

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.9267 of 2017
and W.M.P.Nos.10241 to 10243 of 2017

S.Vijayashankar

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by it's Chief Secretary,
Fort St.George, Chennai-9.
2. The State of Tamil Nadu,
Rep. by it's Home Secretary,
Fort St.George, Chennai-9.
3. The Director General of Police,
Mylapore, Chennai - 4.
4. The Additional Director General of Police,
(Social Justice and Human Rights)
Mylapore, Chennai - 4.
5. The District Collector,
The Collector Office,
Cuddalore District, Cuddalore.
6. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram District, Villupuram.
7. The Superintendent of Police,
Cuddalore District, Cuddalore.
8. The Deputy Superintendent of Police, CBCID
District Police Office Compound, Cuddalore.
9. Mr.Raja
The Inspector of Police
Neyveli Township Police Station
District, Villupuram.

10. Kaligadevi
Constable at Neyveli Township Police Station,
Villupuram District.
11. The Inspector of Police
Nellikuppam Police Station,
Nellikuppam, Cuddalore District.
12. The Dean,
JIPMER, Dhanvantri Nagar,
Gorimedu, Pondicheery-605006.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to pay compensation to legal heirs of deceased Subramaniam of Rupees twenty lakhs for custodial torture resulted in death, within the time limit fixed by this Court.

For Petitioner : Ms.P.Uma

For Respondents 1 to 8 & 11 : Mr.P.H.Aravind Pandian,
Additional Advocate General
Assisted by
Mr.E.Manoharan
Addl. Govt. Pleader

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Claiming himself to be a Co-Convenor of Campaign for Custodial Justice and Abolition of Torture, petitioner has filed the instant public interest litigation seeking a Writ of Mandamus to direct the respondents to pay compensation of Rupees Twenty lakhs to the legal heirs of deceased E.Subramaniam (35 years) namely Revathi, wife (28 years), daughters Subashini (9 years), Nivashini (6 years), Sona (4 years) and son Varshid (3 years), as the deceased was taken to illegal custody on midnight of 28.5.2015, detained illegally and was inflicted with grave injuries by the 9th respondent and his team for 7 days and the deceased succumbed to the injuries, in the 12th respondent hospital on 06.06.2015.

2. It is submitted by the petitioner that a state wide campaign of 190 members, comprising of victims of custodial injustice, social activists, political parties, voluntary organizations, trade union members, human right activists, local government institutions, representatives from Dalits, Adivasis, teachers, lawyers, etc., from 18 Districts was conducted. The

main objective of this campaign is to create awareness among the public about the rights of the people in custody, to build support for the proposed reforms needed in custodial institutions based on human rights standards, to monitor the functioning and to bring to light the overall human rights violations in the state custodial institutions and to support victims with services such as legal aid, counselling, shelter and rehabilitation.

3. Petitioner has further submitted that E.Subramaniam S/o.Ekambaram was aged 35 years, at the time of death, was survived by his wife named Revathi (28 years), daughters Subashini (9 years) Nivashini (6 years), Sona (4 years) and son Varshid (3 years). On the midnight of 29th May 2015, a Police team including the 9th respondent took the deceased from his house, to enquire him, in relation to murder of one Mumtaj. The 9th respondent and his team illegally detained the Subramaniam, for a week and tortured him and ultimately, he died in the Hospital, due to the injuries caused by the 9th and 11th respondents.

4. Petitioner has further submitted that he and his colleagues conducted a fact finding enquiry in relation to the death of Subramaniam and obtained information from his legal heirs, neighbours, police and hospital. Wife of the deceased Subramaniam stated that her husband - deceased Subramaniam completed his education as a fitter in ITI. He had also undergone industrial training (ITI Fitter Course) and finished his apprenticeship in Neyveli Lignite Corporation. Thereafter he was working for a Sub-Contractor with Neyveli Lignite Corporation namely Nila Engineering Works from the month of April 2015. While he was working in Neyveli, he used to visit his relative Saba Amma alias Elizabeth. On 23.05.2015 a woman named Mumtaz aged about 47 years who was living next to Saba Amma's house was murdered and her gold jewelries were stolen by some body. On 29.05.2019 midnight, the 9th and 11th respondents along with their team came to the house of Subramaniam and forcefully took him, to custody after beating him. They searched the house and took away the mobile phones, apprenticeship certificates, along with Subramaniam, in their Jeep.

5. Petitioner has further submitted that on 29th morning, wife of Subramaniam, along with her three children went to the 9th respondent Police Station. The 9th respondent responded very harshly and told that her husband had murdered Mumtaz. She cried before them and told that they had gone to Velankani Church and returned only on 25.05.2015 to Pattanampakkam. She also told them to verify the photos in the mobile-phone, seized by the 9th respondent. But they did not heed to her words. They did not disclose the place of detention and did not allow her to see her

husband. Two to three days continuously she visited the 9th respondent, but could not meet her husband. Without having any other option, on 31.05.2015, she along with her Advocate went to the Office of Superintendent, Cuddalore, 7th respondent herein and gave a complaint about the illegal detention. Thereafter, the 9th respondent allowed wife Revathy to see Subramaniam. He was kept in a dark room behind the Police Station. Subramaniam was very weak and was lying on the floor only with his under garments and could not even stand up. Seeing Subramaniam's condition, his wife broke down.

6. Petitioner has further submitted that the 9th respondent immediately sent them out and did not allow her to interact with Subramaniam. On the next day, the 9th respondent took Subramaniam's wife and elder child in a Jeep to Mayiladuthurai and ordered them to do a role play, as to how they got out from the railway station and took the bus to Velakani Church. At that time, she saw her husband in another vehicle along with police persons.

7. Petitioner has further submitted that on 04.06.2015, Revathy was called by the 9th respondent and was informed that investigation was over, Subramaniam was innocent and handed him over to his wife. But his condition was very serious. He couldn't stand, walk, his legs and hands were swollen and his body was clotted with blood stains. The 9th respondent instructed Revathy to give treatment to her husband and then to take him home. Revathy cried that she had no money to hire a vehicle to take him to a hospital to provide treatment. Then the 9th respondent sent a TATA Sumo with two police persons, Subramaniam was taken to JIPMER Hospital. On the way, Subramaniam told to his wife that he could not breath and not passed urine, for the past two days and his stomach was swollen. His hands, fingers and toes were also swollen. His body was full of wounds. He complained of acute pain. In JIPMER, doctors asked about the wounds and he told them that police had brutally beaten him. He had also told that he was tied upside down in a cashew tree, a log of causausrina was tied to his shoulder and policeman sat on it; they jumped on his lap with heavy boots; beaten his foot, poked a needle in the toes and unplugged the nails. Even though he was admitted in the hospital for treatment, he succumbed to injuries on 06.06.2015 early morning 4.00 am. Based on a complaint, FIR was registered in Crime No.269/15, under Section 174(1) CrPC., in Nellikuppam Police station. On 7th June' 2015, people in the said locality blocked the road and demanded necessary action against the police personnel; to give compensation to the destitute family and to provide a government job to the wife of deceased. Regional Development Officer assured to fulfill all their demands and hence Subramaniam's body was received by the relatives.

8. Petitioner has further submitted that the deceased Subramaniam was a calm person, not involved in any conflict and a good family man. The Superintendent of Police, Cuddalore, 7th respondent herein, also accepted that he had received complaint on 31.05.2015, from the wife of deceased Subramaniam, but she was on leave and so she had no knowledge about the same and she assured to take action after obtaining the Postmortem report.

9. Petitioner has further submitted that JIPMER Outpost Police taken a complaint that deceased Subramaniam was attacked and beaten up by some persons and they passed the said information to Nellikuppam Police Station, since the deceased Subramaniam's house is located within the jurisdiction of Nellikuppam Police Station. But the deceased was taken by Neyveli police, the 9th Respondent and brutally injured and succumbed to injuries. The Inspector of Police, Nellikuppam Police Station, was not informed about the arrest and detention of the deceased Subramaniam by the 9th respondent, without jurisdiction and brutally injured and he succumbed to injuries.

10. Petitioner has further submitted that a complaint has been filed before 10th respondent-Nellikuppam Police station against 9th Respondent and said complaint was registered under section 174(1) CrPC. The police has failed to follow the guidelines, as per Supreme Court's direction. No arrest memo was issued. Even though the neighbours and family members were present at the time of arrest, the 9th respondent or his team has not taken the signature from anybody. Location of arrest, time or date not documented. Whether diary entry has been made or not, is also not known. No medical test was conducted to the deceased (Section 53(1) CrPC) and not produced before the Magistrate. The 9th Respondent failed to communicate the place of detention. No pre-arrest, or post-arrest procedure was followed by police. The complaint made before the 7th respondent by the wife of deceased is a strong evidence against the illegal arrest. The illegal action of 9th respondent was not questioned by the 7th respondent in time. A family comprising of 4 kids and a young woman have lost their bread winner.

11. Petitioner has further submitted that the 9th respondent curtailed the liberty of Subramaniam illegally and detained him for 7 days, under the guise of investigation and grave injuries were inflicted upon him and that in critical stage, he was admitted in the 11th respondent. 9th respondent conspired to register a fake FIR. The State has a vicarious liability to pay a reasonable compensation for the misconduct of its servants who had beaten up a poor person mercilessly in the lockup and died subsequently, thereby, failed in their duty to protect a citizen's life.

12. Petitioner has further submitted that the case of Subramaniam will fall under the parameters of Supreme Court's observation, in custodial death cases. Legal heirs of deceased Subramaniam are entitled to get compensation for the loss caused to them due to the custodial torture and barbaric acts of the Police. State has vicarious liability to pay compensation to the legal heirs for the act of their servants and sudden loss of the bread winner.

13. Petitioner has further submitted that Subramaniam is survived by his, Wife, Revathi 28 years, and four small kids aged 9, 6, 4 and 3 years respectively. All the legal heirs were completely under the care and protection of Subramaniam. The poor situation of the family, age of the deceased, age and financial inability of the surviving members need urgent intervention for their safe survival. Situation warranted has to be considered as an urgent matter. The vacuum which arose due to the loss of the earning member in the family has to be fill up by the State. With 4 small kids, the wife of the deceased is living with the mercy of relatives. If Subramaniam was alive, he would have provided all the facilities to the family. Subramaniam's family has lost the breadwinner, due to the illegal act of the respondents 9 and 11. State is liable to provide them, with a job to fill up the said vacuum. Urgent intervention of this Court is necessary to direct the respondents to provide facilities for the family, to cope with the situation, due to the illegal act of the instrumentality of the state. By providing job, monetary assistance and facilities for food, clothing, education, health and shelter, without interruption, the surviving members, would cope with the situation to an extent.

14. Petitioner has further submitted that the deceased Subramaniam's case is under the investigation of CBCID. But it is in a snail pace. None of the accused were arrested or suspended till date. That the wife of deceased is only 30 Years. She is very young and her family situation is also very pathetic. Considering the circumstances of the family of the deceased, this Court may be pleased to issue directions to the 1st respondent to take necessary steps to provide a suitable government job along with compensation to the widow of deceased Subramaniam based on her qualification to cope with the situation for loss of the sole earning member of the family and to survive and to bring up her children.

15. When the matter came up on 06.08.2019, this Court passed the following order:

"Initially a case in Crime No.04/2015, has been registered under Section 174 (i) Cr.P.C. on 01.08.2015. Subsequently, the same has been altered to

176(1-A) of Cr.P.C. After conducting a judicial enquiry, learned Judicial Magistrate-I, Cuddalore, has submitted a report on 06.06.2016, before the learned Chief Judicial Magistrate, Cuddalore. prima facie finding that the deceased Mr.Subramani was beaten by Inspector/Mr.Raja, then working in Neyveli Town Police Station and others. Charge sheet has been filed under Sections 218, 330, 343, 348 and 304 part (ii) of the I.P.C. and the case is stated to be pending trial in PRC.01/2017, dated 12.05.2017. From the above it could be deduced that there is a specific finding of torture and injuries caused to the deceased Mr.Subramani, etc.

2. Copy of the report filed under Section 176(1-A) of Cr.P.C. in Crime No.04 of 2015, is required for the purpose of considering the prayer sought for in the instant writ petition.

3. Learned Principal District Judge, Cuddalore is directed to send a copy of the said report by fax."

16. When the matter came up on 07.08.2019, Mr.E.Manoharan, learned Additional Government Pleader appearing for the official respondents submitted that if this Court deems it fit to consider that the State is bound to compensate the family of the deceased Subramaniam who died in custody, then the quantum of compensation be restricted to Rupees five lakhs as done in the order made in W.P.(MD)No.5272 of 2006, dated 06.08.2010 [Sangaiyya v. State of Tamil Nadu]. He further submitted that if quantum of compensation payable by the State is determined by this Court, then the right to recover from the accused be given to the State. He also submitted that the State has requested Mr.Aravind Pandian, learned Additional Advocate General, Government of Tamil Nadu, to defend.

17. Accepting his request for adjournment, we posted the case on 08.08.2019.

18. Today, placing reliance on the decisions of the Hon'ble Supreme Court in D.K.Basu v. State of W.B reported in 1997 (1) SCC 416 and Nilabati Behera v. State of Orissa reported in 1993 (2) SCC 746, Mr.Aravind Pandian, learned Additional Advocate General, Government of Tamil Nadu, fairly accepted that public law remedy is available to the victims of custodial death. But vehemently objected to the method of computation of quantum of compensation. According to him, the principle/method followed for awarding compensation to accident victims, should not be followed in the case of every tortuous liability.

19. Placing reliance on a decision of this Court in Nilabati Behera v. State of Orissa reported in 1993 (2) SCC 746, submission of the learned Additional Advocate General,

Government of Tamil Nadu, is that though public law remedy, is available, the mode or method in arriving at the quantum of compensation, does not mandate any application of principles, followed in the Motor Accident cases to be ipso facto followed in awarding compensation to the victims of custodial death, and that the victims have to approach the competent civil Court.

20. Though Mr.Aravind Pandian, learned Additional Advocate General, Government of Tamil Nadu, submitted that there cannot be a public interest writ petition, for claiming compensation, attention was brought to the notice that the decisions in Union Carbide Corporation v. Union of India reported in 1991 (4) SCC 584 and D.K.Basu v. State of W.B reported in 1997 (1) SCC 416, were public interest litigations and were entertained.

