

# COMPENSATION FOR DEPRIVATION OF FUNDAMENTAL RIGHTS

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### 1. Tort — Compensation —

The State is responsible for the tortious acts of its employees. An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical

injuries and death. In case of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari 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. Respondent 2, Delhi Administration is liable for payment of compensation to mother for the death of her son due to beating by the SHO of Police Station. *Joginder Kaur vs. Punjab State* 1969 ACJ 28; *State of Rajasthan vs. Vidhyawati* AIR 1962 SC 933 : 1962 Supp 2 SCR 989; *Peoples' Union for Democratic Rights vs. Police Commissioner, Delhi Police Headquarters* (1989) 4 SCC 730, followed.

Supreme Court directed the Delhi Administration to pay compensation to mother of the deceased, a sum of Rs. 75,000. 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 any observation made by the Court in justification of the order shall not have any bearing in any proceedings specially criminal prosecution pending against the police officials in connection with the death of son.

In *Peoples' Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters* ((1989) 4 SCC 730) one of the labourers who was taken to the police station for doing some work and on demand for wages was severely beaten and ultimately succumbed to the injuries. It was held that the State was liable to pay compensation and accordingly directed that the family of the deceased labourer will be paid Rs. 75,000 as compensation.

[*Saheli, a Women's Resources Centre vs. Commissioner Of Police Delhi* ;1990-(001)-SCC -0422 –SC; 1990-(077)-AIR -0513 –SC]

2. Constitution of India – Arts. 32, 142, 226 & 300 – Criminal Procedure code, 1973 – Sec. 357(5) – International Covenant on Civil and Political Rights, 1966 – Art. 9(5) – Evidence Act, 1872 – Sec. 106 – Award of compensation from Public Law Proceedings – Different from private law proceedings – Custodial death – State liable for compensation to deceased's mother- Principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when 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 resort to the remedy in public law under the Constitution by recourse of arts. 32 & 226 – The Court is not helpless and wide powers given to Supreme Court by art. 32, which itself is fundamental right, imposes a constitutional obligation on Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in Constitution, which enable award of monetary compensation in appropriate cases, where that is only mode of redress available – Power available to the Supreme Court under art. 142 is also enabling provision in this behalf – Death in police custody established – Having regard to deceased aged and monthly income between Rs. 1200 to Rs. 1500 – Respondent State is directed to pay the sum of Rs. 1,50,000 to the widow

Constitution of India – Arts. 32 & 226 – Remedy in public law proceedings – The burden is, clearly on the respondents to explain how the deceased sustained those injuries which caused his death – Unless a plausible explanation is given by the respondents which is consistent with their innocence, the obvious inference is that the fatal injuries were inflicted on the deceased in police custody resulting in his death, for which the respondents are responsible and liable.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. Award of compensation in a proceeding under art. 32 by Supreme Court or by the High Court under art. 226 of the Constitution is a remedy available in public law, base on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.'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 this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when 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 resort to the remedy in public law under the Constitution by recourse to arts. 32 & 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under arts. 32 & 226 of the Constitution, for contravention of fundamental rights. Certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really

detract from that principle. This is how the decisions of Supreme Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom.

Constitution of India – Art. 21 – Convicts, prisoners or undertrials – Their fundamental rights under art. 21 – Obligation of State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with procedure established by law, while the citizen is in its custody. Convicts, prisoners or undertrials are not denuded of their fundamental rights under art. 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. The defence of “sovereign immunity” in such cases is not available to the State. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under art. 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under art. 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the Courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve ‘new tools’ to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much as protector and guarantor of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations.

Penal Code, 1860 – Sec. 302 – Evidence Act, 1872 – Sec. 45 – Deceased taken in police custody and found dead next day on railway track without being released from custody – Burden clearly on respondents (State) to explain how deceased sustained those injuries which caused his death – Respondent’s plea that deceased escaped from police custody – Opinion of Professor and Head of Deptt. of Forensic Medicine, who not examined as witness during inquiry – Being cryptic and based on conjectures, not acceptable – Deceased in police custody resulting in his death for which respondent are responsible and liable

The burden is, clearly on the respondents to explain how the deceased sustained those injuries which caused his death. Unless a plausible explanation is given by the respondents which is consistent with their innocence, the obvious inference is that the fatal injuries were inflicted on the deceased in police custody resulting in his death, for which the respondents are responsible and liable.

Criminal Procedure Code, 1973 – Sec. 176 – Custodial death – Inquiry contemplated independently by magistrate and not jointly with police officer when role of police officer itself matter of inquiry –

Joint inquiry report in case cannot made u/s. 176 CrPC and cannot be relied on as statutory report relating to cause of death

Joint inquiry report is stated to have been not made u/s.176 CrPC and was not strongly relied on by the Additional Solicitor General as a statutory report relating to the cause of death. An inquiry u/s. 176 CrPC is contemplated independently by a Magistrate and not jointly with a police officer when the role of the police officers itself is a matter of inquiry.

