

Right to Compensation Under Constitutional Scheme in India

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ABSTRACT

Compensation refers to the financial relief afforded to an individual whose rights have been infringed. Usually money, granted to someone in acknowledgment of loss, suffering, or injury. It serves as a remedy in civil lawsuits. In the context of criminal cases, the primary focus is on punishing the offender to create a deterrent effect for both the offender and society. Generally, in a criminal case, the victim gains little from the punishment of the offender beyond the reassurance that their rights were defended. Awarding compensation in specific criminal cases as mandated by legislation to achieve justice. Recent legislative advancements and judicial responses to compensation provisions demonstrate that the importance of compensation is now fully acknowledged within the framework of criminal justice. Various laws, including the Constitution of India, the Law of Torts, the Criminal Procedure Code, and many other laws, stipulate the payment of compensation to individuals whose rights have been compromised. Additionally, The UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, established in 1985, marked a significant milestone in promoting the pro-victim movement. This declaration includes sections addressing victims' access to justice, their right to fair treatment, restitution, compensation, and support for those affected by crime. In this article, authors will explore these laws briefly to enhance understanding of the nature, scope, and calculation of compensation.

Keywords: Victim, Fundamental right, compensation, Constitution, criminal justice

INTRODUCTION

Humans are inherently social creatures, and it is quite evident that actions can often infringe upon the rights of others within society. To address these circumstances, the law has established the idea of compensation. This ancient principle involves providing financial restitution to someone who has been harmed. Ubi jus ibi remedium, a Latin phrase - which means 'where there is a right, there is a remedy'. This maxim is typically associated with Tort law, indicating that when a wrong occurs, it necessitates some form of compensation. However, it has also proven valuable in the realm of public law. The interpretation of this maxim is not only limited to tortious wrongs but also has expanded to include public law matters, particularly human rights. Therefore, it is essential to provide some form of compensation in instances of human rights violations. If the plaintiff has a right, "he must of necessity have a means to vindicate and maintain it; and indeed, it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal.

Right to Compensation Under Indian Constitution

The Preamble to the Constitution represents the fundamental constitutional principles that define the Constitution. It states that India is a Sovereign Socialist Secular Democratic Republic dedicated to Justice, Equality, and Liberty for its citizens. The Constitution of India does not explicitly provide for compensation to crime victims; however, its essence can be inferred from various articles, such as Article 41 mentions that the state shall, within its financial means, establish effective measures to provide assistance in situations of disability and unmerited poverty. Further, Article 51A asserts that it is the fundamental duty of every Indian citizen to show compassion toward living beings and to foster humanism and a spirit of reform. Article 21 recognizes the victim's entitlement to compensation as a fundamental right, as affirmed by the Hon'ble courts. Article 14 of the Indian Constitution speaks about the equality before Law, on the other hand fair and just inquiry and an impartial trial are essential to

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safeguarding the fundamental rights of an accused as stated in Article 21 of the Indian Constitution. The Supreme Court and the High Court hold the authority to provide compensatory justice by granting reasonable monetary compensation under Article 32 or Article 226 of the Constitution of India for any mental, physical, or financial harm sustained due to the violation of fundamental rights protected by the Constitution. It should be clearly demonstrate that the State neglected to take necessary measures to safeguard the fundamental rights of its citizens. There is no requirement for the victim to seek recourse through a Civil Court by invoking common law for damages due to the infringement of fundamental rights. The victim has the choice to pursue compensation through either constitutional or civil remedies. Given that the constitutional remedy is rooted in public law, it is not mandatory for the direct victim to present their case in Court. Relief may also be granted through the exercise of suo- motu authority or in cases of public interest litigation. Globally, there has been a praise for the welfare state, leading to an increase in its authority and responsibilities, as well as a more significant intrusion into personal rights. Consequently, the range and scale of actions against the state for the enforcement of liability due to rights violations is on the rise. It is an undeniable principle in civil and criminal law that anyone who violates another person's rights should face punishment, and in specific situations, the victim deserves to receive financial compensation for any harm suffered due to such violation. In a similar vein, the State, which operates through a vast network of employees, is generally accountable, with few exceptions, for providing monetary compensation whenever its employees violate rights, particularly in nations that uphold the rule of law and democratic principles. The case is related to the, death of Suman Behera, who was approximately 22 years old, was apprehended by ASI Police on December 1, 1987, as part of an investigation into a theft occurring in the village. He was handcuffed, restrained, and held at the police station. His lifeless body, with a handcuff and several injuries, was discovered on the railway tracks on December 2, 1987. His mother, Smt. Nilabati Behera, sent a letter on September 14, 1988, to the Supreme Court, claiming that her son had died while in police custody. The Court considered the letter as a writ petition under Article 32 of the India Constitution.