21. Per Contra, Ms.P.Uma, learned counsel appearing for the petitioner submitted that, one of us, (Hon'ble Mr. Justice S.Manikumar) in the decision of this Court in Duraisamy v. The Executive Engineer, Operation & Maintenance reported in 2012 (2) CWC401, has applied the method of computation under the Motor Vehicles Act for compensating the victims and that a sum of Rs.3,40,000/-, was granted to the legal representatives of the deceased. She drew the attention of this Court to another decision of this Court, where one of us (Hon'ble Mr. Justice S.Manikumar), in Commissioner, Corporation of Chennai v. State of Tamil Nadu reported in 2017 (1) MLJ 650, and submitted that the issue, as to whether, a writ petition, under Article 226 of the Constitution of India, can be entertained, under public law remedy. According to her considering the infringement of the constitutional rights, there is no restriction imposed on the victims in approaching the Court, under Article 226 of the Constitution of India.

22. Learned Counsel for the petitioner further submitted that at the time of death, the deceased was working as a painter and survived by his wife and four minor children. According to her, though there are no documents to prove the monthly income of the deceased. However, as per the Minimum Wages Act, during 2015, the minimum wages per day for Painters and Varnishers in Cuddalore area falling under Zone-B, was Rs.378.50. She requested the Court to award just compensation, taking into account the monthly income earned at the time of the death in custody.

23. Going through the files Ms.P.Deepa, Inspector of Police, CB-CID, present in Court acknowledges the submissions of the learned Counsel for the petitioner that the deceased Subramanian died in custody.

24. Today (07.08.2019), when the matter was taken up, on the basis of the order, dated 06.08.2019, passed by us, the Principal District Judge, Cuddalore District vide D.No.6436/2019, dated 06.08.2019, has submitted a copy of the report filed under Section 176(1-A) of Cr.P.C. in Cr.No.4/2015 of CB-CID, Cuddalore. We have perused the same. Report under Section 176(1-A) of Cr.P.C., in Cr.No.4/2015 of CB-CID, Cuddalore, reads thus,

"The brief version behind the case which is under inquest, is that, One Subramani, husband of the complainant namely Revathy was being picked up by Police personal attached to Neyveli Township Police Station from the residence of deceased at P.N.Palayam, Panruti Taluk on 28.5.2015 around 1.00 A.M. for interrogation in connection to crime No.4/2015 of Neyveli Town Ship Police Station, It is alleged by the complainant, that said Subramani was subjected to custodial torture from 28.05.2015 to 04.06.2015, then he was handed over to the complainant on 06.06.2015 around 3.00 P.M. with an advise to admit the deceased in the JIPMER Hospital as his health was not in good condition. Accordingly, said Subramani was admitted into the hospital with the help of Police Personal who were attached to above police station. It is the specific version of the complainant that, on 05.06.2015 alone she was allowed to see her husband who was kept in separate building detached from the premise of police station. When she so seen her husband, she found him with multiple injuries. Then, the deceased who was said to be admitted in JIPMER, succumbed to death on 6.6.2015 around 4.00 A.M., the cause of death as per Post Postmortem, is that Acute Tubular Necrosis Renal Failure.

2. The general publication and paper publication of contemplated inquest and then examination of the witnesses and collection of documents:

Before I took the matter for examination of the subjects concerned, as per the guidelines given in the circular in dis No. A2/30/2015 dated 23.11.2015 by the Hon'ble Chief Judicial Magistrate, I have caused paper publication in Dinamalar dated 20.10.2015 having circulation in Cuddalore District, through the Investigation Agency namely CBCID, Cuddalore. Simultaneously, I have also issued a letter to the Village Administrative Officer through Tahsildar Cuddalore to affix the notice that the proposed inquest in respect of the suspicious death of Subramani is contemplated and the same is assigned to me. The said intimation was disseminated by the Village Administrative Officer on 4.1.2016 around

10.30 A.M., Melpattampakkam in the local area by general publication. Then I issued summons to witnesses 1 to 18 on 04.01.2016 and they have appeared on 04.01.2016 and on my examination given statement to me. Then, I have issued summons, 1.Mrs.Revathy, 2.Thiru.Karunakaran, 3.Thiru.Arumugam, 4.Tmt.Elizabeth Rani, 5.Thiru.Daniel, 6.Thiru.Sambandam, 7.Thiru.Mani, 8.Thiru.Udhayakumar, 9.Thiru.Ezubaba 10. Thiru.Baskar, 11.Thiru.Velmurugan, 12.Thiru.Vennil, 13.Thiru.Elamurugan, Asst. Professor, JIPMER, 14.Dr.Sreejith Parameswaran, 15.Thiru.Sowmiyan, Head constable, 16.Thiru.Veenus, Bhuvanagiri Police Station, 17.Mr.Raja, Inspector, 18.Mr.Sanjai Kumar, Doctor, JIPMER. After completion of examination of the above witnesses I have visited the Neyveli Police Station on 22.04.2016 and the defacto complainant also requested through CBCID officials to appear on such day in the said police station. The visit for Police station with presence of defacto complainant was proposed for the purpose of testify the version of defacto complainant that she had seen the deceased with multiple injuries, in the place which, is detached from the premises of police Station. Thereafter, I concluded my inquest and prepared the report hereunder.

3. I have examined the complainant Mrs.Revathy, relatives of the deceased, the inhabitance of village where the deceased habitat, the Police Officers against whom the allegation leveled and others who are concerned with the issue, and the Medical Officers who given treatment to Subramani and conducted postmortem of his corpse. I have summoned the officers of CBCID to produce the following documents and others to my office. In response to my request the Deputy Superintendent of Police furnished the following documents on 16.12.2015.

1) Postmortem Report and the medical records of the deceased

2) Chemical Report

3) The FIR .in Cr.No. 269/2015 of Nellikuppam Police Station.

4) The FIR in Cr.No.4/2015 of CBCID, Cuddalore

5) The materials which is collected by the Inspector of Police, Nellikuppam to whom originally the task of inquest on the deceased was assigned.

6) The materials collected by the Investigation Officer who attached to the CBCID with reference to the alleged custodial torture.

7) The true copy of general diary maintained by Neyveli Police station from 29.05.2015 05.06.2015.

8) The true copy of alleged muchalika said to be obtained from deceased Subramani and his wife Mrs.Revathy.

4. After careful scrutiny of the statements and the documents, the following facts and points are required for consideration.

1) Is it true that the deceased was taken by police personal from his house, on 28.5.2015 around 1.00 hrs.

2) Is it correct that, the deceased Subramani was being in illegal custody from 28.5.2015 to 4.6.2015.

3) Whether the deceased Subramani was subjected to torture by police, and caused multiple injuries?

4) Is there any possibilities that the deceased Subramani was scuffled with local person at his residence and sustained injuries of which found on his bodies?

5) Whether the custodial torture can be resulted to Acute Renal Failure.

5. Discussion and findings

The inspector of Police, Mr.Raja, while he was examined by me, had submitted that, on 28.05.2015 around 1.00 hours, he had picked up the deceased Subramani, from his house at Melpattamapakkam, and also admitted that when he took the deceased, his wife was present on the odd hours, and also stated that one Elizabeth, the relative of the deceased identified the deceased house, by accompanying the police team from Neyveli Township. From the statement of Mr.Raja, the inspector of Police, Neyveli, there is no dispute to derive a conclusion that the deceased Subramani was being taken into custody by Mr.Raja, Inspector of Police on such date, hours and place, in connection to the proposed interrogation in crime No.4/2015 u/s 302 IPC with reference to the murder of one Mumthaj Neyveli. He had mentioned that he had developed a suspect on the deceased, as the deceased used to come to Elizabeth home which is adjacent to said Mumthaj home, it is also further statement that, the husband of Mumthaj made a statement suspecting the deceased and his relative Elizabeth. On the backdrop of the alleged murder case, the deceased was taken into custody by Mr.Raja, Inspector of Police and his team.

6. Now, the further discussion which required to be focused is that, whether the said deceased Subramani was being kept in custody from 28.05.2015 to

04.06.2015. Mr.Raja, the Inspector of Police, stated that he had interrogated the Subramani after examining said Subramani, he was allowed him to go his home on executing a Muchalika, on all the above day, it was specifically denied by the complainant that the deceased was not kept in illegal custody and he has allowed to go with his wife.

7. Whereas Mrs.Revathy, the wife of deceased firmly stated in my inquiry, that after the deceased Subramani taken into custody by said Mr.Raja the Inspector of Police, she was taken into custody by one Kalingadevi the Police person from his residence on the next day morning for the purpose of interrogation in the alleged crime. She stated that after she was brought to the Police Station the Inspector of Police Mr.Raja enquired her with reference to whereabouts of herself and her husband the deceased Subramani on 23.5.2015 the date on which the above captioned Mumthaj was murdered. For which Mrs. Revathy stated that they were went to Vellaganni for worship, and they spend the day at Nagapattinam and returned to Melpattampakkam on next day.

8. It was specifically stated by her, that when she brought to the Police station she was not seen her husband deceased Subramani in the police station and she was also not allowed to see him. She was kept in the police station till 7.00 P.M. on the same day. Thereafter, her brothers namely Velmurugan and Baskar came to Police Station, then only she was allowed to leave the Neyveli Police Station after executing an undertaking. Then next day (29.5.2015) around 10.00 A.M. she along with her brother-in-law namely Karunakaran and one Advocate namely Ravindran went to the Police Station to rescue her husband, even on the such day she was not allowed to see her husband, the deceased Subramani. As the Inspector of Police Mr.Raja, declined to allow Mrs.Revathy, to see her husband, thereafter, on the very same day she and her advocate who accompanied her, went to the office of the Deputy Superintendent of Police, Neyveli around 4.00 P.M. However, she was not able to see the Deputy Superintendent of Police concerned, for the reason of his absence on the specific time. Therefore, again she made an efforts before the very same Neyveli Police Station and she waited there till evening, even then, she was not allowed to see her husband.

9. Then, on 30.05.2015 around 10.00 A.M. she made an attempt to complaint the illegal custody of her husband before the Superintendent of Police, Cuddalore, but, as there is no presence of

Superintendent of Police to the office on the relevant time, she lodged the complaint before the officer who is available at the time. Thereafter she went to her home, from there she along with her sister-in-law, brother in law namely Karunakaran and other inhabitants of her village namely Lakshmi, Anjalai, Syndarapandi and her brothers Velmurugan, Baskaran went to Neyveli Police Station in order to bring back her husband to her home. At the instance and intervention of Sundarapandi, the police Officers who were available in the station allowed Mrs.Revathy and four others to see her husband the deceased Subramani, he was said to be kept in custody in a premises which is situated certain extent away from the Police station, where she found Subramani talking with some person, as he was allowed to see through a window of the said building, she said that she was able to perceive the person who was seen by her, was deceased Subramani by tracing the shape of the deceased Subramani. Then she was directed by the Police, to leave the station, after leaving the Police station she went to her mother house situated in Sedapalayam. She stated that around 10.00 P.M. her brother Baskar, received a call in his mobile phone, in which the deceased Subramani spoken to him then to Mrs.Revathy. In the said conversation deceased Subramani asked her to come Police station next day morning.

10. She stated that accordingly, on the next day, she went to the Police station and she was enquired by the the Inspector, then concerned police persons taken her to Mayavaram and Nagapattinam to find out the modus of itinerary on the alleged date of 23.05.2015. As per their direction she along with children walked on the street where they said to be straddled on such specific date. Then she was bring back to the Neveli Police station around 5.00 P.M. then on next date when she again came to the police station around 9.00 A.M. she found one Police Officer said to be from Chennai, on his instruction, the Inspector of Police Mr.Raja allowed Mrs.Revathy to see her husband who was said to be in illegal custody. After such permission, she found his husband with multiple injuries that of contusion on his hand, leg, and head, his nails are said to be or appears to be removed and the fingers are found to be bleeding. It is her statement that on this day she has seen her husband properly. Even on the day also, the said Subramani was not freed by the Police, and the complainant Mrs.Revathy was left the station without rescue her husband.

11. Then on 04.06.2015 around 2.00 P.M. the Inspector of Police Mr.Raja, said to be informed advocate Ravindran, Chennai to take away Subramani from the Neyveli Police Station. The said advocate informed the same to Mr.Karunakaran the brother of the deceased. The said Karunakaran in turn informed to Mrs.Revathy, after receipt of such information Mrs.Revathy, Mr.Karunakaran, Mr.Velmurugan and Mr.Baskaran went to the Neyveli Police Station when they reached the police station, as the inspector was not available on the juncture, they have been asked to wait till the arrival of the Inspector. Then, after an hour lapse, Mr.Raja, the Inspector of Police came to the Police Station thereafter, one jeep was came near to Mrs.Revathy and others , and the Police officials asked her to enter into the jeep, then only she saw her husband deceased Subramani in the jeep by looking down his head and also shedding tears. Then the jeep was rushed to JIPMER hospital where deceased Subramani was admitted as inpatient.

12. It is that specific statement that at 3.00 PM on 04.05.2015, Subramani was admitted into the hospital and died around 4.00 A.M. On 06.06.2015. During the said period, the Subramani was under surveillance by the Neyveli police personal.

13. The above said statement with reference to the illegal custody was found to the,, supported and corroborated by other person who said to be accompanied Mrs.Revathy during her efforts to rescue her husband. The said persons are Karunakaran, the brother of deceased who said to be witnessed the alleged custody taken by the police on 28.5.2015 around 1.00 hours and seeing the deceased Subramani in the police station with multiple injuries. Then he went to the police station along with Mrs.Revathy and saw the Mr.Subramani and taken him the JIPMER hospital. The other two are Mr.Baskar and Mr.Velmurugan both of them are brothers of Mrs.Revathy the complainant herein. Both of them in unison alleged that they heard from their sisters Mrs.Revathy that deceased Subramani was being taken to the custody by the Police, then they accompanied her sister to the police station and they found Subramani with multiple injuries, then on 4.05.2015 Mr.Velmurugan accompanied Mrs.Revathy and traveled with him in the police jeep along with deceased Subramani to admit him into the JIPMER hospital. From the statement of Mrs.Revathy, Karunakaran, Velmurugan and Baskar I am not able to find no any discrepancies to disbelieve their version.

14. In support of the above statement, from one Mani who said to be the resident of P.N.Palayam who has no any direct knowledge in this case stated that he heard that, the police took away Subramani for some investigation on 28.5.2015, then he was heard that the said Subramani was died on around 6.00 at JIPMER hospital, thereafter, he able to see the dead body of the said Subramani at Melpattampakkam. The another witnesses namely Sambantham also stated that after the police took away subramani, he saw the dead body of Subramani of Melpattampakkam on his funeral. He has specifically stated that he was not seeing the said Subramani during the said interval period. The other witnesses namely Arumugam who is the neighbor of deceased Subramani stated that he had heard the fact that the said Subramani was taken into custody of Neyveli Police on next day from the complainant. Then, he enquired the said complainant on every day whenever she returned from the Neyveli police station about the status of Subrmani in the Neyveli Police Station and he also specifically mentioned that the deceased Subramani was not returned to home by alive, and his dead body was brought to the Melpattamapakkam from JIPMER hospital.

