

COMPENSATION ON BREACH OF FUNDAMENTAL RIGHTS

Mr.Parmindra Dadhich *

On the off chance that a man has a right, he should of need have a way to vindicate and keep up it and a cure on the off chance that he is harmed in the activity or satisfaction in it; and in reality it is a vain thing to envision a privilege without a cure; need of right and need of cure are equal. The judgment of *Ashby v. White* recognized the well known principle of *ubi jus ibi remedium*. Holt C.J. in this case observed that “if man will multiply injuries, action must be multiplied too: for every man who is injured ought to have recompense”¹. Man is a social being and overlapping and encroaching of the other’s right by one’s action is quit deducible in the human society. For such situations, the law has developed the concept of compensation. It is an age old concept of recompensing an injured person by some pecuniary amount.

The "standard of law" requires that the wrongs ought not to remain unredressed. Every one of the people or persons carrying out wrongs ought to be at risk in an activity for harms for rupture of common law or for criminal discipline. "Pay" implies anything given to make things comparable, a thing offered or to present appropriate reparations in light of misfortune, reward, compensation or pay; it need not along these lines, fundamentally be as far as cash, since law might indicate standards on which and the way in which pay is to be resolved and given. Pay is a demonstration which a court requests to be done, or cash which a court requests to be paid, by a man whose demonstrations or exclusions have created misfortune or harm to another all together that along these lines the individual damnified might get approach esteem for his misfortune; or be made entire in appreciation of his harm; something given or acquired as an identical; rendering of equal in quality or sum; a comparable given for property taken or for a damage done to another; a reward given for a thing got; reward for entire harm endured; compensation or fulfillment for harm or harm of each depiction. The expression "remuneration" is not normally utilized as an identical to "harms", in spite of the fact that pay might frequently must be measured by the same tenet as harms in an activity for a

* Ph.D. Scholar , Mody University of Science and Technology,Rajasthan

¹ As per HOLT C.J. in *Ashby v. white* at p. 955.

rupture. The expression "remuneration" as pointed out in the Oxford Dictionary implies what is given in reward, a proportionate rendered; "harms", then again, constitute the total of cash, asserted or pronounced to be paid in pay for misfortune or damage maintained. "Remuneration" is an arrival for the misfortune or harm supported. Equity requires that it ought to be equivalent in worth, in spite of the fact that not alike in kind. "Compensation" is a return for the loss or damage sustained. Justice requires that it should be equal in value, although not alike in kind.²

As long as obligations exist in our everyday lives, it is reasonable to assume that these obligations- whether they arise out of contract, tort or restitution- will be breached. "Once the plaintiff has established that the defendant is in breach of an obligation, he will normally seek damages to compensate for the loss flowing from the breach."

The evolution of the principles of natural rights in the form of human rights across the globe is a great development in the jurisprudential field in the contemporary era. A host of international covenants on human rights and the concern for effective implementation of them are radical and revolutionary steps towards the guarantee of liberty, equality and justice. Though the subject is new, the content is not and these rights have been recognized since ages and have become part of the constitutional mechanism of several countries. India recognized these concepts in the part III (Fundamental Rights) of the Indian Constitution and provided for the effective implementation of those rights. The Indian judiciary on the other hand has played an important role by its expansive interpretation of all the Fundamental Rights. In *Francis Coralie Mullin v. The Administrator*³ Justice P.N. Bhagwati stated:

"By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world."

² Divisional Controller, *KSRTC v. Mahadeva Shetty*, 2003(7) SCC 197.

³ 1981 AIR 746, 1981 SCR (2) 516.

It has been the constant endeavor of the Indian judiciary to make all the Fundamental Rights in the Constitution of India more meaningful and expansive. “Life” today does not merely mean mere animal existence. Also the expression “personal liberty” has been given the widest interpretation by the judiciary. In *Maneka Gandhi*⁴, the Supreme Court said:

“The expression ‘personal liberty’ in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19”.

The Court continued to say:

“The attempt of the court should be to expand the reach and ambit of the Fundamental Rights rather than to attenuate their meaning and content by a process of judicial construction”.

Though the concept of compensation does not appear in any article of the Indian constitution under part III, the Supreme Court by its expansive interpretation has traced it under various provisions of the Constitution. A person with whom a wrong is committed generally seeks compensation under the law of torts at the local civil courts. This process is time consuming and it takes a long time for the victim to get compensation through this process although the damages awarded under torts are well defined and categorized under the heads of compensatory, nominal and punitive. The least amount courts provide is the direct financial loss suffered by the victim in terms of medical cost or the cost to repair the property or any such similar loss.