The Court directed an investigation into the matter by the District Judge, Sundergarh, who, after taking evidence, concluded that the deceased had died due to multiple injuries sustained while in custody at the police station.

Development of Right to Compensation in India

The Penal Law of India has not established a system for compensating crime victims for the harm they have suffered; there is no legal entitlement for victims to receive compensation. In situations of permanent injury, financial compensation remains the only viable remedy. In India, the lack of comprehensive laws or statutory frameworks related to monetary compensation persists and no mandate is there which may set the State's liability to provide financial compensation to crime victims. The absence of a legal right to monetary compensation for human rights violations has been addressed by the higher judiciary, which has created an alternative constitutional remedy. According to Article 9 (5) 'any individual who has suffered from unlawful arrest or detention has the right to seek compensation that is enforceable. Nevertheless, this right to compensation is not explicitly recognized as a fundamental right in Part-III of the Constitution. Furthermore, when India acceded to the International Covenant on Human Rights in 1979, it made several declarations (or reservations), including the following: "Referring to Article 9 of the International Covenant on Civil and Political Rights, the Government of the Republic of India asserts that the Article's provisions should be interpreted in alignment with clauses (3) to (7) of Article 22 of the Constitution of India. Additionally, within the Indian Legal System, there is no legally enforceable right to compensation for individuals who assert they have been victims of unlawful arrest or detention by the State" The Constitution of India does not explicitly provide a right to compensation. In instances where fundamental rights are violated, victims are permitted to seek enforcement through the Courts under Articles 32 and 226. To obtain compensation, they had to initiate a Tort case, which was often a cumbersome process. Therefore, when the Supreme Court had the opportunity to explore and acknowledge the complexities surrounding the right to compensation, it seized the moment. The drafters of the Constitution have enshrined fundamental rights in Part III of the Indian Constitution. Articles 12 to 35

outline the various rights available to citizens of India. In *Rudul Shah vs. State of Bihar* and another three-Judges Bench of the Supreme Court, ruled that while exercising its authority under Article 32, the Supreme Court has the power to issue orders for monetary compensation related to the violation of a petitioner's fundamental right to life and liberty. In delivering the judgment, Chief Justice Chandrachud remarked that-"Article 21 of the Constitution of India, assures the right to life and liberty, would lose its essential substance if the Court's authority were confined to issuing orders for release from unlawful detention. A compelling method to reasonably avert the breach of that right and to ensure adherence to Article 21's provisions is to hold violators financially accountable. Systemic failures resulting in blatant violations of fundamental rights cannot be rectified by any other approach available to the judiciary. The right to compensation serves as a remedy for the wrongful actions of entities acting on behalf of public interest and utilizing the powers of the State as their defense. If our civilization is to be preserved in this nation, unlike in some others whose fates are well-known, it is crucial for us to learn to accept that honoring individual rights is the true foundation of our democracy." In the case of *Hari Kishan Singh & State of Haryana vs. Sukhbir Singh*, the Supreme Court granted compensation of Rs. 50,000/- to the victim and instructed subordinate criminal courts to use their authority to award compensation more generously, ensuring that victims do not need to resort to civil courts for compensation. This is very pathetic that the lower courts seldom utilize this provision to grant compensation to victims, particularly when accused individuals are acquitted due to benefit of doubt or for technical legal reasons. The Court also specified that the amount of compensation should be assessed by considering the nature of the offense, the validity of the claim made by the victim, and the ability of the accused to pay. According to the Court, the compensation amount must be fair and will vary based on the specific facts and circumstances of each situation. The right of a rape victim to obtain compensation came into existence from Article 21 of the India Constitution. Courts have the authority to grant compensation not only at the conclusion of a trial but also to provide interim compensation at any stage of the trial, as established in 1996 SCC (1) 490 . In *Delhi Domestic Working Women's Forum*, the