15. From the above statement of the witnesses, I am able to deduce a conclusion that the deceased Subramani was not released by the Inspector of Police Mr.Raja as stated by him that he was released on every day, after obtaining undertaking from him. There is no any acceptable documents prepared by the Inspector of Police for detaining the deceased Subramani in the police station even to the extent of a day alone. The general diary so maintained by the Police station did not disclose that the said Subramani was brought to station and freed from custody on such stated hours. It is mentioned by the Inspector of Police Mr.Raja that on 2.6.2015 around 10.00 A.M. Mrs.Revathy and her husband Mr.Subramani along with their children, appeared in police station and they have been taken to Mayavaram and conducted investigation. The said action of the Inspector of Police that he and above persons went to Mayavaram was not mentioned in the general diary dated 2.6.2015 around 10.00 A.M. In the said general diary on 2.6.2015 it was mentioned that the following officers are present around 7.00 A.M. in the police station, i.e., the Inspector of Police, H.C.253 WPC 1142, the Sub Inspector of Police namely Venus, Elavarasan, Anbarasan, are present. In the said date, the general diary was very absent about the alleged investigation of the inspector of police by leaving to

Mayavaram. It was also not stated in the general diary that the inspector of police left the police station even after 10.00 A.M. As per the general diary the inspector of police is very much available in the police station on 2.6.2015 therefore, the claim of the inspector of police he went to Mayavaram after Mrs.Revathy and her husband appeared in the police station around 10.00 A.M. was appears to be not with acceptance and found with truth. Whereas, Mrs.Revathy who stated in the inquiry maintained that the inspector of police was not accompanied her at Mayavaram, some other police personal alone deputed for such task and her husband was not accompanied her.

16. Set aside the discrepancies of statement by the inspector of police, there is no mention in the general diary that the said Subramani was brought to the police station on his own volition and the investigation was conducted on such dates as mentioned in the Muchalika which were undated. It is found from the oral statement of Dr.N.Elavarasan having clinical laboratory at Viruthachalam, that the deceased Subramani was being taken to the above said clinic namely Senthil Nursing Home on 4.6.2015 around 12'0 clock by Neyveli Police station. From the said evidence of the doctor it can be safely said that the deceased was being in custody with the Inspector of Police Mr.Raja. From all the above evidence, I am able to deduce and perceive that the said Subramnai was being kept in the custody from 28.05.2015 to 4.6.2015.

17. As the custody is proved and the said fact was unearthed the point of which require to be unfolded that whether the deceased was subjected to custodial torture. The oral testimony of witnesses very specifically stated that the deceased found many injuries on his body, the defacto- complainant specifically mentioned that she had seen the deceased with multiple injuries at Neyveli Police station.

As per the postmortem report the following injuries are found upon the body of diseased

(1) Multiple abraded contusions (Covered with brownish scab), cris-cross pattern, present over the upper back back with size ranging from 13 cm x 1 cm to 6 cm x 1 cm.

(2) Multiple abraded contusions (Covered with brownish scab), cris-cross pattern, present over the left arm with size ranging from 8 cm x 1 cm to 2.5 cm x 1 cm.

(3) Partially healed abrasion(scab fallen off) over the back of the right and left hand of size 4 cm x 0.5 cm and 1 cm x 0.5 cm respectively.

(4) Transversely placed abraded contusion (covered with brownish scab) present over the right and left buttock with size ranging from 4 cms x 1 cm to 3 cm x 1 cm respectively.

(5) Contusion of size 20 cm x 15 cm and 18 cm x 12 cm present over the back of right and left thigh respectively at its middle and lower one-third.

(6) Contusion present over both knee joints.

(7) Contusion present over both ankle joints.

(8) Contusion of size 7cm x 7 cm present over the sole of left foot at its middle one-third.

(9) Avulsion of right big toe nail and second toe nail of the right foot missing with blood extravasated around.

18. Now, the fact which required to be unearthed is that whether the above said injuries are resulted out of alleged torture at the hands of the police officers.

19. The custody of the deceased from 28.05.2015 to 04.06.2015 with the police officers was proved as per the discussion in the supra. It is also appeared to be proved that the deceased Subramani was admitted to JIPMER hospital from Neyveli Police Station. There is no any evidence in contra, to say that the said deceased Subramani was sustained the above injuries during such transit. The admission file, dated 28.04.2015 disclose that the said Subramani was admitted into the JIPMER hospital around 3.00 P.M., in the said register it was mentioned that it was informed to the Doctor that the said Subramani was being assaulted with the aid of blunt force, wooden rod by known person at Neyveli. IN the case sheet it was mentioned as follows.

"35 years male allegedly assaulted 4 days back by known men with sticks / rods and belt."

The above said documents and the transit period of deceased from Neyveli Police station to JIPMER Hospital convincingly compel me to hold that the above injuries are inflicted on the deceased during his illegal custody at Neyveli Police Station. The oral testimony given by other witnesses namely defacto-complainant Mrs.Revathy, Mr.Karunakaran, Mr.Velmurugan, Mr.Baskar, their statement divulged that they have seen deceased Subramani on 04.06.2015 at police station with multiple injuries. They also further stated that they have taken deceased from the Police station with all above injuries. Therefore,

without any hesitation it can be said that the deceased Subramani was inflicted with the injuries by the alleged torture.

20. It was put-forth by the Inspector of Police Mr.Raja in his statement, he had stated that they have received an information from the JIPMER hospital by stating that some four peoples attacked the deceased at his residence then only he had sent SSI Mr.Subramaniyan on 05.06.2015 in the JIPMER hospital. Whereas, the admission register and the case sheet maintained by the JIPMER hospital disclose that deceased was being attacked by known person at Neyveli. The residence of the deceased was situated in Melpattampakkam, not in the Neyveli vicinity. Therefore, the statement that the deceased was being attacked at his residence and such information was received by Neyveli Police station appears to be not supported by the medical records, the SSI Mr.Udayakumar who attached to the Nellikuppam police station had stated that they have received an information from the JIPMER on 04.06.2015 around 10.00 P.M., that said deceased was admitted into the hospital by stating that he was attacked in his residence at Melpattambakkam which is situated within the jurisdiction of Nellikuppam Police station. Then he maintained that said information is pertain to Neyveli and on his enquiry he find no any such incident in the said vicinity, all the evidence squarely marching the injuries of the deceased towards the custodial torture.

21. Now, a point which require for consideration is that whether the alleged torture lead to death of the deceased. For which the medical records and the evidence are to be perusal carefully. The final opinion given by the postmortem doctor is that the deceased Subramani was died due to Acute Tubular Necrosis Renal Failure.

22. The doctor who conducted the Postmortem to the deceased body opined in his report that the deceased was died due to acute tubular necrosis, and he reserved the opinion for the cause of Acute Tubular Necrosis as the clinical report an opinions are await. The Nephrologist namely Srijith Paramsewaran who given opinion to the cause of Acute Tubular Necrosis was examined by me in this inquest, and he had stated that, he could not identify the exact cause for the acute tubular necrosis which pave a way for mortal to the deceased. It is also said by him that the deceased was not found with history of renal decease. This wife of the deceased also mentioned in her statement that

the deceased was not with any such type of ailment. The question which now appears to be in perplexed and need to be addressed is that when no such past history of particular deceased was found with the deceased, then how the said disorder infiltrated to the deceased to be taken into consideration and unfolded.

The Acute tubular Necrosis can be attributed to followings.

- a. Trauma and muscle compression - from any cause
- b. Infection: eg: influenza, HIV, Cocksackie virus, Clostridium, etc
- c. Metabolic and genetic factors: rare causes like inherited enzyme deficiencies
- d. Drugs and myotoxins: Eg. ethanol, methanol, Heroin, Methadon, statins, fibric, acid derivatives etc.
- e. Other: Hypokalemia, heat stroke.

It is stated by the doctor that the major and most cause of Rhabdomyolysis is trauma or injury to muscles.

23. Here in this inquest, the custodial torture is proved and the deceased was found with multiple injuries. When a prisoner was subjected to torture, there are possibilities that the said prisoner can be subjected to Rhabdomyolysis.

24. Here in this case, the doctor who verified the urinary report of the deceased namely Shrijith Parameswarar, stated that after receipt of clinical records he opined that and there is no presence of Myoglobin in the test report, it is not possible for him to confirm the Rhabdomyolysis as cause to the acute Renal Necrosis. The urinary test was conducted but no such report is said to be available. But, the opinion of the doctor cannot be brushed away, as he is expert in the said field. The opinion of the said doctor is that as no evidence of myoglobin existed in the urinary sample, it was not possible for him to conclude the cause for the acute renal failure. But a said doctor in a statement stated that in the event the urinary sample are taken at earliest point of time in nexus to the period of alleged torture the sample can be found with myoglobin. It is also further answered by the doctor that even after the lapse of period, the myoglobin can be found in the kidney as sediments. It is also answered that the renal failure shall be as a consequence of the circumstances which is prevailing in this case. But the clinical evidence are not concrete enough to say that the renal failure was due to Rhabdomyolysis. The said doctor in sum and substance precisely stated that when there is no any

existence of myoglobin, the renal failure cannot be attributed to Rhabdomyolysis. But he did not find any other cause for the Renal failure. The possibilities of Rhabdomyolysis was not excluded by the doctor by stating other causes for the Acute Renal Necrosis.

25. The meaning of Rhabdomyolysis as per wikipedia is that, a condition in which damaged skeletal striated muscle breaks down rapidly. Breakdown products of damaged muscle cells are released into the bloodstream; some of these, such as the protein myoglobin are harmful to the kidneys and may lead to kidney failure. The severity of the symptoms, which may include muscle pains, vomiting, and confusion, depends on the extent of muscle damage and whether kidney failure develops. The muscle damage may be caused by physical factors (e.g. crush injury, strenuous exercise, medications, drug abuse, and infections). Some people have a hereditary muscle condition that increases the risk of Rhabdomyolysis. The diagnosis is usually made with blood tests and urinalysis. The mainstay of treatment is generous quantities of intravenous fluids, but may include dialysis or hemo filtration in more severe cases.

26. From the above said definition and opinion of the nephrologist, it can be said that the myoglobin is a protein which are released by the damaged muscle cells into the blood stream which are harmful to the kidneys and may lead to kidney failure. Here in this case the alleged torture and multiple injuries upon the deceased appears to be apparent but the evidence of myoglobin is absent on the other hand there is no any evidence to show that the deceased was having prehistoiy of Renal decease. The Nephrologist having an opinion that in the event of testing the urine after certain period of alleged torture, the myoglobin cannot be found in the samples. Here in this case the deceased was taken into treatment only on 28.05.2015 Whereas, he was admitted into the hospital 04.06.2015,. Therefore, there is some delay in treating the deceased. Therefore, there are some possibilities that the clinical report may be negative. When the oral testimony of the witnesses squarely support the alleged torture and there is opinion of the doctors that such kind of torture can lead to renal failure, and there is no any alternative cause other than the Rhabdomyolysis found in the medical records. I conclude that the renal failure of the deceased was very proximate to the custodial torture which is suffered at Neyveli Police station.

27. It is hard to fix the perpetrator or the police personal who actually indulged in custodial torture as against the prisoner for the reason that, there shall not be any eye witnesses to the alleged action. Here in this case, there is no witnesses for the alleged torture. However, the circumstances expressly denote that the torture was being exercised by the investigation team of Momthaj case in Cr.No.4/2015 of Neyveli Police station which is headed by Mr.Raja to Inspector of Police, Neyveli.

Thus, I conclude my report by giving finding as follows.

1. The deceased Subramani was taken into illegal custody on 28.5.2015 by Inspector of Police Mr.Raja and his team

2. The deceased was put into custodial torture from 28.5.2015 to 04.06.2015

3. The deceased was being taken from Neyveli Police station on 4.6.2015 and admitted the JIPMER Hospital for treatment through the Police jeep with the Assistant of police personal attached to Neyveli Police station.

4. The deceased was found with postmortem mentioned injuries and the said injuries are resulted from the custodial torture.

5. The-said torture caused the Renal failure^though the clinical evidence of Myoglobin found as negative, when there is no other evidence i.e. prehistory of Renal decease, and there is no any alternative cause other than the Rhabdomyolysis found in the medical records I conclude that the Renal failure can be attributed to the custodial torture. The Investigation team of Mumthaj case in Cr.No.4/2015 of Neyveli Police station which is headed by Mr.Raja to Inspector of Police, Neyveli are the responsible persons for the custodial torture and the death of the deceased."

25. Records reveal that at the time of death, Subramaniam was a painter and was survived by his wife and four children. Inspector of Police, CB-CID, present in Court, admitted the same.

Heard the learned counsel for the parties and perused the materials on record.

26. On the above pleadings and submissions, the following points are framed for consideration,

(i) Whether a Public Interest Litigation is maintainable, for claiming compensation, in the matter

of illegal custodial death, torture and such other heinous offences?

(2) When the affected party has a remedy to approach the civil Court and whether a public law remedy is a bar to claim compensation?

(3) In the absence of any method of calculation to arrive at the compensation, whether writ Court can adopt the multiplier method, as applied in compensating accident victims under the Motor Vehicles Act, 1988?

(4) Whether the victims or legal representatives of the victims, can claim compensation by way of institution of a suit or other proceedings, claiming compensation, other than what is awarded in a proceedings, under Article 226 of the Constitution of India?

27. During the course of hearing of this writ petition, learned counsel for the petitioner produced the recent photograph of the legal heirs of the deceased. The petitioner, Co-Convenor of Campaign for Custodial Justice and Abolition of Torture, has also narrated the entire events from the date of detention, till the victim breath last and the action against the violator. The petitioner cannot be said that he is a total stranger to the cause of instituting this writ petition as a Public Interest Writ Petition. When a Public Interest Writ Petition can be filed and what should be the ingredients, is well settled by several pronouncements of the Hon'ble Supreme Court and other Courts,

28. In Rudul Sah v. State of Bihar reported in 1983 (4) SCC 141, is a Habeas Corpus Petition under Article 32 of the Constitution of India, for release and compensation. At Paragraphs 8 to 11, the Hon'ble Supreme Court, held thus,

"8. That takes us to the question as to how the grave injustice which has been perpetrated upon the petitioner can be rectified, insofar as it lies within our power to do in the exercise of our writ jurisdiction under Article 32 of the Constitution. That Article confers power on the Supreme Court 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 Part III. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is "guaranteed", that is to say, the right to move the Supreme Court under Article 32 for the enforcement of any of the

rights conferred by Part III of the Constitution is itself a fundamental right.

