and taken into custody on 1.12.187 by Shri Sarat Chandra Barik, ASI of Jaraikala police out post under PS Bissa, Distt. Sundergarh in Orissa in connection with an offence of theft. On 2.12.1987 the body of Suman Behra was found on a railway track near jaraikala railway station. There were multiple injuries on his body. The petitioner, mother of deceased alleged death in police custody due to injuries and police having thrown the body on railway track afterwards. A writ under Article 32 was filed in Supreme Court for compensation for violation of right to life of deceased guaranteed under Article 21 of the Constitution. The Supreme Court while explaining right to compensation for violation of fundamental rights guaranteed under the Constitution, observed, "A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection..."
of such rights and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution. Then that is the only practicable mode of redress available for the contravention made by the state or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resorting to the remedy in public law under the Constitution by recourse to Article 32 and 226 of the Constitution. 271 Hence, the claim in public law for compensation for unconstitutional deprivation of the guaranteed Fundamental Rights is a claim based on strict liability and is in addition to the claim available in private law for damages to the victim. 272

The Supreme Court directed, “The respondent State of Orissa to pay the sum of Rs. 1,55,000/- to the petitioner and a further sum of Rs. 10,000/- as costs to be paid to the Supreme Court Legal Aid Committee. The mode of payment of Rs. 1,55,000/- to the petitioner would be, by making a term deposit of that amount in a scheduled bank in the petitioner’s name for a period of three years during which she would receive only the interest payable thereon, the principle amount being payable to her on expiry of the term.” 273 The court also clarified “that the award of this compensation, a part from the direction for adjustment of the amount as indicated, will not affect any other liability of the respondents or any other person flowing from the custodial death of petitioner’s son Suman Behra. We also expect the State of Orissa would take the necessary further action in this behalf, to ascertain and fix the responsibility of the individuals responsible for the custodial death of Suman Behra, and also take all available appropriate actions against each of them, including their prosecution for the offence committed thereby.” 274

271. Ibid.
273. Supra note 55.
274. Ibid.
In Prof. S. Seshiaiah v. State of Andhra Pradesh 275 a person named Masi was illegally detained by the police on false charges of theft from 3.10.93 to 21.10.93 and produced the detenue before the judicial Magistrate to cover up illegal detention. The court quashed the prosecution for theft case. While ordering compensation, the court observed that "Having regard to the fact that Masi was deprived of his personal liberty from 3.10.93 to 21.10.93, we feel that it will be appropriate to direct the State of Andhra Pradesh to pay him compensation of Rs. 5,000/- (Rupees five thousand only) in the circumstances of the case." 276

A undertrial prisoner was handcuffed and taken through the streets in a procession by police during investigation. The court held that Article 21 of the Constitution was violated. However, the court held that police officer responsible for act acted only as an official and cannot be made personally liable. The court directed that compensation of Rs. 10,000/- be paid by the State and authorities may, if consider necessary, hold an enquiry against police officer and then decide whether any further action is to be taken against him or not. 277

In a recent case of excesses by the Punjab Police while passing strictures against the Punjab police the court also awarded compensation to the victim of police excesses. In the tattooing case, the Punjab High Court directed the State Government to pay Rs. 50,000/- to each of the four victims. In another case the same court, in a judgement on May 4, 1994 ordered a compensation of Rs. 1.5 lakh to Joginder Kaur, whose husband Santokh Singh died of police torture. Earlier a magisterial inquiry had rejected the police version that the cause of Singh's death was snake bite. 278

Arvinder Singh v. State of U.P. 279 is another example of police atrocities where police officers subjected a married woman to physical, mental and psychological torture to submit to their demands to abandon her legal marriage. Her husband and other family members were also tortured. The court seriously viewed the violation of

---

275. 1994 Cr. LJ 1469.
276. Ibid.
human rights and directed the state to launch prosecution and pay compensation of Rs. 10,000/- to the victim woman and Rs. 5,000/- to each of other victims. The court directed that it would be open to the State to recover the amount of compensation from the police officers concerned.\textsuperscript{280}

For illegal abduction and detention of 7 persons who were later on found missing. The Supreme Court on a writ of habeas corpus ordered probe by CBI in the matter of \textit{Inder Singh v. State of Punjab}.\textsuperscript{281} The court observed “when the police force of a State acts as the Punjab police has done in this case, the State whose arm that force is must bear the consequences. It must do so in token of its failure to enforce law and order and protect its citizens and to compensate in some measure those who have suffered by reason of such failure. We direct the State of Punjab to pay to the legal representatives of each of the said 7 persons the amount of Rs. 1.5 Lakhs with in 2 weeks. Later when the guilty are identified the State should endeavour to recover the amount which is the tax payers money”\textsuperscript{282} (emphasis added). The court also directed the State for disciplinary action against erring officials.