[Nilabati Behera Alias Lalita Behera V. State Of Orissa;1993-(002)-SCC -0746 -SC  
1993-(080)-AIR -1960 –SC;1993-(099)-CRLJ -2899 –SC]

3. Constitution of India – Arts. 21, 32, 226 – Habeas corpus petition – Compensation – Where the plea of Army that the young boys detained by them had been released was found to be false on enquiry, mothers of boys awarded compensation to the tune of Rs. 1,25,000 each with costs of Rs. 7,500 – Nilabati Behera v. State of Orissa (1993) 2 SCC 746 : 1993 SCC (Cri) 527 followed  
Where the plea of Army that the young boys detained by them had been released was found to be false on enquiry, mothers of boys awarded compensation to the tune of Rs. 1,25,000 each with costs of Rs. 7,500.

The Supreme Court directed the District Judge, Imphal (West), to conduct an inquiry into the circumstances relating to the disappearance of the two boys. The District Judge submitted a detailed report and concluded that there was no cogent evidence to show that the said boys had been released. He, therefore, found that they had not yet been released from the custody of the army.

The case before the Supreme Court was squarely covered by their earlier decision in Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527] the facts whereof were similar to the present case. The Court held that there was an obligation upon it, conferred by Article 32 of the Constitution, to forge new tools necessary for doing complete justice and enforcing the fundamental rights guaranteed by the Constitution. This enabled it to award monetary compensation in appropriate cases where that was the only mode of redress available. The remedy in public law was more readily available when invoked by the have-nots, who were not possessed of the wherewithal for enforcement of their rights in private law, but the exercise was to be tempered with judicial restraint to avoid circumvention of private law remedies, where more appropriate.

The Supreme Court directed the Union of India to pay a sum of Rs. 1,25,000 to the kin of the two boys, the interest whereon was to be paid periodically to them.

[Postsangbam Ningol Thokchom vs. General Officer Commanding and Others;1997-(007)-SCC -0725 –SC]

4 Constitution of India: Compensation for prison death: A convict Ramjit Upadhaya working as a Nambardar in Central Jail, Varanasi, was killed by a co-accused while serving out his sentence under Section 302 IPC in Central Jail, Varanasi. His wife sent a letter petition to the Supreme Court claiming compensation for the death of her husband both in law and on compassionate grounds, Reports were obtained from the Inspector General of Prisons, U.P. and the Superintendent, Central Jail, Varanasi. They confirm that Ramjit Upadhaya was killed by a co-accused. Even though Ramjit Upadhaya 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 (see Francis Coralie Mullin v. Administrator, Union Territory of Delhi and A. K. Roy v. Union of India). Therefore, he was entitled to protection. Since the killing took place when he was in jail, it resulted in deprivation of his life contrary to law. He is survived by his wife and three children. His untimely death has deprived the petitioner and her children of his company and affection. Since it has taken place while he was serving his sentence due to failure of the authorities to protect him, we are of opinion that they are entitled to be compensated. The Supreme Court directed the State of U.P. to pay a sum of Rs. 1,00,000 as compensation to the wife of the deceased.

[Smt. Kewal Pati vs. State Of U.P. and Others;1995-(101)-CRLJ -2920 –SC]

5. Compensation for Police firing on unarmed protestors:On 19th April, 1986, 600 to 700 poor peasants and landless people mostly belonging to the backward classes had collected for holding a peaceful meeting within the compound of Gandhi library in Arwal, a place within the District of Gaya in the State of Bihar. Without any previous warning by the police or any provocation on the part of the people who had so collected, the Superintendent of Police, reached the spot with police force, surrounded the gathering and opened fire as a result of which several people were injured and at least 21 persons including children died. Even though several people died and many more were injured by the ruthless and unwarranted firing resorted to by the police, to give a cover to the atrocities, the police started a false case and therein implicated several innocent people including even some of the people who had been killed in the firing.

The incident drew a lot of publicity and attention both within the State as also outside. There has been no dispute that as a result of the police firing 21 people died and several others were injured. The heirs and relations of a few of the dead people had been compensated by the State of the tune of Rupees ten thousand as found from the record. No Justification has been indicated as to why the said compensation has not been given in every case of death or injury. It is a normal feature of which judicial notice can be taken that when such unfortunate consequences emerge even in police firing, the state comes forward to give compensation. The Supreme Court directed that for

every case of death compensation of Rupees twenty thousand and for every injured person compensation of Rupees five thousand shall be paid.

[Peoples' Union For Democratic Rights vs. State Of Bihar and Others; 1987-(093)-CRLJ -0528 –SC]

6. Constitution of India Art 226 – Habeas Corpus petition – as per the enquiry report brother of the petitioner was arrested by the BSF personnel while on his way to his place of duty as a teacher and has disappeared since then – prayer to release the detenu and constitute magisterial inquiry and to prosecute the respondents under Sec 302 read with Sec 149 RPC and direct them to pay a compensation of Rs. one crore to the family of the detenu – investigations are already in progress – detenu has not been released – as held by various decisions of the SC State is under a legal obligation to compensate the family of the deceased for the pain and sufferings occasioned by custodial death of the deceased.