9. 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 14 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 an appropriate order for the payment of compensation in this habeas corpus petition itself.

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. 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 of 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 violators 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 civilisation 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.

11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs 30,000 (Rupees thirty thousand) in addition to the sum of Rs 5000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent." (Emphasis supplied)

29. On the aspect, as to whether, a Public Interest Writ Petition is maintainable, claiming compensation to the victims of custodial death, torture and such other heinous offences, it could be seen that in *M.C. Mehta v. Union of India* reported in A.I.R. 1987 S.C. 1086, is a Public Interest Litigation, dealing with a writ petition filed for closure of certain units, the Hon'ble Supreme Court observed that when violations of fundamental right is brought to the notice of the Court, then hypertechnical approach should not be made. The Hon'ble Apex Court observed as follows:

"The applications for compensation are for enforcement of the fundamental right to life enshrined in Art 21 of the Constitution and while dealing with such applications, a hyper-technical approach which would defeat the ends of justice could not be adopted. If the Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the Court for Justice, there is no reason why the applications for compensation which have been made for enforcement of the fundamental right of the

persons affected by the oleum gas leak under Art. 21 should not be entertained. The Court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form".

30. People's Union for Democratic Rights v. Police Commissioner reported in 1989 (4) SCC 730, is a Public Interest Litigation. It was an unfortunate case, where the police collected poor people and took them to the Police Station for doing some work. They were asked to work, without labour charges. On demand, they were beaten and it appears that one of them, Ram Swaroop succumbed to the injuries and the body has also been disposed of. Petitioner No. 2 therein, Patasi, as alleged, was also stripped of her clothes and was thrashed in the Police Station. The other Eight persons namely (1) Dandwa (2) Ram Prasad (3) Jaipal (4) Mahavir (5) Kannu (6) Munsjia (7) Hukka and (8) Pratap were also beaten up rather than they should have been paid for the work they did at the Police Station. Though no specific question was posed, as to whether, the petitioner herein was a public interest litigant, the Hon'ble Supreme Court awarded compensation and held that the compensation awarded in the order will not prevent any lawful action for compensation, but if some compensation is awarded, then the amount awarded by the Hon'ble Supreme Court be given credit. Relevant paragraphs are extracted hereunder:

"4. Under the above circumstances we direct that the family of Ram Swaroop who is dead will be paid Rs 50,000 as compensation, which will be invested in some scheme under the Life Insurance Corporation, so that the destitute family may get some amount monthly and the money may also be kept secured. It is also directed that Petitioner 2 Patasi who was stripped of her clothes at the police station, shall be paid Rs 500 as compensation and the 8 other persons namely (1) Dandwa (2) Ram Prasad (3) Jaipal (4) Mahavir (5) Kannu (6) Munsjia (7) Hukka and (8) Pratap, who were taken in the police station without being paid for their work, will be paid Rs 25 each. It is directed that after investigation and inquiry officers who are found guilty, the amount paid as compensation or part thereof may be recovered from these persons out of their salaries after giving them opportunity to show cause.

5. This order will not prevent any lawful action for compensation. But in case some compensation is ordered by a competent court, this will be given credit to."

31. Case in Saheli v. Commissioner of Police reported in 1990 (1) SCC 422, is a Public Interest Litigation. Women's and Civil Rights Organization known as SAHELI, a Women's Resources Centre has filed the said case, on behalf of two women Maya Devi and Kamlesh Kumari, who have been residing in one room tenement each on the ground floor of house No.408/S/A L Gali No.29, Anand Parbat and were severely beaten up by the alleged landlord in collusion with the SHO, Shri Lal Singh and the police of Anand Parbat Police Station. There was also a death. After considering Joginder Kaur v. Punjab State [1969 ACJ 28], State of Rajasthan v. Vidhyawati [1962 Supp (2) SCR 989, 1007 : AIR 1962 SC 933] and Peoples' Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters [(1989) 4 SCC 730] and on the facts of the case, at Paragraph 15, held as follows:

"15. On a conspectus of these decisions we deem it just and proper to direct the Delhi Administration, respondent 2 to pay compensation to Kamlesh Kumari, mother of the deceased, Naresh a sum of Rs 75,000 within a period of four weeks from the date of this judgment. The Delhi Administration may take appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found responsible, if they are so advised. As the police officers are not parties before us, we state that any observation made by us in justification of this order shall not have any bearing in any proceedings specially criminal prosecution pending against the police officials in connection with the death of Naresh. The writ petitions are disposed of accordingly."

32. In Nilabati Behera v. State of Orissa reported in 1993 (2) SCC 746, on the aspect of availing public law remedy, for compensation, after considering a catena of decisions, Hon'ble Justice J.S.Verma, at Paragraph 10, held as follows:

"10. In view of the decisions of this Court in Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] , Sebastian M. Hongray v. Union of India [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 : (1984) 1 SCR 904(I)] , Sebastian M. Hongray v. Union of India [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] , Bhim Singh v. State of J & K [1984 Supp SCC 504 : 1985 SCC (Cri) 60] , Bhim Singh v. State of J & K [(1985) 4 SCC 677 : 1986 SCC (Cri) 47] , Saheli: A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] and State of Maharashtra v. Ravikant S. Patil [(1991) 2 SCC 373 :

1991 SCC (Cri) 656] the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based 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. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings."

After extracting Rudul Shah's case, the Hon'ble Supreme Court, at Paragraphs 12 to 25, considered the earlier decisions,

"12. It does appear from the above extract that even though it was held that compensation could be awarded under Article 32 for contravention of a fundamental right, yet it was also stated that "the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was actually controversial" and "Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes". This observation may tend to raise a doubt that the remedy under Article 32 could be denied "if the claim to compensation was factually controversial" and, therefore, optional, not being a distinct remedy available to the petitioner in addition to the ordinary processes. The later decisions of this Court proceed on the assumption that monetary compensation can be awarded for violation of constitutional rights under Article 32 or Article 226 of the Constitution, but this aspect has not been adverted to. It is, therefore, necessary to clear this doubt and to indicate the precise nature of this remedy which is distinct and in addition to the available ordinary processes, in case of violation of the fundamental rights.

13. Reference may also be made to the other decisions of this Court after Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] . In Sebastian M. Hongray v. Union of India [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 : (1984) 1 SCR 904(I)] it was indicated that in a petition for writ of habeas corpus, the burden was obviously on the respondents to make good the positive stand of the respondents in response to the notice issued by the court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control, and command of the detaining authority. In Sebastian M. Hongray v. Union of India (II) [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] in such a writ petition, exemplary costs were awarded on failure of the detaining authority to produce the missing persons, on the conclusion that they were not alive and had met an unnatural death. The award was made in Sebastian M. Hongray-(II) [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] apparently following Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] , but without indicating anything more. In Bhim Singh v. State of J & K [(1985) 4 SCC 677 : 1986 SCC (Cri) 47] , illegal detention in police custody of the petitioner Bhim Singh was held to constitute violation of his rights under Articles 21 and 22(2) and this Court exercising its power to award compensation under Article 32 directed the State to pay monetary compensation to the petitioner for violation of his constitutional right by way of exemplary costs or otherwise, taking this power to be settled by the decisions in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and Sebastian M. Hongray [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] . In Saheli [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] the State was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for the tortious acts of its employees. In State of Maharashtra v. Ravikant S. Patil [(1991) 2 SCC 373 : 1991 SCC (Cri) 656] the award of compensation by the High Court for violation of the fundamental right under Article 21 of an undertrial prisoner, who was handcuffed and taken through the streets in a procession by the police during investigation, was upheld. However, in none of these cases, except Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] anything more was

said. In Saheli [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] reference was made to the State's liability for tortious acts of its servants without any reference being made to the decision of this Court in Kasturilal Ralia Ram Jain v. State of U.P. [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] wherein sovereign immunity was upheld in the case of vicarious liability of the State for the tort of its employees. The decision in Saheli [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] is, therefore, more in accord with the principle indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] .

14. In this context, it is sufficient to say that the decision of this Court in Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which 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 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, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] is, therefore, inapplicable in this context and distinguishable.

15. The decision of Privy Council in Maharaj v. Attorney-General of Trinidad and Tobago (No. 2) [(1978) 2 All ER 670] is useful in this context. That case related to Section 6 of the Constitution of Trinidad and Tobago 1962, in the chapter pertaining to human rights and fundamental freedoms, wherein Section 6 provided for an application to the High Court for

redress. The question was, whether the provision permitted an order for monetary compensation. The contention of the Attorney General therein, that an order for payment of compensation did not amount to the enforcement of the rights that had been contravened, was expressly rejected. It was held, that an order for payment of compensation, when a right protected had been contravened, is clearly a form of 'redress' which a person is entitled to claim under Section 6, and may well be 'the only practicable form of redress'. Lord Diplock who delivered the majority opinion, at page 679, stated:

"It was argued on behalf of the Attorney General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in *Jaundoo v. Attorney General of Guyana* [(1971) AC 972 : (1971) 3 WLR 13]. Reliance was placed on the reference in the sub-section to 'enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections' as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships' view an order for payment of compensation when a right protected under Section 1 'has been' contravened is clearly a form of 'redress' which a person is entitled to claim under Section 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction 'to hear and determine any application made by any person in pursuance of sub-section (1) of this section'. The very wide powers to make orders, issue writs and give directions are ancillary to this."

Lord Diplock further stated at page 680, as under:

"Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone."

16. Lord Hailsham while dissenting from the majority regarding the liability for compensation in that case, concurred with the majority opinion on this principle and stated at page 687, thus:

"... I am simply saying that, on the view I take, the expression 'redress' in sub-section (1) of Section 6 and the expression 'enforcement' in sub-section (2), 'although capable of embracing damages where damages are available as part of the legal consequences of contravention, do not confer and are not in the context capable of being construed so as to confer a right of damages where they have not hitherto been available, in this case against the State for the judicial errors of a judge.'" Thus, on this principle, the view was unanimous, that enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

17. It follows that '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 Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of

a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.

19. This view finds support from the decisions of this Court in the Bhagalpur Blinding cases: Khatri (II) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228] and Khatri (IV) v. State of Bihar [(1981) 2 SCC 493 : 1981 SCC (Cri) 503] wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared "to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corpn. v. Union of India [(1991) 4 SCC 584] Misra, C.J. stated that "we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future ... there is no reason why we should hesitate to evolve such principle of liability ...". To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case [(1991) 4 SCC 584] with regard to the court's power to grant relief.

20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any

relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

21. We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:

"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and 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 this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line have to be understood and Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

23. The question now, is of the quantum of compensation. The deceased Suman Behera was aged about 22 years and had a monthly income between Rs 1200 to

Rs 1500. This is the finding based on evidence recorded by the District Judge, and there is no reason to doubt its correctness. In our opinion, a total amount of Rs 1,50,000 would be appropriate as compensation, to be awarded to the petitioner in the present case. We may, however, observe that the award of compensation in this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. Apart from the fact that such an order is just, it is also in consonance with the statutory recognition of this principle of adjustment provided in Section 357(5) CrPC and Section 141(3) of the Motor Vehicles Act, 1988.

24. Accordingly, we direct the respondent State of Orissa to pay the sum of Rs 1,50,000 to the petitioner and a further sum of Rs 10,000 as costs to be paid to the Supreme Court Legal Aid Committee. The mode of payment of Rs 1,50,000 to the petitioner would be, by making a term deposit of that amount in a scheduled bank in the petitioner's name for a period of three years, during which she would receive only the interest payable thereon, the principal amount being payable to her on expiry of the term. The Collector of the District will take the necessary steps in this behalf, and report compliance to the Registrar (Judicial) of this Court within three months.

25. We clarify that the award of this compensation, apart from the direction for adjustment of the amount as indicated, will not affect any other liability of the respondents or any other person flowing from the custodial death of petitioner's son Suman Behera. We also expect that the State of Orissa would take the necessary further action in this behalf, to ascertain and fix the responsibility of the individuals responsible for the custodial death of Suman Behera, and also take all available appropriate actions against each of them, including their prosecution for the offence committed thereby."

Concurring with the above views, Hon'ble Justice A.S.Anand, in his separate judgment, added thus,

"30. On basis of the above conclusion, we have now to examine whether to seek the right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same

matter which may be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress – by awarding monetary damages for the infraction of the right to life.

31. It is axiomatic that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 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. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. 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. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr Altaf Ahmed it may be recorded that he raised no such defence either.

32. 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 Article 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 Article 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. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for negligence... This is not the task for Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country."

33. 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.

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court

moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising 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 citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law – through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India,

notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.

36. In the facts of the present case, on the findings already recorded, the mode of redress which commends appropriate is to make an order of monetary amends in favour of the petitioner for the custodial death of her son by ordering payment of compensation by way of exemplary damages. For the reasons recorded by Brother Verma, J., I agree that the State of Orissa should pay a sum of Rs 1,50,000 to the petitioner and a sum of Rs 10,000 by way of costs to the Supreme Court Legal Aid Committee. I concur with the view expressed by Brother Verma, J. and the directions given by him in the judgment in all respects."