One Ranjit Upadhyay who was a convict and undergoing imprisonment in Varanasi Jail was murdered n the jail by another convict named Happu who was undergoing life term in jail in 1991. A writ petition was filed by Upadhyay’s widow Smt. Kewal Pati in Supreme Court seeking compensation for ‘untimely’ death of her husband. The Supreme Court awarded Rs. One Lakh as compensation to the widow. The court observed “Even though Ranjit Upadhyay was a convict and was serving his sentence yet the 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.”\textsuperscript{283}

\textsuperscript{280} \textit{Ibid}, It is worthwhile to note that Court has given the indication that amount of compensation may be recovered from the erring police officers besides launching prosecution.

\textsuperscript{281} AIR 1995 SC 1949.

\textsuperscript{282} \textit{Ibid}, at 1951; This is a landmark judgement wherein for the first time Supreme Court has directed to recover the amount of compensation from the erring police official, when guilty are identified. The trend is welcome development in ‘compensation’, jurisprudence.

\textsuperscript{283} See \textit{Times of India, Ahemdabad}, 21\textsuperscript{st} April, 1995 p.1.
In a recent case two boys aged about 20 years were picked up by Army in Imphal on 23rd September, 1980. A writ of habeas corpus was filed in Gauhati High Court which was dismissed as Army claimed that they had released the boys. Ultimately, SLP was filed in Supreme Court. The Distt. Judge conducted the inquiry and reported that these 2 boys were not released by Army as there was no cogent evidence. The court while referring to Nilabati Behra’s case awarded compensation of Rs. 1,25,000 to each of two appellants and also ordered to fix up the responsibility and to take appropriate actions including prosecution of offenders.  

A review of the judicial trend concerning the payment of compensation to the victims of State lawlessness, by and large reveals that, the award of compensation to the victims of abuse of power by the State is not a rule of exception but is a rule itself. The interpretation of Article 32 of the Constitution enabling the courts to award the compensation to the victim in case of State lawlessness/highhandedness/excesses has given a news dimension to jurisprudence of victimology in India. For a long time this proposition of giving compensation to the victims was never invoked by the Supreme Court. In the light of the cases discussed above, it has been found that the court did not generalise the provision of granting compensation. It has granted compensation, exemplary costs only in cases of extreme necessity, where the infringement is gross and patent, in-controvertible and glaring. No general yard stick to measure such hardships has been laid down.

Earlier, it was the policy of the court, under the jurisdiction conferred by article 32 of the Constitution not to pass an order for the payment of money if such an order was in the nature of compensation consequential upon the deprivation of fundamental right. The Court's attitude was that if a public servant committed a wrongful act under the powers delegated to him for discharge of sovereign function of the State, no legal action for damage could be taken against him or his employer, the government.

The Supreme Court has granted two types of monetary relief's under Article 32 namely 'compensation' and 'exemplary cost'. Through the idea of compensation to the victim is implicit in both the concepts yet exemplary costs are essential in nature of primitive damage and also have a measure of punishment to the State and some time as a measure of damage to the victim.\(^{287}\)

The demarcating line between sovereign function and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime, etc., which are among the primary and inalienable functions of a Constitutional Government, the State cannot claim any immunity.\(^{288}\)

The question of State liability for wrongful acts of its employees has assumed considerable significance in the latter half of the twentieth century, particularly in the context of the State performing innumerable functions for promoting the welfare of its citizens. Misuse of power by these employees of their negligence may cause injury to the person or property of the citizen and involve even an assault on his fundamental rights. Such a situation calls for an adequate mechanism for determining liability of the State and compensating the victim. It is, however, strange that the State which has extended its tentacles practically into all spheres of activities has not thought it fit to enact a statute for determining the citizen's claim against the all powerful State. Indeed, the absence of such a mechanism has put an onerous task on the judges who have evolved in their own way some principles for meeting the aforesaid situation.\(^{290}\)

Thus, to sum up, it is now well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the Fundamental Right to life of a citizen by the public servant and the State is vicariously liable for their acts. The claim of the citizen is based on the


\(^{288}\) Mundrathi, Sammaiah, op.cit., p. 139.


principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer.

(VI) SUM UP

The foregoing discussion reveals that compensation is to make good the loss, suffered through a wrongful act, in the form of money.”291 It is internationally recognised principle that enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right.292 The Supreme Court of India had held long back that the court has the jurisdiction and power to pass any order including award of compensation to the aggrieved person in case of violation of fundamental rights under Part-III of the Constitution.293 Though, in India there is no statute like the Criminal Justice Act of 1972, 1982, 1988 of England but pronouncements of the Apex Court in number of cases have developed the right to compensation from case to case.294

While Cr.P.C. enshrines the provision for compensation for accusation without reasonable cause295 and compensation for groundless arrest296 where such arrest has been caused by a person other than a police officer. The objective is to compensate the arrested person for loss of time and expenses.297 The study reveals that there have been scanty and rare use of legal provisions relating to compensation and they are inadequate.298

Article 32 of the Constitution dealing with Constitutional remedies which is itself a fundamental right guarantees the enforcement of fundamental rights by appro-

292. Ibid.
295. See Sec. 250 Cr. PC.
296. Sec. 358 Cr.P.C.
297. Clause (1) of Sec. 358 Cr.P.C.,1973.s
298. See Mundrathi , Sammaiah, op. cit., p.91.
appropriate proceedings by the Supreme Court therefore rightly observed as cornerstone of the democratic edifice raised by the Constitution.

