

Golden Research Thoughts

RIGHT TO MONETARY COMPENSATION FOR VIOLATION OF FUNDAMENTALS RIGHTS



B. P. Tiwari

Professor & HOD of
Law , Govt. State
Level PG College Bhopal.

ABSTRACT:-

Under the British Constitution or constitution of United States of America right to constitutional remedy was available to person who had suffered legal injury. This position of law has been styled as right to locus standi but with the advent of judicial activism in this field right to locus standi has been relaxed and expanded in the British and American constitution including constitution of India. Right to life and personal liberty provided under Article 21 is the anchor sheet of judicial activism. The expression "personal liberty" covers a variety of rights which go to constitute the personal liberty. The activist interpretation of Article 21 has paved the way of several New fundamental rights. For instance right to privacy, right to shelter, right to speedy trial right, to free legal aid right to get food, right to education and right to monetary compensation for violation fundamental rights etc. have been interpreted to be incorporated in the purview of Article 21.



Keywords:

Monetary compensation, Handcuff, Illegal detained, Mental agony,

INTRODUCTION

There is even not a single article of the constitution to suggest that the court has the power to order of award monetary compensation for violation fundamental rights. The Supreme Court has assumed this power under Article 32 and 142 in a numbers of cases. Now the society needs the jurisprudence of victimology to take care of victims of offences and their violation fundamental rights.

The Public interest litigation and judicial activism have played a dynamic and constructive role in recognizing right to monetary compensation for violation fundamental rights. Some important leading decision rendered by the Supreme court in this area are being discussed here under.

For the first time, in Rudul Shah Vs State of Bihar¹ The Supreme Court delivered its judgment through the then chief justice Y.V. Chandrachud that the court has power to award monetary compensation in appropriate cases, where there has been violation fundamental rights of citizen. In the present case the Supreme Court directed Bihar government to pay "Compensation" of Rs. 30,000/- to Rudal Shah who had to remain in jail for 14 years because of the irresponsible behavior of the state government officer even after his acquittal.

Thus it is clear from this ruling that the court can order payment of compensation to victim of State violence. Similarly in Bhismen Vs State of Jammu and Kashmir². The Supreme Court awarded a sum of Rs. 50,000/- to the petitioner as compensation for violation of his fundamental rights of personal liberty under Article 21 of the constitution. The petitioner who was an MLA was illegally arrested and detained in police custody and deliberately prevented from attending the session of legislative assembly.

When the constitutional right of personal liberty is invaded the invasion is not washed away by his being set free. In appropriate cases the Supreme Court has jurisdiction to award monetary compensation by way of exemplary costs or otherwise. In people's union for Democratic rights Vs Police commissioner, Delhi police Head quarter³. In this case one of the labour was taken to the police station for doing some work. When he demanded wages he was severely beaten and as a result of which he died. It was held that state was liable to pay compensation of Rs. 75,000/- to the family of the deceased.

In M.c. Mehta Vs Union of India⁴. On the Public Interest litigation, a constitutional. Bench of the Supreme Court through justice P.N. Bhagawati, approved the above principle (Monetary Compensation) and reiterated that "In case of infringement of fundamental rights of large number of persons the supreme court can award remedial relief of compensation in writ petition it self⁵. However the court qualified the said award, as an exceptional measure only when the infringement of fundamental rights is gross and patent i.e. incontrovertible and ex facie glaring.

Similarly Saheli Vs Commissioner of Police⁶, The Court directed the government to pay 75,000/- as compensation to mother of victim who died because of beating by police officer. In this case A boy aged 9 years had died because of beating by police officer. The writ petition was filed by the women's and civil rights organization known as saheli on behalf of the mother of the victim.

CUSTODIAL DEATH:-

In Nelabati Behare Vs State of Orissa⁷. The Supreme Court held that the right to monetary compensation for violation of fundamental rights and human rights is a part of guarantee under Article 21. The Supreme Court awarded compensation of Rs. 1,50,000/- to the mother of the deceased who died in the police custody due to beating. In this case, the deceased aged about 22 years was taken into police custody at about 08:00 A.M. on Dec 01, 1987, by ASI in connection with the investigation of an offence of theft in village and detained at the police outpost. He was handcuffed, tied and kept in custody in the police station. His mother went to the police station at about 08:00 P.M. with food for him which he ate. At about 02:00 PM on Dec 02 the petition came to know that dead body of her son with handcuff and multiple injuries was found laying on the railway track. The police version was that deceased had escaped from police custody about at 03:00 A.M. by chewing off the rope and therefore his body was found at the railway track. On the basis of evidence and medical report it was found that the deceased had died due to beating and the court awarded Rs. 1,50,000/- as compensation to the deceased mothers.

An other important case in State of Maharashtra Vs Ravikant S. Patil⁸ an under trial prisoner was handcuffed and paraded on streets he was suspected to be involved in a murder case. A local Newspaper carried a news item that he would be taken in a procession from police station through the main streets of the city for the purpose of investigation The Bombay high court held that handcuffing and parading of the petitioner was unwarranted and violative of Article 21 and directed the inspector of police who was responsible for this, to pay Rs, 10,000/- by way of compensation.

In State of Andhra Pradesh Vs Challa Ram Krishna Reddy⁹. The Apex court while awarding compensation for failure of police to provide adequate security in the jail cell in spite of being asked, observed as under:-

"Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the constitution and not even the state has the authority to violate that right. A prisoner, be a convict or under trial or a detainee, does not cease to be human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights."