33. In *Consumer Education and Research Centre v. Union of India* reported in 1995 (3) SCC 42, a Public Interest Writ Petition was filed for enforcement of fundamental rights and to pay compensation to the affected workmen. While allowing the writ petition, at Paragraphs 23 and 29, the Hon'ble Supreme Court, held thus,

"23. In *Sunil Batra v. Delhi Admn.* [(1978) 4 SCC 494 : 1979 SCC (Cri) 155] , considering the effect of solitary confinement of a prisoner sentenced to death and the meaning of the word 'life' enshrined under Article 21, the Constitution Bench held that the quality of life covered by Article 21 is something

more than the dynamic meaning attached to life and liberty. The same view was reiterated in Board of Trustees of the Port of Bombay v. D.R. Nadkarni [(1983) 1 SCC 124 : 1983 SCC (L&S) 61] , Vikram Deo Singh Tomar v. State of Bihar [1988 Supp SCC 734 : 1989 SCC (Cri) 66] , Ramsharan Autyanuprasi v. Union of India [1989 Supp (1) SCC 251] . In Charles Sobraj v. Supdt., Central Jail, Tihar [(1978) 4 SCC 104 : 1978 SCC (Cri) 542 : AIR 1978 SC 1514] this Court held that the right to life includes right to human dignity. The right against torture, cruel or unusual punishment or degraded treatment was held to violate the right to life. In Bandhua Mukti Morcha v. Union of India [(1984) 3 SCC 161 : 1984 SCC (L&S) 389] at pp. 183-84 this Court held that the right to live with human dignity, enshrined in Article 21, derives its life-breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42. In C.E.S.C. Ltd. v. Subhash Chandra Bose [(1992) 1 SCC 441 : 1992 SCC (L&S) 313] this Court considered the gamut of operational efficacy of human rights and constitutional rights, the right to medical aid and health and held that the right to social justice are fundamental rights. Right to free legal aid to the poor and indigent worker was held to be a fundamental right in Khatri (II) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228] . Right to education was held to be a fundamental right vide Maharashtra State Board of Secondary & Higher Secondary Education v. K.S. Gandhi [(1991) 2 SCC 716] and Unni Krishnan, J.P. v. State of A.P. [(1993) 1 SCC 645]

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29. Yet another contention of the petitioners is that the workmen affected by asbestosis are suffering from lung cancer and related ailments and they were not properly diagnosed. They be sent to national institute and to such of those found suffering from diseases developed due to asbestos, proper compensation be paid. It is needless to reiterate that they need to be re-examined and cause for the disease and the nature of the disease diagnosed, thereon deciding each one of them whether entitled to damages? That the employer is vicariously liable to pay damages is unquestionable. The award of compensation in proceedings under Article 32 or Article 226 is a remedy available in public law. In Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] it was held that this Court under Article 32 can grant compensation for the deprivation

of personal liberty, though ordinary process of court may be available to enforce the right and money claim could be granted by this Court. Accordingly compensation was awarded. This view was reiterated in Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527] and awarded monetary compensation for custodial death lifting the State immunity from the purview of public law. It is, therefore, settled law that in public law claim for compensation is a remedy available under Article 32 or Article 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defence being available for constitutional remedy. It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence issued under the statute or for the enforcement of any right or duty under the Constitution or the law."

34. In State of M.P. v. Shyamsunder Trivedi reported in 1995 (4) SCC 262, the Hon'ble Supreme Court, at Paragraphs 16 and 17, held thus,

"16.The High Court erroneously overlooked the ground reality that rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available, when it observed that 'direct' evidence about the complicity of these respondents was not available. Generally speaking, it would be police officials alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues, and the present case is an apt illustration, as to how one after the other police witnesses feigned ignorance about the whole matter.

17.The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In

the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad day."

Taking note of the Law Commission Report, dated 04.06.1980 and on the facts and circumstances of the case, observed thus,

"18. In its 4th Report of June 1980, The National Police Commission noticed the prevalence of custodial torture etc. and observed that nothing is so dehumanising as the conduct of police in practising torture of any kind on a person in their custody. The Commission noticed with regret that the police image in the estimation of the public has badly suffered on account of the prevalence of this practice in varying degrees over the past several years and noted with concern the inclination of even some of the supervisory ranks in the police hierarchy to countenance this practice in a bid to achieve quick results by short-cut methods. Though Sections 330 and 331 of the Indian Penal Code make punishable those persons who cause hurt for the purpose of extorting the confession, by making the offence punishable with

sentence up to 10 years of imprisonment, but the convictions, as experience shows us, have been very few because the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are. Disturbed by this situation, the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless, the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. The recommendation, however, we notice with concern, appears to have gone unnoticed and the crime of custodial torture etc. flourishes unabated. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, we hope that the Government and Legislature would give serious thought to the recommendation of the Law Commission (supra) and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed."

35. Case in D.K.Basu v. State of W.B., reported in 1997 (1) SCC 416, is a Public Interest Writ Petition. In the reported case, the Executive Chairman, Legal Aid Services, West Bengal, a non-political organisation registered under the Societies Registration Act, on 26.08.1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items published in The Telegraph dated 20.01.1986, 21.07.1986 and 22.07.1986 and in the Statesman and Indian Express dated 17.08.1986 regarding deaths in police lock-ups and custody. The Executive Chairman after reproducing the news items submitted

that it was imperative to examine the issue in depth and to develop "custody jurisprudence" and formulate modalities for awarding compensation to the victim and/or family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. It was also stated in the letter that efforts are often made to hush up the matter of lock-up deaths and thus the crime goes unpunished and "flourishes". It was requested that the letter along with the news items be treated as a writ petition under "public interest litigation" category. Considering the importance of the issue raised in the letter and being concerned by frequent complaints regarding custodial violence and deaths in police lock-up, the letter was treated as a writ petition and notice was issued on 09.02.1987 to the respondents therein. After considering the Law Commission Reports and the aspect of Public Law Remedy in awarding compensation, the Hon'ble Supreme Court considered and answered thus,

"8. The Law Commission of India also in response to the notice issued by this Court forwarded a copy of the 113th Report regarding "Injuries in police custody and suggested incorporation of Section 114-B in the Indian Evidence Act".

9. The importance of affirmed rights of every human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.

10. "Torture" has not been defined in the Constitution or in other penal laws. "Torture" of a human being by another human being is essentially an instrument to impose the will of the "strong" over the

"weak" by suffering. The word torture today has become synonymous with the darker side of human civilisation.

"Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself." – Adriana P. Bartow

11. No violation of any one of the human rights has been the subject of so many Conventions and Declarations as "torture" – all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward – flag of humanity must on each such occasion fly half-mast.

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.

13. "Custodial violence" and abuse of police power is not only peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Despite the pious declaration the crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication.

14. In England, torture was once regarded as a normal practice to get information regarding the crime, the accomplices and the case property or to extract confessions, but with the development of common law and more radical ideas imbibing human thought and approach, such inhuman practices were initially discouraged and eventually almost done away

with, certain aberrations here and there notwithstanding. The police powers of arrest, detention and interrogation in England were examined in depth by Sir Cyril Philips Committee – "Report of a Royal Commission on Criminal Procedure" (Command Papers 8092 of 1981). The report of the Royal Commission is instructive. In regard to the power of arrest, the Report recommended that the power to arrest without a warrant must be related to and limited by the object to be served by the arrest, namely, to prevent the suspect from destroying evidence or interfering with witnesses or warning accomplices who have not yet been arrested or where there is a good reason to suspect the repetition of the offence and not to every case irrespective of the object sought to be achieved.

15. The Royal Commission suggested certain restrictions on the power of arrest on the basis of the "necessity principle". The Royal Commission said:

"... We recommend that detention upon arrest for an offence should continue only on one or more of the following criteria:

(a) the person's unwillingness to identify himself so that a summons may be served upon him;

(b) the need to prevent the continuation or repetition of that offence;

(c) the need to protect the arrested person himself or other persons or property;

(d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

(e) the likelihood of the person failing to appear at court to answer any charge made against him."

The Royal Commission also suggested:

"To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be fingerprinted or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case..."

16. The power of arrest, interrogation and detention has now been streamlined in England on the basis of the suggestions made by the Royal Commission and incorporated in Police and Criminal Evidence Act,

1984 and the incidence of custodial violence has been minimised there to a very great extent.

17. Fundamental Rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens. Chapter V of the Criminal Procedure Code, 1973 deals with the powers or arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41 CrPC confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this section no formality is necessary while arresting a person. Under Section 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on

bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the Magistrate to hold an enquiry into the cause of death.

18. However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

19. The Third Report of the National Police Commission in India expressed its deep concern with custodial violence and lock-up deaths. It appreciated the demoralising effect which custodial torture was creating on the society as a whole. It made some very useful suggestions. It suggested:

"... An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines.
..."

The recommendations of the Police Commission (supra) reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. These recommendations, however, have not acquired any statutory status so far.

20. This Court in *Joginder Kumar v. State of U.P.* [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] (to which one of us, namely, Anand, J. was a party) considered the dynamics of misuse of police power of arrest and opined: (SCC p. 267, para 20)

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. ... No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter."

21. *Joginder Kumar case* [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] involved arrest of a practising lawyer who had been called to the police station in connection with a case under inquiry on 7-1-1994. On not receiving any satisfactory account of his whereabouts, the family members of the detained lawyer preferred a petition in the nature of habeas corpus before this Court on 11-1-1994 and in compliance with the notice, the lawyer was produced on 14-1-1994 before this Court. The police version was that during 7-1-1994 and 14-1-1994 the lawyer was not in detention at all but was only assisting the police to detect some cases. The detenu asserted otherwise. This Court was not satisfied with the police version. It is noticed that though as on that day the relief in habeas corpus petition could not be granted but the questions whether there had been any need to detain the lawyer for 5 days and if at all he was not in detention then why was this Court not informed, were

important questions which required an answer. Besides, if there was detention for 5 days, for what reason was he detained. The Court, therefore, directed the District Judge, Ghaziabad to make a detailed enquiry and submit his report within 4 weeks. The Court voiced its concern regarding complaints of violations of human rights during and after arrest. It said: (SCC pp. 263-64, paras 8 and 9)

"The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider"

This Court then set down certain procedural "requirements" in cases of arrest.

22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights' jurisprudence. The answer, indeed, has to be an emphatic "No". The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody,

except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

.....

24. Instances have come to our notice where the police has arrested a person without warrant in connection with the investigation of an offence, without recording the arrest, and the arrested person has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case property or for extracting confession etc. The torture and injury caused on the body of the arrestee has sometimes resulted in his death. Death in custody is not generally shown in the records of the lock-up and every effort is made by the police to dispose of the body or to make out a case that the arrested person died after he was released from custody. Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even the higher police officers turn a blind eye to such complaints. Even where a formal prosecution is launched by the victim or his kith and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting in death, as the police lock-up where generally torture or injury is caused is away from the public gaze and the witnesses are either policemen or co-prisoners who are highly reluctant to appear as prosecution witnesses due to fear retaliation by the superior officers of the police. It is often seen that when a complaint is made against torture, death or injury, in police custody, it is difficult to secure evidence against the policemen responsible for resorting to third-degree methods since they are in charge of police station records which they do not find difficult to manipulate. Consequently, prosecution against the delinquent officers generally results in acquittal. State of M.P. v. Shyamsunder Trivedi [(1995) 4 SCC 262 : 1995 SCC (Cri) 715 : (1995) 3 Scale 343] is an apt case illustrative of the observations made by us above. In that case, Nathu Banjara was tortured at police station, Rampura during the interrogation. As a result of extensive injuries caused to him he died in police custody at the police station. The defence set up by the respondent police officials at the trial was that Nattu had been released from police custody at about 10.30 p.m. after interrogation on 13-10-1981

itself vide entry Ex. P/22-A in the Roznamcha and that at about 7.00 a.m. on 14-10-1981, a death report Ex. P/9 was recorded at the police station, Rampura, at the instance of Ramesh Respondent 6, to the effect that he had found "one unknown person" near a tree by the side of the tank wriggling with pain in his chest and that as soon as Respondent 6 reached near him, the said person died. The further case set up by SI Trivedi, Respondent 1, in charge of the police station was that after making a Roznamcha entry at 7.00 a.m. about his departure from the police station he (Respondent 1-Shyamsunder Trivedi) and Constable Rajaram respondent proceeded to the spot where the dead body was stated to be lying for conducting investigation under Section 174 CrPC. He summoned Ramesh Chandra and Goverdhan – respondents to the spot and in their presence prepared a panchnama Ex. P/27 of the dead body recording the opinion therein to the effect that no definite cause of death was known.

25. The First Additional Sessions Judge acquitted all the respondents of all the charges holding that there was no direct evidence to connect the respondents with the crime. The State of Madhya Pradesh went up in appeal against the order of acquittal and the High Court maintained the acquittal of Respondents 2 to 7 but set aside the acquittal of Respondent 1, Shyamsunder Trivedi for offences under Sections 218, 201 and 342 IPC. His acquittal for the offences under Sections 302/149 and 147 IPC was, however, maintained. The State filed an appeal in this Court by special leave. This Court found that the following circumstances had been established by the prosecution beyond every reasonable doubt and coupled with the direct evidence of PWs 1, 3, 4, 8 and 18 those circumstances were consistent only with the hypothesis of guilt of the respondents and were inconsistent with their innocence: (SCC p. 272, para 16)

"(i) that the deceased had been brought alive to the police station and was last seen alive there on 13-10-1981; (ii) that the dead body of the deceased was taken out of the police station on 14-10-1981 at about 2 p.m. for being removed to the hospital; ... (iv) that SI Trivedi, Respondent 1, Ram Naresh Shukla, Respondent 3, Rajaram, Respondent 4 and Ganniuddin, Respondent 5 were present at the police station and had all joined hands to dispose of the dead body of Nathu Banjara; (v) that SI Trivedi, Respondent 1 created false evidence and fabricated false clues in the shape of documentary evidence with a view to

screen the offence and for that matter, the offender; (vi) SI Trivedi – respondent in connivance with some of his subordinates, respondents herein had taken steps to cremate the dead body in hot haste describing the deceased as a 'lavaris' though the identity of the deceased, when they had interrogated for a sufficient long time was well known to them."

and opined that : (SCC p. 272, para 16)

"The observations of the High Court that the presence and participation of these respondents in the crime is doubtful are not borne out from the evidence on the record and appear to be an unrealistic over simplification of the tell-tale circumstances established by the prosecution." One of us (namely, Anand, J.) speaking for the Court went on to observe: (SCC p. 273, para 17)

"The trial court and the High Court, if we may say so with respect, exhibited a total lack of sensitivity and a "could not care less" attitude in appreciating the evidence on the record and thereby condoning the barbarous third-degree methods which are still being used at some police stations, despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society."

This Court then suggested : (SCC p. 274, para 18)

"The Courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible

within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed."

26. The State appeal was allowed and the acquittal of Respondents 1, 3, 4 and 5 was set aside. The respondents were convicted for various offences including the offence under Sections 304 Part II/34 IPC and sentenced to various terms of imprisonment and fine ranging from Rs 20,000 to Rs 50,000. The fine was directed to be paid to the heirs of Nathu Banjara by way of compensation. It was further directed : (SCC pp. 275-76, para 24)

"The trial court shall ensure, in case the fine is deposited by the accused respondents, that the payment of the same is made to the heirs of deceased, Nathu Banjara, and the court shall take all such precautions as are necessary to see that the money is not allowed to fall into wrong hands and is utilised for the benefit of the members of the family of the deceased, Nathu Banjara, and if found practical by deposit in a nationalised bank or post office on such terms as the trial court may in consultation with the heirs of the deceased consider fit and proper."