The identical power for enforcement of fundamental rights and any other purpose is also conferred on High Courts by the Constitution but Article 226 is not in derogation of Article 32 of the Constitution. The Supreme Court has been awarding monetary compensation to aggrieved persons for violation of fundamental rights for illegal detention in jail, for harassment by State officials for suspicious disappearance from custody for illegal detention in police station for police firing an a peaceful gathering of peasants causing death and injuries, for death in custody for negligence of officials, for death of a child due to assault by police officials, for illegal detention, assault and ravishing a woman, custodial death.

The apex court had clarified decades back that court’s power is not limited to issuing writs only and it can pass declaratory orders or issue any direction essential for relief to the aggrieved person. In Radul Shah, the court awarded compensation in the nature of pilliative and the plaintiff had option to file compensation suit also. In Sebastian M. Hongray v. Union of India, the court in addition to awarding

299. See Article 32(1) of Constitution.
301. Article 226 of Constitution.
302. Clause 4 ibid.
309. Saheli v. Commissioner of police, Delhi, AIR 1990 SC 513.
314. Ibid.
315. AIR 1984 SC 1026.
compensation also directed to register F.I.R. and bring the offenders to justice.\textsuperscript{316} This was a new trend which continued later on also. In Smt. Solgabai Sunil Pawar's case\textsuperscript{317}, besides awarding compensation court directed to launch prosecution of erring officials and to recover compensation from responsible officials involved in custodial death.\textsuperscript{318} In Nilabati Behra's case\textsuperscript{319} and Inder Singh's case\textsuperscript{320} court directed prosecution or disciplinary action against erring officials and also directed to recover amount of compensation when culprits are identified.

The Supreme Court have awarded two types of monetary relief's under Art. 32 namely "compensation" and exemplary cost\textsuperscript{321} and the demarcating line between "sovereign" and "non-sovereign" powers of state has largely disappeared.\textsuperscript{322}

After enactment of the Protection of Human Rights Act, 1993, the National Human Rights Commission has been quite active to check violation of human rights in India. The Commission has been conferred wide functions to inquire into the cases of violation of human rights and to prevent such violations.\textsuperscript{323} as per P.H.R. Act, the NHRC is a recommendatory body,\textsuperscript{324} and the Act does not specifically provide for awarding compensation\textsuperscript{325} but section 18(3) of the Act authorise NHRC to recommend to the concerned Govt. for grant of such immediate interim relief to the victim or his family members as the Commission may consider necessary.\textsuperscript{326} Justice(Rtd.) J.S.Verma, Chairman, National Human Rights Commission has observed that National Human Rights, Commission is monitoring the functioning of government and it is playing a complementary role with the Supreme Court for protection of human rights. The Commission have made several proposals to the Government for amendment of the Protection of Human Rights Act, 1993 which needs to be implemented. He

\begin{footnotesize}
\begin{itemize}
\item[316.] Ibid.
\item[317.] 1998, Cr. LJ p.1505.
\item[318.] Ibid.
\item[319.] AIR 1993 SC 1960.
\item[321.] Supra note 282.
\item[322.] Mundrathi, Sammaiah, \textit{op.cit.}, p. 139.
\item[323.] Section 12(a) of PHR Act, 1993.
\item[324.] See Sec. 12 of PHR Act for functions of NHRC.
\item[325.] See Mundrathi, Sammaiah, \textit{op.cit.}, p.104.
\item[326.] Sec. 18(3) PHR Act.
\end{itemize}
\end{footnotesize}
also felt that the N.H.R.C. should also be given statutory recognition.\textsuperscript{327} There is no “separate administrative body which compensates the victim in lieu of the accused being economically in capacitated in doing so.”\textsuperscript{328} The National Human Rights Commission has recommended compensation in number of cases for illegal detention, custodial death, torture, ill treatment and it has also recommended prosecution of police officials wherever required and it is making efforts to create a culture of human rights observance and educating the people to be right conscious.

\textsuperscript{327} Justice (Rtd.) J.S. Verma, Chairman, NHRC in an interview with “Aaj Tak” TV dated 16th Jan, 2003 telecasted from 11:00 p.m. to 11:30 p.m.