COMPENSATION TO PERSONS KILLED IN "FAKE ENCOUNTER"

In peoples union for civil liberties Vs Union of India¹⁰ the petitioner, peoples union for civil liberties, filed a writ petition under Article 32 of the constitution for issuing appropriate direction for

instituting a judicial enquiry into the fake encounter by Imphal Police in which two persons were killed, to direct appropriate action to be taken against the erring officials and to award compensation to the member of family of deceased. In this case the Supreme Court held that taking away of two persons by police on the ground that they are terrorists and killing them would be deprivation of the right to life under Article 21 and held that the family of each of the deceased was entitled to Rs. 1,00,000/- towards monetary compensation.

INTERIM COMPENSATION TO RAPE VICTIM:-

In this case *Bodhisathwa Gautam Vs Subhra Chakraborty*¹¹, the Complainant Subhra Chakraborty was a student of the Baptist college, Kohima and the accused Shri Budhisathwa was a lecturer in that college. According to the FIR filed by the complainant, the accused not only induced the complainant and cohabited with her, giving her false assurance of marriage but also fraudulently went through a certain marriage ceremony with knowledge and thereby dishonestly made the complainant to believe that she was a lawfully married wife of the accused. Bodhisathwa married the complainant before the god he worshipped by putting vermilion on her forehead and accepted her as his wife but later refused to recognize on his life partner. The Supreme Court held right to life under Article 21 and ordered an interim compensation Rs. 1000/- Per Month to the rape victim until her charges of rape are decided by the trial court.

In *Chiranjit Kaur Vs Union of India*¹². An Army officer died in service due to negligence of army officer resulting in great mental agony and physical and financial hardship to widow of the deceased and two minor children. The court awarded the widow of the deceased a compensation of Rs. 06 Lakhs as well as special family pension and children allowance.

In *Sebastain M. Hongray Vs union of India*¹³, two persons were taken in to custody by Army authorities in Manipur but they were not produced before the court in obedience of a writ of habeas corpus and it was presumed that they must have met with unnatural death while in Army Custody. The Supreme Court directed the central government to pay exemplary damages for Rs. 01 Lakhs each to the wives of those persons.

In *Shakuntala Devi Vs Delhi Electric Supply undertaking*¹⁴. In this case the petitioner's husband died when he came into contact with the live electric wire while returning from the place of his employment and got electrocuted. The live electricity wire was laying open in the field in a rainy season and was not repaired in spite of many complaints. The court held that the Delhi Electric Supply undertaking liable for negligence and awarded compensation of ex-iratia amount to the widow and her minor children.

In *Kewal Pati Vs State of Uttar Pradesh*¹⁵. The court has awarded compensation to the widow of a convict who was killed in jail by a co-accused while serving his sentence under section 302 I.P.C. as it resulted in deprivation of his life contrary to law and in violation of Article 21. 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 on Rs. 1,00,000/- to the widow & children of the deceased. Further it was held that the killing in Jail resulted in deprivation of his life contrary law.

In *Chairman, Railway board Vs Chandrima Das*¹⁶. A two Judges Bench of the Supreme Court dealt with the case of the gang Rape of a Bangla Deshi woman by Railway Employees in Railway Building on a writ petition. The court approved the order of Calcutta High Court to compensation of Rs. 10 Lakhs. The court further held that even foreign nationals also can be granted relief under public Law for violation of fundamental rights on the ground of domestic Jurisprudence based on constitutional provisions and human Rights jurisprudence.

In a Case, where a person was wrongfully imprisoned for 05 years on the account of wrong conviction because he was given inadequate legal representation of the supreme court ordered compensation¹⁷. In *Madhu Kaur Vs Government of N.C.T. of Delhi* and another¹⁸ death of the petitioner was caused due to accident due to damaged road. The court held that the state is liable to pay compensation. Failure on the part of the state authorities to maintain road & display caution notice in respect of a pit created on surface of road amounts negligence. It is the duty of the state to see that contractor performs assigned work properly. Negligence on the part of the contractor amount to infringement of right under Article 21 of the Constitutions.

CONCLUSION

In the above cases the court have ordered the government to pay monetary compensation for violation of their valuable fundamental right to life and liberty guaranteed by Article 21 of the constitution. The issues related that fundamental rights are available only to 'Citizens' and not to aliens, the court held in various decisions, the word "life" has been used in Art.

Article 32 and 226 give freedom to the court to mould the remedies and even invent. New remedies for the enforcement of Right to personal liberty. Traditionally the writ jurisdiction was supposed to be an exercise only for stopping or preventing a mischief, not for providing relief for mischief already done. If a person was illegally detained, a court could set him free but could not provide compensation free wrongful confinement or Punishment for the wrong doer. The Supreme Court now felt that mere release of a person from illegal detention would not be an adequate relief for him and would not deter irresponsible police officers from riding roughshod over peoples right. It is therefore used the writ jurisdiction for awarding monetary compensation for violation of fundamental of right to person under Article 21.

FOOTNOTES:-

- 1.AIR 1983 SC 1086
- 2.AIR 1986 SC 494
- 3.(1989)4 SCC 730
- 4.AIR 1987 SC 1086
- 5.Ibid at Page 1091
- 6.AIR 1990 SC 513
- 7.(1993)2 SCC 746
- 8.(1991)2 SCC 373
- 9.AIR 2000 SC 2083
- 10.AIR 1997 SC 1203
- 11.(1996) SC 922
- 12.(1994)2 SCC /
- 13.(1984) 3 SCC 82
- 14.(1995)2 SCC 369
- 15.(1995)3 SCC 600
- 16.AIR 2000 SC 988
- 17.Hussain Vs State of Kerala (200)8 SCC 139
- 18.AIR 2010 (NOC) 385 (Delhi)