27. It needs no emphasis to say that when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime or his kith and kin become frustrated and contempt for law develops. It was considering these aspects that the Law Commission in its 113th Report recommended the insertion of Section 114-B in the Indian Evidence Act. The Law Commission recommended in its 113th Report that in prosecution of a police officer for an alleged offence of having caused bodily injury to a person, if there was evidence that the injury was caused during the period when the person was in the custody of the police, the Court may presume that the injury was caused by the police officer having the custody of that person during that period. The Commission further recommended that the court, while considering the question of presumption, should have regard to all relevant circumstances including the period of custody, statement made by the victim, medical evidence and the evidence which the Magistrate may have recorded. Change of burden of proof was, thus, advocated. In Shyamsunder Trivedi case [(1995) 4 SCC 262 : 1995 SCC (Cri) 715 : (1995) 3 Scale 343] this Court also expressed the hope that the Government and the legislature would give serious thought to the recommendation of the Law Commission. Unfortunately, the suggested amendment, has not been incorporated in

the statute so far. The need of amendment requires no emphasis — sharp rise in custodial violence, torture and death in custody, justifies the urgency for the amendment and we invite Parliament's attention to it.

28. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

29. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third-degree methods during interrogation.

30. Apart from the police, there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, RAW, Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP, which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential Commodities Act, Excise and Customs Act, Foreign Exchange Regulation Act etc. There are instances of torture and death in custody of these authorities as well. Death

of Sawinder Singh Grover, Re [1995 Supp (4) SCC 450 : 1994 SCC (Cri) 1464] , (to which Kuldip Singh, J. was a party) this Court took suo motu notice of the death of Sawinder Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the Additional District Judge, which disclosed a prima facie case for investigation and prosecution, this Court directed the CBI to lodge an FIR and initiate criminal proceedings against all persons named in the report of the Additional District Judge and proceed against them. The Union of India/Directorate of Enforcement was also directed to pay a sum of Rs 2 lakhs to the widow of the deceased by way of ex gratia payment at the interim stage. Amendment of the relevant provisions of law to protect the interest of arrested persons in such cases too is a genuine need.

31. There is one other aspect also which needs our consideration. We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hardcore criminals like extremists, terrorists, drug peddlers, smugglers who have organised gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalisation and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go scot-free without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worst than the disease itself.

32. The response of the American Supreme Court to such an issue in *Miranda v. Arizona* [384 US 436 : 16 L Ed 2d 694 (1966)] , is instructive. The Court said:

"A recurrent argument, made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. [See e.g., *Chambers v. Florida* [309 US 227 : 84 L Ed 716 : 60 S Ct 472 (1940)] , US at pp. 240-41 : L Ed at p. 724 : 60 S Ct 472 (1940)]. The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of Government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged." (emphasis ours)

33. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the courts. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus reipublicae suprema lex* (safety of the State is the supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be "right nor just nor fair" and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated – indeed subjected to sustained and scientific interrogation – determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to "terrorism". That would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that various

agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable to punishment but it cannot justify the violation of his human rights except in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge.

34. In addition to the statutory and constitutional requirements to which we have made a reference, we are of the view that it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of at least one witness who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date and time of arrest shall be recorded in the memo which must also be countersigned by the arrestee.

35. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the

arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be

instituted in any High Court of the country, having territorial jurisdiction over the matter.

37. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

38. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

39. The requirements mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on All India Radio besides being shown on the National Network of Doordarshan any by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes.

Punitive Measures

40. Ubi jus, ibi remedium.—There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.

41. Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331 provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to

commission of an offence. Illustrations (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

42. Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 and made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. (See with advantage *Rudul Sah v. State of Bihar* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] ; *Sebastian M. Hongray v. Union of India* [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 and (1984) 3 SCC 82 : 1984 SCC (Cri) 407] ; *Bhim Singh v. State of J&K* [1984 Supp SCC 504 : 1985 SCC (Cri) 60 and (1985) 4 SCC 677 : 1986 SCC (Cri) 47] ; *Saheli, A Women's Resources Centre v. Commr. of Police* [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] .) There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See *Nilabati*

Behera v. State [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899])

43. Till about two decades ago the liability of the Government for tortious acts of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this Court has taken the view that the defence of sovereign immunity is not available to the State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In Nilabati Behera v. State [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] the decision of this Court in Kasturilal Ralia Ram Jain v. State of U.P. [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus: (SCC p. 761, para 14)

"In this context, it is sufficient to say that the decision of this Court in Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which 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 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, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] related to the value of goods seized and not returned to the owner due to the fault of government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] is, therefore, inapplicable in this context and distinguishable."

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian 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. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim – civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

46. In Nilabati Behera case [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] , it was held: (SCC pp. 767-68, para 32)

"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 Article 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 Article 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. While concluding his first Hamlyn Lecture in 1949 under the title 'Freedom under the Law' Lord Denning in his own style warned:

'No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for negligence... This is not the task of Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.' "

47. A similar approach of redressing the wrong by award of monetary compensation against the State for its failure to protect the fundamental rights of the citizen has been adopted by the Courts of Ireland, which has a written constitution, guaranteeing fundamental rights, but which also like the Indian Constitution contains no provision of remedy for the infringement of those rights. That has, however, not prevented the Courts in Ireland from developing remedies, including the award of damages, not only against individuals guilty of infringement, but against the State itself.

48. The informative and educative observations of O'Dalaigh, C.J. in *State (At the Prosecution of Quinn) v. Ryan* [1965 IR 70] (IR at p. 122) deserve special notice. The Learned Chief Justice said:

"It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizen that these rights should be set at nought or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of those rights. As a necessary corollary, it follows that no one can with impunity set these rights at nought or circumvent them, and that the Court's powers in this regard are as ample as the defence of the Constitution requires." (emphasis supplied)

49. In *Byrne v. Ireland* [1972 IR 241] Walsh, J. opined at p. 264:

"In several parts in the Constitution duties to make certain provisions for the benefit of the citizens are imposed on the State in terms which bestow rights upon the citizens and, unless some contrary provision appears in the Constitution, the Constitution must be deemed to have created a remedy for the enforcement of these rights. It follows that, where the right is one guaranteed by the State, it is against the State that the remedy must be sought if there has been a failure to discharge the constitutional obligation imposed." (emphasis supplied)

50. In *Maharaj v. Attorney General of Trinidad and Tobago (No. 2)* [(1978) 2 All ER 670 : (1978) 2 WLR 902 : 1979 AC 385, PC] the Privy Council while interpreting Section 6 of the Constitution of Trinidad and Tobago held that though not expressly provided therein, it permitted an order for monetary compensation, by way of "redress" for contravention of the basic human rights and fundamental freedoms. Lord Diplock speaking for the majority said:

"It was argued on behalf of the Attorney General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in *Jaundoo v. Attorney General of Guyana* [1971 AC 972 : (1971) 3 WLR 13, PC] . Reliance was placed on the reference in the subsection to 'enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections' as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships' view an

order for payment of compensation when a right protected under Section 1 'has been' contravened is clearly a form of 'redress' which a person is entitled to claim under Section 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction 'to hear and determine any application made by any person in pursuance of subsection (1) of this section'. The very wide powers to make orders, issue writs and give directions are ancillary to this."

Lord Diplock then went on to observe (at p. 680):

"Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone."

51. In *Simpson v. Attorney General* [1994 NZLR 667] (Baigent case) the Court of Appeal in New Zealand dealt with the issue in a very elaborate manner by reference to a catena of authorities from different jurisdictions. It considered the applicability of the doctrine of vicarious liability for torts, like unlawful search, committed by the police officials which violates the New Zealand Bill of Rights Act, 1990. While dealing with the enforcement of rights and freedoms as guaranteed by the Bill of Rights for which no specific remedy was provided, Hardie Boys, J. observed:

"The New Zealand Bill of Rights Act, unless it is to be no more than an empty statement, is a commitment by the Crown that those who in the three branches of the government exercise its functions, powers and duties will observe the rights that the Bill affirms. It is I consider implicit in that commitment, indeed essential to its worth, that the Courts are not only to observe the Bill in the discharge of their own duties but are able to grant appropriate and effective remedies where rights have been infringed. I see no reason to think that this should depend on the terms of a written constitution. Enjoyment of the basic human rights are the entitlement of every citizen, and their protection the obligation of every civilised

State. They are inherent in and essential to the structure of society. They do not depend on the legal or constitutional form in which they are declared. The reasoning that has led the Privy Council and the Courts of Ireland and India to the conclusions reached in the cases to which I have referred (and they are but a sample) is in my opinion equally valid to the New Zealand Bill of Rights Act if it is to have life and meaning." (emphasis supplied)

52. The Court of Appeal relied upon the judgments of the Irish Courts, the Privy Council and referred to the law laid down in Nilabati Behera v. State [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] thus:

"Another valuable authority comes from India, where the Constitution empowers the Supreme Court to enforce rights guaranteed under it. In Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899], the Supreme Court awarded damages against the State to the mother of a young man beaten to death in police custody. The Court held that its power of enforcement imposed a duty to "forge new tools", of which compensation was an appropriate one where that was the only mode of redress available. This was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity does not apply. These observations of Anand, J. (at p. 2912 of Cri LJ) may be noted: (SCC p. 768, paras 33 and 34)

'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. ... The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.' "

53. Each of the five members of the Court of Appeal in Simpson case [1994 NZLR 667] delivered a separate judgment but there was unanimity of opinion regarding the grant of pecuniary compensation to the victim, for the contravention of his rights guaranteed under the Bill of Rights Act, notwithstanding the absence of an express provision in that behalf in the Bill of Rights Act."

The Hon'ble Supreme Court, at Paragraph 54, finally held that,

"54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

36. In *Chairman, Railway Board v. Chandrima Das* reported in 2000 (2) SCC 465, a writ petition was filed an Advocate, claiming compensation for the victims. A lady H had arrived at Howrah Railway Station from Bangladesh with a view to catch a train for Ajmer. She was taken by some of the employees of the Railways to Yatri Niwas. The room of Yatri Niwas was booked in the name of one of the employees against railway card pass. She was raped there by four employees. Later she was taken out to a rented house by another railway employee and was raped. Following the hue and cry raised by her, she was rescued by the police. A practising lady advocate of Calcutta High Court

(respondent) filed a writ petition before the High Court against the appellants claiming compensation for the victim. The respondent also claimed several other reliefs including a direction to the appellants to eradicate anti-social and criminal activities at Howrah Railway Station. The High Court awarded a sum of Rs.10 lakhs as compensation to H as it was of the opinion that the rape was committed at the building (Rail Yatri Niwas) belonging to the Railways and was perpetrated by the railway employees. The contention raised before the Supreme Court was that the Railways would not be liable to pay compensation to H who was a foreigner and was not an Indian national. It was also contended that commission of the offence by the person concerned would not make the Railways or the Union of India liable to pay compensation to the victim of the offence. It was contended that since it was the individual act of those persons, they alone would be prosecuted and on being found guilty would be punished and may also be liable to pay fine or compensation, but having regard to the facts of the case, the Railways, or, for that matter, the Union of India would not even be vicariously liable. It was also contended that for claiming damages for the offence perpetrated on H, the remedy lay in the domain of private law and not under public law and, therefore, no compensation could have been legally awarded by the High Court in proceedings under Article 226 of the Constitution and, that too, at the instance of a practising advocate who, in no way, was concerned or connected with the victim. Rejecting the contentions and dismissing the appeal, the Supreme Court held that,

"Though initially a petition under Article 226 relating to commercial matters was held not to lie, but the law has undergone a change by subsequent decisions and now even contractual matters are amenable to writ jurisdiction of the High Court under Article 226. The public law remedies have also been extended to the realm of tort and the court can award compensation to petitioners who suffer personal injuries amounting to tortious acts at the hand of officers of the Govt. Therefore, the contention that H should have approached the civil court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. In the instant case, it is not a mere matter of violation of an ordinary right of a person but the violation of fundamental rights which is involved. "Rape" is an offence which is violative of the fundamental right of a person guaranteed under Article 21 of the Constitution. Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement

o f public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law. (Paras 9, 11 and 12)

The existence of a legal right, no doubt, is the foundation for a petition under Article 226 and a bare interest, maybe o f a minimum nature, may give locus standi to a person to file a writ petition, but the concept of "locus standi" has undergone a sea change. There has been a spectacular expansion of the concept of locus standi. The concept is much wider and it takes in its stride anyone who is not a mere "busybody". Public-spirited citizens having faith in the rule of law are rendering great social and legal service by espousing causes of public nature. They cannot be ignored or overlooked on a technical or conservative yardstick of the rule of locus standi or the absence of personal loss or injury. In this case the reliefs which were claimed in the petition included the relief for compensation. But many other reliefs as, for example, relief for eradicating anti-social and criminal activities of various kinds at Howrah Railway Station were also claimed. The true nature of the petition, therefore, was that of a petition filed in public interest. Having regard to the nature of the petition filed by the respondent and the reliefs claimed it is clear that this petition was filed in public interest which could legally be filed by the respondent and the argument that she could not file that petition as there was nothing personal to her involved in this petition must be rejected. (Paras 15, 17, 14 and 18)

The argument that II was a foreign national and therefore, no relief under public law could be granted to her as there was no violation of the fundamental rights available under the Constitution must also fail for two reasons; first, on the ground of domestic jurisprudence based on constitutional provisions and secondly, on the ground of human rights jurisprudence based on the Universal Declaration of Human Rights, 1948, which has the international recognition as the "Moral Code of Conduct" having been adopted by the General Assembly of the United Nations. (Para 19)

The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the provisions of those Declarations and Covenants have to be such as would help in effective implementation o f those rights. The applicability of the Universal Declaration of Human Rights and the principles thereof

may have to be read, if need be, into the domestic jurisprudence. (Para 24)

Our Constitution guarantees all the basic and fundamental human rights set out in the Universal Declaration of Human Rights, 1948, to its citizens and other persons. The chapter dealing with the fundamental rights is contained in Part III of the Constitution. The purpose of Part III is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties who, by virtue of their majority, may come to form the Government at the Centre or in the State. (Para 27)

The fundamental rights are available to all the "citizens" of the country but a few of them are also available to "persons". The word "LIFE" has also been used prominently in the Universal Declaration of Human Rights, 1948. The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the Declaration and the Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them. That being so, since "LIFE" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by the Supreme Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country. On this principle, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to "life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens. (Paras 28, 32 and 34)