Case of disappearance has been registered and investigations are already in progress. It being a case of arrest and custodial disappearance, the respondents, Union of India and the BSF personnel are under legal obligation to compensate the family for the pain and sufferings occasioned by loss of liberty and disappearance of their bread earner. Under public law, the Union and its instrumentality are under legal duty to safeguard the life and liberty of the individuals and protect its citizens from its wrong doings which may occasionally result in death of the citizen. There are a no. of decisions of the SC which go in favour of awarding compensation to the family of the deceased who has become a victim of custodial violence. With regard to quantum of compensation details about family strength and other relevant facts having a bearing on the question of award of compensation are quite sketchy. Taking into consideration the various decisions and totality of facts and circumstances the amount of Rs. one lakh is awarded as just and proper compensation to be paid by the Union of India and BSF, to the family of the deceased.

[Mohammad Sultan Mir vs. State Of J. & K.; 2001-(107)-CRLJ -0301 -J&K]

7. Arts.32 & 21 — Police atrocities — Resulted in the death of three persons – Direction issued that an ex gratia payment of Rs. 25,000 be made to widow of each deceased person – State Govt. may recover this amount from tort-feasors. Since death of the persons resulted due to police atrocities hence Supreme Court directed to make payment of ex gratia of Rs. 25,000 to each widow of deceased persons.

[Pratul Kumar Sinha vs. State Of Bihar; 1994-(SU3)-SCC -0100 –SC]

8. Compensation for forced disappearance: A writ petition for issue of Habeas Corpus was taken up on receipt of a telegram. On 11-8-1991 the marriage of one Allampati Sudhakara Reddy, a close friend of the present detenu and two others, namely (i) Raja and (ii) Pakam Sudhakar, took place at Jonnawada temple with one Parveen, daughter of a Sub-Inspector. While so, hearing that the above three persons attended the marriage, the Sub-Inspector along with other constables came to the house of the detenu in the early hours and took him away by using criminal force in a van and from there went to the house of the other two, namely Raja and Pakam Sudhakar, and took them also in the same van, kept all of them in the Central Crime Station, Nellore, and the persuasions of their parents to release their sons having proved futile, the parent of the detenu moved the Addl. Judicial Ist Class Magistrate, Nellore under S. 97 of the Criminal Procedure Code, resulting in the appointment of an Advocate as Commissioner to search and have custody of the three persons for being produced before the Court. By then the three persons were moved to the III-Town Police Station, Nellore. The Commissioner, along with the petitioner went to the Police Station and proceeded to the lock-up room and found all the three in the lock-up. When asked for handing over custody of the three persons, the Sub-Inspector refused to do so and did not also endorse his refusal on the warrant when demanded by the Commissioner.

In view of the facts and circumstances, the Court held that it was proved that the Sub-Inspector along with some constables took away the detenu forcibly from his house in Nellore and confined him in illegal custody; the detenu was kept in illegal custody in the Police-Station and the Sub-Inspector attached to the said Police Station during the relevant time and refused to hand over custody of the detenu to the Commissioner inspite of the fact that the warrant issued by the Court was shown to him, and thus interfered with the due course of judicial process and that the detenu was beaten by the Sub-Inspector and another while he was in the illegal custody in the said police station resulting in number of injuries.

Adequate compensation or exemplary costs were sought for the illegal detention of the detenu and infringing his fundamental rights guaranteed by Art. 21 and 22 of the Constitution. Article 21 guarantees the life and personal liberty of the citizens and the same cannot be deprived of except by the procedure laid down under law. Art. 22 provides for protection against arrest and detention in certain cases. Under Art. 22 no person can be kept by the police under arrest for more than 24 hours without producing the arrested person before the Magistrate. It provides for production of the arrested person within '24' hours before the nearest Magistrate, excluding the travel time. In other matters of detention, the Article mandates that the arrested person should be informed of the grounds of arrest. In the instant case the very fact that the detenu was taken away forcibly is illegal. In the circumstances the forcible taking away and illegal detention of the detenu is in gross violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.

It is pertinent to notice a few decisions of the Supreme Court and other Courts dealing with cases where a victim can be compensated for wrongful arrest and illegal detention. In Rudul Sah v. State

of Bihar, AIR 1983 SC 1086 : 1983 Cri LJ 1644 the petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full dressed trial. It is only after moving the Supreme Court by way of a petition for habeas corpus, he was released. In that background, that Supreme Court observed that an order for payment of money in the nature of compensation can be passed consequential upon the deprivation of a fundamental right to life and liberty of a petitioner. The Supreme Court further observed at page 1989 of AIR :

“Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the powers of the Supreme Court were limited to passing orders of released from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art. 21 secured, is to mulct its violaters in the payment of monetary compensation. 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. Respect for the rights of the 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.”

So observing, the Supreme Court in that case ordered the State to pay to the petitioner a further sum of Rs. 30,000/- as an interim measure keeping it open to the petitioner to recover appropriate damages from the State and erring officials through institution of a suit.

[Ega Venkaiah vs. State Of Andhra Pradesh;1993-(099)-CRLJ -0691 –AP]