Supreme Court proposed a framework to compensate the rape victims during the trial, through interim compensation, and after the trial has concluded. The Supreme Court recommended the creation of a Criminal Injuries Compensation Board under Article 38(1) of the Constitution of India. Either by the Criminal Injuries Compensation Board or the court will provide compensation for the rape victim. In *Saheli: a Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters*, the Apex Court determined that the State was responsible for compensating the mother of a 9-year-old child who had died due to beating and assault by police officers and instructed the Delhi Administration to provide Rs. 75,000/- as exemplary compensation to the mother. The Court established that the State would be accountable for the wrongful acts of its employees. Implicitly, the Court dismissed the principle established by the Hon'ble Supreme Court in *Kasturilal Ralia Ram Jain v. State of U.P.*, which upheld sovereign immunity concerning the vicarious liability of the State for the actions of its employees. It is argued that the Court's ruling aligns more closely with the principles outlined in *Rudul Shah v. State of Bihar*. In the case of *State of Maharashtra v. Ravikant S. Patil*, the respondent was arrested on suspicion of involvement in a murder investigation. He was handcuffed and had both his arms bound with a rope while being walked through the city streets. He submitted a writ petition requesting the censure of the police officer and seeking damages. A Division Bench of the Bombay High Court found that the police inspector had subjected the under-trial prisoner to unnecessary humiliation and indignity, which is not permissible for any citizen of India and against the human rights of an individual. Therefore, the Police Inspector deemed liable, personally to pay compensation. *Sunil Gupta and Others v. State of Madhya Pradesh and Others* is a significant ruling issued by the Supreme Court of India on May 2, 1990. The case focuses on the illegal detention and cruel treatment of social activists who were advocating for the rights of farmers and tribal groups of Madhya Pradesh. Sunil Gupta, Raj Narain, and Purushottam Nayak, petitioners experienced police violence, being restraint with handcuffs and layout publicly, which raised important constitutional issues under Articles 14, 19, and 21 of the Indian Constitution. The ruling is a vital

confirmation of the importance of human dignity and personal freedom within the Indian legal context. Although the Court did not deem the detention period illegal, it strongly criticized the unjustified and arbitrary use of handcuffs by police officials, emphasizing the necessity for compliance with procedural standards and respect for constitutional rights. This case highlights the judiciary's essential role in defending citizens' rights against possible overreach by state authorities, thus reinforcing the fundamental principles of justice and human dignity that are enshrined in the Indian Constitution. In the present case, the principle established in *Rudal Shah* was upheld, and no further elaboration was provided. In *Saheli*, a mention was made regarding the State's responsibility for the wrongful acts committed by its employees. The Supreme Court granted compensation to the deceased's mother following her son's death in police custody resulting from physical assault. The supreme Court referred the various judgments given by itself in *Bhim Singh v. State of J&K*; *Saheli: A Women Resources Centre v. Commissioner of Police Delhi, Police Headquarters State of Maharashtra v. Ravikant S. Patil* and many more and concluded that the State of Orissa's obligation to provide compensation in this case is unquestionable. The Court elucidated the State's liability in those such circumstances, which are related with the payment of compensation, and differentiate it from liability in private law concerning tort actions. Further, the court noted that awarding the compensation in the proceedings under Article 32 by Supreme Court or by the High Court under Article 226 of the Constitution of India is a public law remedy founded on strict liability for the violation of fundamental rights. It is not the subject to the principle of sovereign immunity, even if such a defense might be applicable in private law for tort actions. This distinction between the two forms of remedy is crucial to understand and highlights the rationale for how compensation is determined in these proceedings." Sovereign's immunity regarding the vicarious liability of the State for the tortious activity done by its employees has been affirmed by the Supreme Court in *Kasturilal Ralia Ram Jain v. State of U.P.* The presiding Judge outlined a differentiation between the State's sovereign immunity and the Courts' authority to grant compensation for breaches of fundamental rights as specified in Articles 32 and

226 of the Constitution, and stated: In *Kasturilal* the apex court, while upholding the State's plea of sovereign immunity for tortious acts of its servants has been confined to the sphere of liability in tort. Further, the court stated that it is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and there is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights. The only practicable mode of enforcement of the fundamental rights can be the award of compensation. The Supreme Court followed and affirmed the principles in *D.K. Basu v. State of West Bengal* as laid down in *Nilabati Behra's Case*. It was affirmed by the apex court that simply declaring an action or a finding of custodial violence or death in custody as invalid does not offer any substantial remedy to an individual whose fundamental right to life has been violated. More actions are necessary to address the situation. The Court referenced Sections 220, 330, and 331 of the Indian Penal Code, 1960 and determined that these legal provisions are insufficient to rectify the harm caused to the citizen. While it is the State's duty to prosecute offenders for all crimes, victims also deserve monetary compensation for their suffering. When a fundamental right has been violated, the Court should not limit itself to merely issuing a declaration. It must take further steps to provide compensatory relief, which should not be treated as damages in a civil lawsuit but as compensation under public law for the harm caused by the state's failure to uphold the citizen's fundamental right to life. Addressing the wrong done and providing judicial remedies through legal inquiry is an essential responsibility of the judiciary. Dr. A.S. Anand, J. referred Article 9(5) of the International covenant on Civil and Political Rights, 1966. At the time of its ratification in 1979, India made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest and detention, and thus did not become a party to the Covenant. The Learned Judge indicated that approximately twenty years ago, the Government's liability for the tortious actions of its public officials was typically restricted, and individuals impacted could assert their rights in tort