However, the rights guaranteed under Part III of the Constitution are not absolute in terms. They are subject to reasonable restrictions and, therefore, in case of a non-citizen also, those rights will be available subject to such restrictions as may be

imposed in the interest of the security of the State or other important considerations. Interest of the nation and security of the State is supreme. Since 1948 when the Universal Declaration was adopted till this day, there have been many changes political, social and economic while terrorism has disturbed the global scenario. Primacy of the interest of the nation and the security of the State will have to be read into the Universal Declaration as also in every article dealing with fundamental rights, including Article 21. (Para 35)

H, who was not the citizen of this country but came here as a citizen of Bangladesh was, nevertheless, entitled to all the constitutional rights available to a citizen so far as "right to life" was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she could not be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of government employees who outraged her modesty. The right available to her under Article 21 was thus violated. Consequently, the State was under a constitutional liability to pay compensation to her. The judgment passed by the Calcutta High Court, therefore, allowing compensation to her for having been gang-raped, cannot be said to suffer from any infirmity. (Para 37)

It is not possible to accept the contention that the Central Government cannot be held vicariously liable for the offence of rape committed by the employees of the Railways. The theory of sovereign power which was propounded in *Kasturi Led* case has yielded to new theories and is no longer available in a welfare State. Functions of the Government in a welfare State are manifold, all of which cannot be said to be the activities relating to exercise of sovereign powers. The functions of the State not only relate to the defence of the country or the administration of justice, but they extend to many other spheres as, for example, education, commercial, social, economic, political and even marital. These activities cannot be said to be related to sovereign power. Running of the Railways is a commercial activity. Establishing the Yatri Niwas at various railway stations to provide lodging and boarding facilities to passengers on payment of charges is a part of the commercial activity of the Union of India and this activity cannot be equated with the exercise

of sovereign power. The employees of the Union of India who are deputed to run the Railways and to manage the establishment, including the railway stations and the Yatri Niwas, are essential components of the government machinery which carries on the commercial activity. If any of such employees commits an act of tort, the Union Government, of which they are the employees, can, subject to other legal requirements being satisfied, be held vicariously liable in damages to the person wronged by those employees. Kasturi Lal Maitra's decision, therefore, cannot be pressed into aid. As observed in *Common Cause v. Union of India*, (1999) 6 SCC 667 the efficacy of *Kasturi Lal* case as a binding precedent has been eroded. Moreover, the present case is one under the public law domain and not in a suit instituted under the private law domain against persons who, utilising their official position, got a room in the Yatri Niwas booked in their own name where the act complained of was committed. (Paras 38, 41 and 42)

37. In *C.Chinnathambi and others v. State of T.N. & Others* [W.P.Nos.4574 and 4575 of 1995, dated 22.09.2000] reported in 2001 WLR 174, this Court, while awarding compensation of Rs.1,50,000/- with 12% interest per annum to each of the parents of two School Students who died, when a water tank broke and fell on them, observed as follows:

"5. Right of life enunciated in Article 21 has time and again been recognized by the Supreme Court and in its various ramifications. This was a case where the two innocent children had gone to the school and the accident actually took place during school hours. Even if it is considered that the said tank was constructed by the Parent Teachers Association it was undoubtedly the responsibility of the School authorities to see that the tank was properly constructed and erected and that it should not have been hazardous to the lives of the children. There can be no dispute that in this case school authorities have not been careful enough to see that the construction was proper and in keeping with the rules. It beats one's understanding as to how a tank which was constructed early in 1983-84 would collapse all of a sudden within eight years of its construction i.e., on 12.10.1992. The things do speak for themselves. There can be least doubt that the school authorities were not vigilant in their duties and that this being the Government School the Government would have a liability. There is no dispute that two young lives

have perished predominantly because of the lack of care on the part of the school authorities. In my opinion the compensation of Rs.5000/- by way of ex gratia payment would be a cruel joke. The petitioners have claimed the compensation of Rs.1,50,000/- each in their writ petitions."

38. Maintainability of the writ petitions claiming compensation against the State's inaction is considered by the Hon'ble Supreme Court in S.S.Ahluwalia v. Union of India reported in (2001) 4 SCC 452. At paragraph 2, the Hon'ble Supreme Court issued following directions,

"..... Therefore, it would be appropriate for us to direct the High Courts of Delhi, Rajasthan, Orissa, Punjab and Haryana, Himachal Pradesh, Patna, Madhya Pradesh, Allahabad and Bombay in the States of Delhi, Rajasthan, Orissa, Haryana, Himachal Pradesh, Bihar, Madhya Pradesh, Uttar Pradesh, Maharashtra and Goa to deal with the matter in respect of the allegations made herein in respect of the State falling in their jurisdiction by treating the writ petition as a petition filed in that High Court. These proceedings, therefore, shall stand transferred to the respective High Courts. A copy of the petition with annexures and response of the respective State Governments shall be sent to the High Court for appropriate action."

The above direction was given since the claim in those writ petitions were made directly before the Supreme Court seeking compensation to the victims of riot, which took place in various places due to the assassination of Smt.Indira Gandhi.

39. In M.S.Grewal v. Deep Chand Sood reported in 2001 (8) SCC 151, children died in a picnic, due to the negligence of teachers. Though there was an enquiry by the Sub-Divisional Magistrate, nothing was forthcoming. Parents filed a writ petition, seeking for a relief by way of an inquiry by CBI to find out the cause for the tragedy and fixation of responsibility therefor and punishment to the guilty, with a prayer for adequate compensation from the school authorities. On 2-8-1995, the High Court ordered an inquiry to be conducted by the Central Bureau of Investigation and later, upon examination of various witnesses recorded the unfortunate incident of drowning of children. Writ petition was allowed and it was ordered that the Chairman and the management of the School shall pay a compensation of Rs 5 lakhs to each of the parents of the fourteen students who died in the incident and a sum of Rs 30,000 to each of the parents of the students who suffered due

to the drowning incident within two months with interest, at the rate of 12% per annum from 28-5-1995 by depositing the same in the Registry of the High Court. Decision of the High Court was challenged on appeal to the Hon'ble Supreme Court. Though M.S.Grewal's case was on negligence and tortious liability, the Hon'ble Supreme Court, considered the following decisions, as to how, compensation has to be awarded,

"8. Incidentally, this Court in C.K. Subramania Iyer v. T. Kunhikuttan Nair [(1969) 3 SCC 64] while dealing with the matter of fatal accidents laid down certain relevant guidelines for the purpose of assessment of compensation. Para 13 of the Report would be relevant on this score and the same is set out hereinbelow: (SCC p. 70, para 13)

"13. The law on the point arising for decision may be summed up thus: Compulsory damages under Section 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the appellate court should be slow in disturbing the findings reached by the courts below, if they have taken all the relevant facts into consideration." (emphasis supplied)

9. The observations as above, undoubtedly lay down the basic guidance for assessment of damage but one redeeming feature ought to be noted that compensation or damages cannot be awarded as a

solatium but to assess the same with reference to loss of pecuniary benefits. In the decision last noted (Subramania Iyer [(1969) 3 SCC 64]) this Court placed strong reliance on two old decisions of the English courts, to wit: Franklin v. South Eastern Rly. Co. [157 ER 448 : (1858) 3 H&N 211] wherein Pollock, C.B. stated:

"We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough and such reasonable expectation might well exist, though from the father, not being in need, the son had never done anything for him. On the other hand a jury certainly ought not to make a guess in the matter, but ought to be satisfied that there has been a loss of sensible and appreciable pecuniary benefit, which might have been reasonably expected from the continuance of life."

On the aspect of maintainability of a writ petition, under Article 226 of the Constitution of India, the Hon'ble Supreme Court, at Paragraphs 26 to 28, held as follows:

"26. Next is the issue "maintainability of the writ petition" before the High Court under Article 226 of the Constitution. The appellants though initially very strongly contended that while the negligence aspect has been dealt with under penal law already, the claim for compensation cannot but be left to be adjudicated by the civil law and thus the civil court's jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting however recording that the law courts exist for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. In this context, reference may be made to two decisions of this Court: the first in line is the decision in Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527] wherein this Court relying upon the decision in Rudul Sah (Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798]) decried the illegality and impropriety in awarding compensation in a proceeding in which the court's power under Articles 32 and 226 of the Constitution stands invoked and thus observed that it was a clear case for award of compensation to the petitioner for

custodial death of her son. It is undoubtedly true, however, that in the present context, there is no infringement of the State's obligation, unless of course the State can also be termed to be a joint tortfeasor, but since the case of the parties stands restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except noting the two decisions of this Court as above and without expression of any opinion in regard thereto.

27. The decision of this Court in D.K. Basu v. State of W.B. [(1997) 1 SCC 416 : 1997 SCC (Cri) 92] comes next. This decision has opened up a new vista in the jurisprudence of the country. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits stands extended since Anand, J. (as His Lordship then was) in no uncertain terms observed: (SCC p. 439, para 45)

"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. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim – civil action for damages is a long-drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."

28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system – affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages. As a matter of fact the decision in D.K. Basu [(1997) 1 SCC 416 : 1997 SCC (Cri) 92] has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach". Law courts will lose their efficacy if they cannot possibly respond to the need of the society – technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since

technicality cannot and ought not to outweigh the course of justice."

On the aspect, as to whether, the second schedule to the Motor Vehicles Act, can be taken as a guide, in the matter of awarding compensation and whether, compensation of Rs.5 Lakhs, awarded by the writ petition, is excessive, the Hon'ble Supreme Court, at Paragraph 36, observed thus,

"36. Having considered the matter in its proper perspective and the applicability of the multiplier method and without even any further material on record, we do feel it expedient to note that though Mr Bahuguna attributed the quantum granted by the High Court as strangely absurd, we, however, are not in a position to lend our concurrence therewith. It is not that the award of compensation at Rs 5 lakhs can be attributed to be the resultant effect of either emotions or sentiments or the High Court's anguish over the incident. The High Court obviously considered the overall situation as regards social placement of the students. As stated hereinafter the School presently is one of the affluent schools in the country and the fee structure and other incidentals are so high that it would be a well-nigh impossibility to think of admission in the School at even the upper middle class level. Obviously the School caters to the need of the upper strata of the society and if the Second Schedule of the Motor Vehicles Act can be termed to be any guide, the compensation could have been a much larger sum. Thus in the factual situation, award of compensation at Rs 5 lakhs cannot by any stretch be termed to be excessive."

40. In The Chief Secretary to the Government of Tamil Nadu & Others v. Mrs. R. Selvam [W.A.No.580 of 2002, dated 21.04.2004] reported in 2004 WLR 611, the Division Bench of this Court awarded Rs.5,00,000/- to the parents of one medical college student, who was killed in a college hostel by the miscreants. The Division Bench in paragraph 17 of its Judgment held as follows:

"17. The parents while admitting their children, be it a boy or a girl, do so with the fond hope that their wards will be properly looked after. The hostel run by the Thanjavur Medical College is not a commercial establishment. It is the bounden duty of the hostel authorities to take every reasonable, possible and necessary step in providing security arrangements. They have to be more careful and vigilant when they take the responsibilities of providing boarding and lodging for the girl students. In fact,

this Court is surprised with the stand taken by the appellants in the counter affidavit filed in the Writ Petition to the effect that they are not responsible since no separate amount was collected under the head 'for security arrangements'."

41. In *National Human Rights Commission v. State of Gujarat* reported in (2004) 8 SCC 610, the Hon'ble Supreme Court directed the High Court of Gujarat to consider the claims of riot victims of communal clash arose in the State of Gujarat due to the Godhra incident, which reads as follows:

"8. In our view, these all are issues which can be raised in the pending writ petitions before the High Court since the High Court would have the jurisdiction to consider each of the grievances raised. In fact, having regard to the nature of the claim it will be more appropriate, that the High Court should deal with the issues raised in the first instance."

42. In *C.Thekkamalai v. State of Tamil Nadu* [W.A. No.1167 of 1998, dated 29.11.2005] reported in 2006 CrL.J. 1997, invoking Art.226 of the Constitution, a writ petition was filed on behalf of Thekkamalai and his wife Lakshmi to direct the first respondent to pay a fair and reasonable amount as compensation to Lakshmi and Thekkamalai, to provide adequate and suitable rehabilitative measures to them, to appoint a Special Public Prosecutor with the consent of the Chairman of the Tamil Nadu Legal Aid Board for conducting the trial in S.C. No.90 of 1992 on the file of the I Assistant Sessions Judge, Trichy and to provide adequate personal protection to Thekkamalai and Lakshmi and their close relatives. A learned Single Judge allowed the writ petition and directed the first respondent to pay interim compensation Rs.75,000/- to Thekkamalai and his wife Lakshmi, subject to the right of the State to realise the said amount from the delinquent police personnel concerned, who abused their position as the servants of the State Government, and irrespective of the result of their prosecution before the criminal court. Learned single Judge further directed the first respondent therein to take all necessary steps to provide the victims adequate and suitable rehabilitative measures. Further directions were also issued, but those are not material for the purpose of this appeal. Thekkamalai has filed an appeal for the enhancement of the compensation on the ground that he and his wife Lakshmi are entitled to just and reasonable compensation and the amount awarded by the learned single Judge by way of interim compensation is meagre and inadequate. Taking note of the catena of decisions, at Paragraph 8, a Hon'ble Division Bench of this Court, held as follows:

"8. We find considerable substance in the submissions of learned counsel for the appellant. Where a heinous crime of rape committed by the police personnel, who are public functionaries, the matter clearly relates to the violation of basic human rights as well as Fundamental Right guaranteed under Article 21 of the Constitution and the victim would be entitled to a fair and reasonable compensation. It is reported that the concerned Sub Inspector was convicted by the trial court in S.C. No.90 of 1992 under Sections 366, 376(2)(a)(1), 384 and 34 2 of I.P.C. and sentenced to suffer rigorous imprisonment for ten years and to pay fine amount. The trial court also directed the accused to pay Rs.2,00,000/- and Rs.50,000/- as compensation to Lakshmi and Thekkamalai respectively. In the appeal filed by the Sub Inspector of Police, the conviction under Sections 366 and 376 (2)(a)(i) of I.P. C. as well as the payment of Rs.2,00,000/- as compensation to the victim Lakshmi was confirmed by this Court. It appears that the amount of compensation has not been paid by the accused, who is presently behind the bars."