As according to Holt CJ in the case of *Ashby v. White*⁵ remarked:

“If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it and a remedy if he is injured in the exercise or enjoyment of 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...”

This judgment envisages that where there is a right there must have some remedy to enforce those rights. Now under part III of the constitution, various rights have been enumerated from Article 12 to 35. If the framers of the constitution have given these

⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁵ (1703) 92 ER 126.

rights to the people of India, there must have been some remedy to the injured persons in case of infringement of these rights. Article 32 was considered to be the remedy, right from the inception of the Constitution, for the vindication and maintenance of the Fundamental Rights. But there were doubts, whether compensation could be granted under that Article in case of infringement of these fundamental rights. Dr. Ambedkar in Constitutional Assembly debates observed about Article 32 as follows:

If I was asked to name any particular Article in this constitution as the most important- an Article without which this Constitution would be a nullity- I could not refer to any other Article except this one..... It is the very soul of the Constitution and the very heart of it.⁶⁷

Unless there is effective machinery for the enforcement of the rights, the declaration of the Fundamental rights is meaningless. It is a remedy which makes the right real. If there is no remedy there is no right at all. It was therefore thought fit, after enumerating a long list of Fundamental Rights, by our Constitution framers, that there must also be some effective remedy for the enforcement of these rights. So the constitution framers provided an effective remedy for the enforcement of these under Article 32⁷ of the Constitution. Article 32 is itself a Fundamental Right. Article 226 also empowers all the High Courts to issue the writs for the enforcement of Fundamental Rights.

The Indian Supreme Court has time and again formulated new methods for securing fundamental rights under Article 32. The Article 32 (2) provides the Supreme Court with power to issue directions, orders or writs for enforcement of any fundamental right. The power of the Supreme Court under Article 32 is not

⁶ Constitutional Assembly Debate Vol VII at 953.

⁷ Article 32 reads as follows: 32. Remedies for enforcement of rights conferred by this Part

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
- (2) 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 the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

subject any limitations and the court has used these powers to both prevent and remedy the violations of fundamental rights. The only limitation is that the proceedings must be ‘appropriate’ for the enforcement of a fundamental right. 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 right pattern or straight jacket formula, the reason being that they realized that the people were poor and illiterate and insistence on any right formula would be self-defeating.

In 1975, a judgment by Madras High Court in *Thangarajan v. Union of India*, maybe offered route to the idea that compensation can likewise be conceded under the Article 32 of the Constitution. All things considered, a divisional seat of Madras High Court held, “As pointed out by the Supreme Court in, there is hardly any justification for the State to claim immunity especially after India has become a democratic republic and a Constitution had been enacted. It is cruel to tell the injured boy who has suffered grievous injuries and was in hospital for over six months incurring considerable expenditure and been permanently incapacitated that he is not entitled to any relief as he had the privilege of being knocked down by a lorry which was driven in exercise of sovereign functions of the State. Considering the circumstances of this case, we would strongly recommend to the Union Government to make an ex gratia payment of Rs. 10,000, to the appellant herein.”

Till 1983, the cure under Article 32 was principally used to keep the infringement of Fundamental Rights as it were. This was perhaps because of the acknowledgment of the principle of sovereign safety, because of the British guideline in India. The Case of Rudal Shah was the principal instance of its kind, when the Supreme Court of India conceded pay under general society law of the nation. The instance of Rudal Shah was the achievement case for understanding that remuneration can likewise be conceded under Article 32 of the Constitution. Hon'ble Justice Chandrachud while communicating worries over the candidate, who was confined for a long time even after the exoneration in his trial expressed, “It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, Civil and Criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the

important question for our consideration is whether in the exercise of its jurisdiction under article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full-dressed trial. He filed a Habeas Corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison- after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass appropriate order for the payment of compensation in this Habeas Corpus petition itself.”

The Hon’ble justice continued by saying:

“.....In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release 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 Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of 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 the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.”