by initiating a civil lawsuit, where the defense of sovereign immunity could still be utilized. It is clearly recognized in many legal systems that financial compensation is a proper, effective, and at times the only suitable remedy for addressing violations of a citizen's fundamental right to life committed by public officials, with the State being vicariously accountable for their actions. The citizen's claim is grounded in the principle of strict liability, which does not permit a defense of sovereign immunity, and the citizen is entitled to receive compensation from the State, which retains the right to seek reimbursement from the individual who committed the wrongdoing. A public interest litigation filed by Delhi Domestic Working Women Forum by invoking the compassionate provisions of Article 32 of the Constitution to address the dire situation of four domestic workers who experienced indecent sexual assault by seven army personnel while traveling on the Muri Express from Ranchi to Delhi. The victims were powerless tribal women from Bihar; they were susceptible to intimidation. Despite the occurrence of such a brutal assault on the women's persons and dignity, neither the Central Government nor the State Government has shown any concern regarding the necessity for rehabilitation and compensatory justice for these women. A three-Judge Bench of the Supreme Court concluded the writ petition with several fundamental remarks and directives. In announcing the verdict, Mohan, J. remarked that it is quite regrettable that there has been a rise in violence against women in recent times, which raises significant concern. Rape indeed presents serious challenges for the criminal justice system. "Rape is an ordeal that profoundly disrupts the lives of its victims. For many, its effects are long-lasting, affecting their ability to form personal relationships, changing their behaviors and values, and creating persistent fear. Besides the trauma of the rape itself, victims have also endured pain throughout the legal process." In *People's Union for Civil Liberties v. Union of India*, the petitioner, submitted a writ petition under Article 32 of the Constitution seeking the issuance of a writ of mandamus or another suitable order or direction (1) to initiate a judicial inquiry into the purported fake encounter conducted by the Imphal Police on April 3, 1991, which resulted in the deaths of two individuals; (2) to compel appropriate action against the police officials responsible; and (3) to grant compensation to

the family members of the deceased, despite the police authorities rejecting the claims of a "fake encounter. Following the principles as laid down in Delhi Domestic Working Women's Forum's Case the apex court in *Budhisattwa Gautam v. Subhra Chakraborty*, held that the Court could award compensation for violation of Fundamental Rights and awarded an interim compensation of Rs. 1,000 per month to the victim of rape until her charges of rape were decided by the trial Court. In *Chairman Railway Board v. Mrs. Chandrima Das*, the respondent was, a practicing lawyer at the Calcutta High Court, submitted a writ petition under Article 226 of the Constitution against the Chairman of the Railway Board and others, seeking compensation for the victim, Smt. Hanuffa Khatoon, a Bangladeshi national who was gang-raped by several individuals, including Railway employees, in a room at Yatri Niwas located at Howrah Railway Station. The Calcutta High Court granted compensation of Rs. 10 Lacs to Smt. Hanuffa Khatoon on the grounds that the rape occurred in a building (Rail Yatri Niwas) owned by the Railways and was carried out by its employees. In *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, the Supreme Court determined that it possesses the authority to grant compensation for the infringement of fundamental rights (specifically the right to life) of prisoners, whether they are convicts, under-trials, or detainees. In this case Challa Chinnappa Reddy and his son Challa Ramkrishna Reddy were detained in Cell No. 7 at Sub-jail Koilkuntla. On the night of May 5-6, 1977, around 3:30 AM, individuals gained access to the Sub-jail premises and threw bombs into Cell No. 7, resulting in severe injuries to Challa Chinnappa Reddy, who later passed away in a government hospital. His son, Challa Ramkrishna Reddy, sustained some injuries but managed to escape. Challa Ramkrishna Reddy, along with his four brothers and mother, filed a lawsuit against the State of Andhra Pradesh, seeking Rs. 10 lacs in damages due to the negligence of the prison authorities. The trial Court dismissed their lawsuit, but the High Court ruled in favor of the plaintiffs, awarding them Rs. 14,4000 with interest at an annual rate of 6 percent. An appeal was filed by the State Government before the Supreme Court against the judgment of the high court. It was contended by the appellant that prisons across the nation are established and maintained by either the Central or State Government as part of their sovereign

responsibilities in upholding law and order, arguing that the suit for compensation should not be permitted. Conversely, the respondents argued that the principle of sovereign immunity regarding governmental actions had been discredited by numerous decisions from the Supreme Court, which had upheld the awarding of damages against the State, even in cases of custodial deaths. The Supreme Court rejected the appeal and upheld the High Court's decision to grant compensation. In *S. Swathi v. The Station House Officer*, a woman made a complaint to the police regarding stripping of her clothes. She was also beaten. The police refused to register her complaint. She was rather abused. An Advocate made a private complaint on her behalf. The Magistrate took cognizance of it. In retaliation to private complaint, police foisted false, case against the Advocate. The Advocate was detained for 20 days. He was not granted bail. It was held that the action of the police officials in restricting such officials from discharging duties entrusted to him brought down his prestige in society. The Court ordered for the payment of Rs. 50,000/- as compensation to Advocate. The amount was to be recovered from its earring officials. The proceedings instituted against the Advocate were held malicious with ulterior motive. The proceedings were therefore quashed. In *Marri Yadamma v. State of A.P.*, the deceased was a trial prisoner. He was suffering from acute abdominal pain. He was admitted to jail hospital. Later on he was shifted to government hospital. Post-mortem report said that the case of death was due to congestive cardiac failure associated with aortic valve disease. Jail hospital authorities failed to produce original record. It was held that as per medical theory, heart cannot be massively enlarged in a day or two and aortic valve disease cannot develop immediately. It appeared that no care or caution was taken by the respondents to get the deceased examined by a surgeon or a specialist or even though he was complaining of the ailments. It was held that the deceased died due to negligence and tortious act of the jail authorities and jail doctors. Therefore, the court held that State Government was liable for wrongful actions of its servants. A compensation of Rs. 2 lacs was therefore granted, as it was the violation of the fundamental right of the deceased to get the medical help by the trial prisoner. In *Chiranjit Kaur v. Union of India*, the petitioner's husband 'a major in Army' died while in service in

mysterious circumstances. No proper investigation was made regarding the cause of his death. His case was handled with culpable negligence and cynical indifference by the authorities concerned. It was held that the widow and her minor children were entitled 'a compensation' of Rs. six lacs as well as to the special family pension and the children allowance according to the relevant rules. In *Sanjay Gupta v. State of Uttar Pradesh* on the last day of the India Brand Consumer show organized by Mrinal Events and Expositions at Vistoria Park at Meerut in a fire tragedy 64 persons were charred to death and more than 100 persons were injured. The Park was a government ground and the permission was granted by the government to hold the events but due care and in violation of statutory requirements. A FIR was lodged against the accused persons. The State Government appointed a Judicial Inquiry Commission to find out the facts and causes of accident, to decide the ways and means to keep up the situation in control, determination of the liability and the extent thereof and measures to be adopted to avoid the occurrence of such incident in future. The Supreme Court in a writ petition under Article 32 directed the State Government to pay by way of interim measure a compensation of Rs. 5 lakhs more besides Rs.2 lacs paid to the legal representative by the State Government and Rs. 2 lacs paid by the Central Government to the persons who died in the tragedy, Rs.2 lacs more besides Rs.1 Lakh paid by the State Government to the seriously injured persons and Rs.75,000/- more in addition to Rs. 50,000/- paid to those by the State Government who suffered minor injuries.

CONCLUSION

In Indian criminal law, the accused holds a favorable position, being presumed innocent until proven guilty, and is entitled to a fair investigation and a just trial. However, it is essential not to regard the victim as an outsider in the criminal proceedings. Additionally, it is the court's responsibility to safeguard the rights of the victim. If, State fails to protect victim's rights, as it is an essential aspect of delivering justice for victims, then the Constitution of India provides a shield in the form of human rights of a victim. In addition to the conventional punishment approach, providing reparations to victims has lessened the bias toward the accused in the justice system; though in

India, despite some progress in this area, there remain numerous flaws and challenges that require coordinated efforts from all organizations involved in the justice system. After collaborative efforts, clarity and accountability within every facet of the criminal justice system become crucial to ensure the effective implementation of existing provisions. In the Indian Criminal Justice system, the victim's role adheres to a common law tradition that limits their position to that of a witness in the prosecution of an offense. In India, compensation is mandated as a public law remedy in alignment with Article 21 of the Constitution. In instances where the State or other entities neglect to safeguard the life, dignity, and freedom of victims, the Supreme Court has sometimes directed the provision of financial compensation and rehabilitation assistance to ensure justice for the victims

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