As indicated by the Court, the ‘Compensation’ was in the way of a palliative, keeping in mind the end goal to give a superior intending to one side to life ensured under Article 21. This was a way breaking choice forcing on the state risk to pay remuneration to casualties of its disorder. Rudal Shah's case was the main instance of its own kind, and a portion of the expressions utilized,

for example, pay just as a part of extraordinary cases, can be seen basically today. In any case, the judgment ought to be acknowledged for making a beginning in this heading.

With respect to risk of the state, now the Supreme Court did not observe the precept of sovereign resistance while choosing cases including infringement of Fundamental Right, and it has honored pay in various cases to the oppressed persons whose key rights have been damaged (Although the regulation of sovereign insusceptibility was at last weakened in *N. Nagendra Rao's* case). There are a few cases in which the Supreme Court and the High Court made the State at risk to pay remuneration as an open law cure overlooking the request of the State about its resistance from obligation.

The Court, in various cases has held that under Article 32 it has energy to give medicinal help which incorporates the ability to concede remuneration in fitting situations where the crucial privileges of poor people and disadvantageous individual are disregarded. Be that as it may, Article 32 can't be utilized as a substitute for guaranteeing remuneration for the encroachment of central rights through the conventional procedure of a common 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 poverty or disability or socially or economically disadvantage position to seek remedy in the civil court.”⁸

The instance of *Sebastian Hongary v. Union of India*⁹ came after the declaration of *Rudal Shah's* case. For this situation, the Supreme Court recompensed compensation in admiration of persons missing from armed force authority. The following case in such manner was the situation of *Bhim Singh v. Condition of Jammu and Kashmir*¹⁰, in which an individual from state authoritative get together was confined with no legal cause and consequently anticipated by the police to go to the State Legislative Assembly and release his protected rights. The court took an extremely concerning note and expressed:

“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 lesser mortals! Police Officers who are the custodians of law and order should have the

⁸ *M.C. Mehta v. Union of India* AIR 1987 SC 1087.

⁹ AIR 1984 SC 571.

¹⁰ AIR 1986 SC 494.

greatest respect for the 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. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity”.

While the court was concerned about the infringement of this constitutional right, the question which clouded the Judges was that what shall be the proper remedy to the victim now. On this question Court said:

“Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs otherwise is now established by the decisions of this court in *Rudul Shah v. State of Bihar and Anr.*¹¹ and *Sebastian M. Hongray v. Union of India*¹². 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 cases 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 the Registrar of this court and paid to Shri Bhim Singh.”

It was the opinion of the court that it could set right a mischief complained of by a person in respect of arrest and violation of his rights by the award of compensation. The court also deviated from the rule of Habeas Corpus (bring the body before the court) being

¹¹ 1983 (3) SCR 508.

¹² AIR 1984 SC 1026.

remedial and made it punitive. One finds in Bhim Singh's case, a collection of rules and reasoning which evolved both in Rudal Shah's case and Sebastian Hongary's case- a mixture of palliative compensation and exemplary costs.¹³

In *M.C. Mehta* case¹⁴, court said that while dealing with such applications for compensation for enforcement of right to life in Article 21 the Court cannot adopt a hyper-technical approach which would defeat the end of justice? The Court in the instant case said that the scope of Article 32 is wide enough to include the power to grant compensation for violation of fundamental rights. The power of the court under Article 32 is not merely preventive, that is, preventing the infringement of fundamental rights, but also remedial in nature, i.e., power to grant compensation. The court said, "The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases." the Court also clarified that the compensation would be given only in "appropriate cases" and not in every case. The "appropriate cases" are those cases where "the infringement of fundamental right is gross and patent" that is incontrovertible and *ex facie* glaring and either such infringement should be on a large scale affecting the fundamental right of a large number of persons or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person affected by such infringement to initiate and pursue action in civil courts.

Again in *M.C. Mehta v. Union of India*¹⁵, the Supreme Court directed the management of the Company to deposit a sum of Rs. 20 lacks by way of security for payment of compensation claims of the victims of Oleum gas leak with the Registrar of the Court. In addition, a bank guarantee for a sum of 15 lacks was also directed to be deposited which shall be encashed in case of any escape of chlorine gas within a period of three years from the date of the judgment resulting in death or injury to any workmen or any person living in the vicinity. The Court allowed the partial reopening of the plant subject to these conditions.

¹³ Source: Article written by Vikram Raghavan titled: Compensation through Writ Petitions: An Analysis of Case Law.

¹⁴ *Ibid.*

¹⁵ (1986) 2 SCC 176.

Today, by a progression of judgments¹⁶, it is clear that where the encroachment of Fundamental Right is at writ expansive, impedance by the Apex Court and in addition High Courts is advocated. The Courts have gone to the degree of recompensing pay for abusing the optional forces of ministers¹⁷. The alleviation of pay is additionally given for environment harms under Article 32 and 21¹⁸. On account of Chairman, *Railway Board v. Chandrima Das*¹⁹, the High Court granted compensation to the tune of ten lakhs on a Public Interest Litigation recorded by a public spirited advocate of Calcutta High Court. The Supreme Court dismissed the contention that the victim ought to have drawn closer the Civil Courts for harms and that a writ petition was not viable in the interest of the victim by another legal practitioner.

In *Rabindra Nath Ghosal v. College Of Calcutta*²⁰, the Supreme Court was called upon to declare the exclusive of the finding of the divisional seat of Calcutta High Court that the moment case is not a fit case for conceding harms under public law. The guideline of conceding harms under public law was emphasized by the incomparable court as takes after:

“The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens.”

Therefore, the power and jurisdiction of Supreme Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights

¹⁶ Peoples Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarter (1989) 4 SCC 730; Chiranjit Kaur v. Union of India AIR 1990 SC 513; Kewal Pati v. State of U.P. (1995) 3 SCC 600.

¹⁷ Common Cause A Registered Society v. Union of India, AIR 1997 SC 1886; Shiv Sagar Tiwari v. Union of India, AIR 1997 SC 83.

¹⁸ Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212; Vellore Citizen Welfare Forum v. Union of India, (1996) 5 SCC 647; M. C. Mehta V. Union of India, AIR 1997 SC 735.

¹⁹ AIR 2000 SC 988.

²⁰ (2002) 7 SCALE 137.

under Article 21 of the Constitution are infringed are thus, well-established.

Public law procedures fill an alternate need than the private law procedures. The help of financial pay, as praiseworthy harms, in procedures under Article 32 by the Supreme Court or under Article 226 by the High Courts, for built up encroachment of the indefeasible right ensured under Article 21 of the Constitution is a cure accessible out in the open law and depends on the strict obligation for contradiction of the ensured essential and indefeasible privileges of the resident. The reason for public law is to socialize open force as well as to guarantee the national that they live under a legitimate framework which expects to secure their hobbies and save their rights. In this manner, when the court shape the help by allowing "remuneration" in procedures under Article 32 or 226 of the Constitution looking for implementation or assurance of crucial rights, it does as such under the general law by method for punishing the wrongdoer and altering the risk for people in general wrong on the State which has fizzled in its open obligation to ensure the basic privileges of the resident. The installment of remuneration in such cases is not to be comprehended, as it is by and large comprehended in a common activity for harms under the private law however in the more extensive feeling of giving alleviation by a request of making 'monetary amends' under people in general law for the wrong done because of break of open obligation, of not ensuring the essential privileges of the resident. The compensation is in the way of 'exemplary damages' recompensed against the wrongdoer for the breach of its public law obligation and is autonomous of the rights accessible to the abused party to case remuneration under the private law in an activity in light of tort, through a suit established in a court of capable ward or/and arraign the guilty party under the corrective law. But there is one more thing to be remembered in this regard. The action of any public authority or any public officer, howsoever motivated cannot call for the order of compensation under Article 32 or Article 226, unless it is per se without the Authority of law. This was the reason that in case of *Raghuvansh Dewanchand Bhasin*²¹ the Hon'ble Supreme Court refused to enhance the compensation granted by Bombay High Court.

²¹ *Raghuvansh Dewanchand Bhasin v. State Of Maharashtra & Anr*, Source: <http://indiankanoon.org/doc/1934058/>, last visited on 18/03/2016.

In any case, it would not be right to accept that each minor infraction of public duty by each public officer would praise the court to give remuneration in a request under Articles 226 and 32 by applying the standard of public law continuing. The Court in activity of exceptional force under Articles 226 and 32 of the Constitution, in this manner, would not recompense harms against public powers just on the grounds that they have made some request which ends up being *ultra vires*, or there has been some inaction in the execution of the obligations unless there is noxiousness or cognizant misuse. Before praiseworthy harms can be honored it must be demonstrated that some major directly under Article 21 has been encroached by self-assertive or impulsive activity with respect to the public functionaries and that the sufferer was a vulnerable casualty of that demonstration.

२०१४