Ultimately, the Hon'ble Division Bench awarded a sum of Rs.4,25,000/- with interest. Thus, it could be seen that payment of compensation in writ petitions, when there is a violation of Article 21 of the Constitution of India, is not prohibited.

43. In *K.Kabali @ Kabalesswaran v. State of Tamil Nadu* [W.A.No.587 of 2001, dated 06.03.2006] reported in 2006 (2) MLJ 28, at Paragraphs 11 to 21, a Hon'ble Division Bench of this Court, held as follows:

"11. Though the learned Judge based on the decision of the Apex Court in *Chairman Grid corporation of Orissa Law v. Sukamani Das*, dismissed the writ petition claiming compensation with the liberty to approach the Civil Court, in the light of recent pronouncements, it is not in dispute that in appropriate cases, this Court even by exercising jurisdiction under Article 226 of the Constitution can grant compensation to the victims.

14. Now, we shall consider the quantum of compensation. As said in the earlier part of our order, in the cases such as custodial death, medical negligence, negligence on the part of the police and public servants, this Court exercising jurisdiction under Article 226 of the Constitution of India can very well award appropriate compensation. In *C. Thekkamalai v. State of Tamil Nadu*, the First Bench of

this Court after referring various decisions of the Apex Court held that, where public functionaries are involved and the matter relates to violation of fundamental rights or enforcement of public duties, the remedy would still be available under the Constitution, notwithstanding that a suit could be filed for damages. Their Lordships further held that, where a heinous crime of rape was committed by the police personnel, who are public functionaries, the matter clearly relates to the violation of basic human rights as well as Fundamental Rights guaranteed under Article 21 of the Constitution of India and the victim would be entitled to a fair and reasonable compensation. The case before the First Bench relates to rape of a schedule caste lady in police station by the police personnel. The Bench, altogether directed the State Government to pay compensation of a sum of Rs. 5 lakh to the victim.

15. In *D. Ranganayagi v. Station of Tamil Nadu etc. and Anr.* [2000 (1) LW 96], a learned single Judge of this Court in respect of the custodial death directed the state of pay compensation of Rs. 5 lakhs.

16. In *Ruth Mary and Anr. v. The Commissioner Corporation of Chennai and Anr.* [2004 WLR 176], a learned single Judge following the decision rendered by one of us (P. Sathasivam, J.) in Writ Petition No. 16084 of 1993 (*Matsa Gandhi D. v. Tamil Nadu Slum Clearance Board*) directed the Corporation of Madras to pay compensation for the death of three children in a Corporation toilet and septic tank.

17. In *R. Dhanalakshmi v. Govt., of Tamil Nadu* [2004 WLR 346], a learned single Judge in respect of custodial death, taking note of age and income of the deceased, family circumstance, dependency, etc., by applying multiplier as provided in the Motor Vehicles Act, fixed compensation of Rs. 9 lakhs.

18. In *Malkiat Singh v. State of U.P.* : (1998) 9 SCC 351, in respect of death of his son Dalvinder Singh in an encounter, the Hon'ble Supreme Court directed the State to pay Rs. 5 lakhs to the petitioner by way of compensation.

19. In *Ajab Singh v. State of U.P.* : 2000 Cri LJ 1809 in the case of custodial death, the Hon'ble Supreme Court directed the State of U.P. for payment of Rs. 5 lakhs. The said direction is in addition to the claim of compensation in civil law proceedings against those responsible for the death.

20. The above decisions make it clear that where public functionaries are involved and the matter relates to the violation of fundamental rights or the

enforcement of public duties, the aggrieved person can very well approach this Court for necessary relief, including compensation under Article 226 of the Constitution of India. In the affidavit, the petitioner has specifically stated that he had one son (K. Ramesh, since deceased) besides three daughters (according to the learned counsel, in para 2 of the affidavit it is wrongly mentioned as 2 daughters). During the course of arguments, it is brought to our notice that all the three daughters are yet to be married and according to the petitioner for want of financial assistance he is not in a position to perform the marriage of his daughters. It is also stated that the petitioner since retired is not an earning member and he does not own any property. It is useful to mention that even the Commission of Enquiry has observed that the entire family was depending on the deceased and he was the only breadwinner. It is not disputed that altogether the petitioner, father of the deceased was paid Rs. 1 lakh i.e., Rs. 50,000/- at the first instance by the Government and another sum of Rs. 50,000/- on the recommendation of the Commission of Enquiry.

21. Taking note of the findings of the Commission of Enquiry that the police personnel were negligent in their duty which resulted in the death of the deceased Ramesh at the age of 22, considering the family circumstances and of the fact that the petitioner being a retired employee has to look after three grown up daughters, we are of the view that ends of justice would be met by directing the State Government i.e., first respondent to pay a further amount of Rs. 3 lakhs (Rupees three lakhs only) as compensation in addition to the amount already paid. The State Government is directed to invest the above mentioned amount of Rs. 3 lakhs (Rupees three lakhs only) within a period of four weeks from the date of receipt of a copy of this order in the name of the petitioner/appellant, viz., K. Kabali, in fixed deposit, initially for a period of three years with Tamil Nadu Power Finance Corporation. It is made clear that the petitioner would be entitled to receive interest accrues on such deposit once in three months. After expiry of the said period of three years, the petitioner/appellant is permitted to withdraw the amount and share the same with his three daughters equally."

44. In Lakshmana Naidu v. Angammal [W.P.Nos.1602, 1603 and 1604 of 1999, dated 28.04.2006] reported in 2006 (4) CTC 225 :

2006 (3) MLJ 764, the legal heirs of the deceased Bale @ Subramaniam (W.P.No.1602 of 1999), Jayaraman (W.P.No.1603 of 1999) and Rajamanickam (W.P.No.1604 of 1999) are the petitioners respectively and they have prayed for the issuance of a writ of mandamus directing the respondents to pay a sum of Rs.5 lakhs each as compensation for the loss and suffering caused by the officials of the second respondent by torture, murder and burning of the said three deceased persons. A learned single Judge (Hon'ble Mr. Justice K.Mohan Ram), though computed the compensation, as per the multiplier method, ordered compensation, as follows:

"12. The High Court, being protector of Civil liberties of the citizen, has not only the power and jurisdiction, but also an obligation to grant relief in exercise of its jurisdiction under Article 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. The relief in exercise of power under Article 226 of the Constitution of India would be granted once it is established that there has been infringement of the fundamental rights of the citizen.

.....
14. (i) In W.P.No.1602 of 1999, the age of the deceased Bale @ Subramaniam was 25 years at the time of death; his income per day was Rs.60/-; the loss of income per year will be Rs.21,600/- and if the standard 1/3-rd deduction is made, the loss of income will be Rs.14,400/-, if the age of the deceased i.e. 25 years is taken into account, as per the provisions of the Motor Vehicles Act, the multiplier to be adopted will be 18 and the compensation that could be arrived at is Rs.2,59,200/-; towards loss of love and affection a sum of Rs.25,000/- could be easily awarded and towards mental agony and suffering of the petitioners a sum of Rs.25,000/- could be fixed; the death was caused on 29.10.1990, if interest at 9% is awarded on the compensation amount on the sum of Rs.3,09,200/- up-to-date, it will come to approximately Rs.7,26,620/-.

(ii) In W.P.No.1603 of 1999, the age of the deceased Rajamanickam was 31 years at the time of death; his income per day was Rs.60/-; the loss of income per year will be Rs.21,600/- and if the standard 1/3-rd deduction is made the loss of income will be Rs.14,400/-, if the age of the deceased i.e. 31 years is taken into account, as per the provisions of the Motor Vehicles Act, the multiplier to be adopted will be 17 and the compensation that could be arrived at is Rs.2,44,800/-; towards loss of love and affection a sum of Rs.25,000/- could be easily awarded and towards mental agony and suffering of the petitioners a sum of Rs.25,000/- could be fixed; the death was caused on 29.10.1990, if interest at 9% is awarded on the compensation amount on the sum of Rs.2,94,800/- up-to-date, it will come to approximately Rs.7,06,046/-.

(iii) In W.P.No.1604 of 1999, the age of the deceased Jayaraman was 27 years at the time of death; his income per day was Rs.60/-; the loss of income per year will be Rs.21,600/- and if the standard 1/3-rd deduction is made the loss of income will be Rs.14,400/-, if the age of the deceased i.e. 27 years is taken into account, as per the provisions of the Motor Vehicles Act, the multiplier to be adopted will be 18 and the compensation that could be arrived at is Rs.2,59,200/-; towards loss of love and affection a sum of Rs.25,000/- could be easily awarded and towards mental agony and suffering of the petitioners a sum of Rs.25,000/- could be fixed; the death was caused on 29.10.1990, if interest at 9% is awarded on the compensation amount on the sum of Rs.3,09,200/- up-to-date, it will come to approximately Rs.7,26,620/.

45. In Sube Singh v. State of Haryana reported in 2006 (3) SCC 178, the Hon'ble Supreme Court framed a question, as to whether, on the facts and circumstances of this case, compensation should be awarded to the petitioner and his family members, as a public law remedy for the violation of their fundamental rights under Article 21 of the Constitution. After considering a catena of decisions, the Hon'ble Supreme Court, at Paragraphs 31 to 49, held as follows:

"31. Though illegal detention and custodial torture were recognised as violations of the fundamental rights of life and liberty guaranteed under Article 21, to begin with, only the following reliefs were being granted in the writ petitions under Article 32 or 226:

(a) direction to set at liberty the person detained, if the complaint was one of illegal detention.

(b) direction to the Government concerned to hold an inquiry and take action against the officers responsible for the violation.

(c) if the enquiry or action taken by the department concerned was found to be not satisfactory, to direct an inquiry by an independent agency, usually the Central Bureau of Investigation.

Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades.

32. In the Bhagalpur Blinding case [Khatrī (II) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228]] Bhagwati, J. (as he then was), speaking for the Bench, posed the following question while considering the relief that could be given by a court for violation of constitutional rights guaranteed in Article 21 of the Constitution: (SCC p. 630, para 4)

"[B]ut if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty."

The question was expanded in a subsequent order in Bhagalpur Blinding case [Khatrī (IV) v. State of Bihar [(1981) 2 SCC 493 : 1981 SCC (Cri) 503]] thus: (SCC p. 504, para 7)

"If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the court for injuncting the State from acting through such officer in violation of his fundamental right under Article 21? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would ex concessione be no breach of Article 21 and if he is

acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who is aggrieved can move the court under Article 32 for a writ injunctioning such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the court for enforcement of his fundamental right, the court cannot give him any relief."

33. Answering the said questions, it was held that when a court trying the writ petition proceeds to inquire into the violation of any right to life or personal liberty, while in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation. This Court clarified that the nature and object of the inquiry is altogether different from that in a criminal case and any decision arrived at in the writ petition on this issue cannot have any relevance much less any binding effect, in any criminal proceeding which may be taken against a particular police officer. This Court further clarified that in a given case, if the investigation is still proceeding, the Court may even defer the inquiry before it until the investigation is completed or if the Court considered it necessary in the interests of justice, it may postpone its inquiry until after the prosecution was terminated, but that is a matter entirely for the exercise of the discretion of the Court and there is no bar precluding

the Court from proceeding with the inquiry before it, even if the investigation or prosecution is pending.

34. In Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] the petitioner therein approached this Court under Article 32 of the Constitution alleging that though he was acquitted by the Sessions Court on 3-6-1968, he was released from jail only on 6-10-1982, after 14 years, and sought compensation for his illegal detention. This Court while recognising 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, raised for consideration the important question as to whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for payment of money, as compensation for the deprivation of a fundamental right. This Court answered the question thus while awarding compensation: (SCC pp. 147-48, para 10)

"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 of 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 violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringement 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 civilisation 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."

Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] was followed in Bhim Singh v. State of J&K [(1985) 4 SCC 677 : 1986 SCC (Cri) 47] and Peoples' Union for Democratic Rights v. Police Commr. [(1989) 4 SCC 730 : 1990 SCC (Cri) 75]

35. The law was crystallised in Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri)

527] . In that case, the deceased was arrested by the police, handcuffed and kept in police custody. The next day, his dead body was found on a railway track. This Court awarded compensation to the mother of the deceased. J.S. Verma, J. (as he then was) spelt out the following principles:

"[A]ward of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based 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. (SCC p. 758, para 10)

... enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

... '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 Articles 32 and 226 of the Constitution. (SCC pp. 762-63, paras 16-17)" (emphasis supplied)

36. Dr. A.S. Anand, J., (as he then was) in his concurring judgment elaborated the principle thus:

"[C]onvicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights 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. (SCC p. 767, para 31)

The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by [the Supreme] Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising 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 citizen. The payment of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law. (SCC pp. 768-69, para 34)"

37. In *D.K. Basu v. State of W.B.* [(1997) 1 SCC 416 : 1997 SCC (Cri) 92] this Court again considered exhaustively the question and held that monetary compensation should be awarded for established infringement of fundamental rights guaranteed under Article 21. This Court held:

"Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should

not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society. (SCC p. 424, para 9)

Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become lawbreakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? ... The answer, indeed, has to be an emphatic 'No'. (SCC p. 429, para 22)

Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it."

38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law

remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.

39. This takes us to the next question as to whether compensation should be awarded under Articles 32/226 for every violation of Article 21 where illegal detention or custodial violence is alleged.

Whether compensation should be awarded for every violation of Article 21.

40. In *M.C. Mehta v. Union of India* [(1987) 1 SCC 395 : 1987 SCC (L&S) 7] a Constitution Bench of this Court while considering the question whether compensation can be awarded in a petition under Article 32, observed thus: (SCC pp. 408-09, para 7)

"We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words 'in appropriate cases' because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights 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 or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. ... If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court and it would have been gravely unjust to the

person whose fundamental right was violated, to require him to go to the civil court for claiming compensation."

In Sube Singh's case, the Hon'ble Supreme Court further held that the award of compensation in writ proceedings, will not affect the right of the victims to claim additional compensation by way of civil or criminal action.

46. In Union Territory of Pondicherry v. M.Latchumanan reported in 2007 (4) MLJ 274, a Hon'ble Division Bench addressed a question, as to whether, a writ petition is maintainable, claiming compensation and whether the party should be driven to a civil Court. Answering the same, at Paragraph 12, held thus,

"12. The contention regarding alternative remedy of approaching the civil court does not merit acceptance at least in this case. It has been repeatedly held by the Courts that the burden of disproving custodial violence is on the police, if it is established that the injuries were sustained while in the custody of the police, that is, in this case, it is true that the petitioner sustained injuries while in custody. For all the various reasons stated, the attitude of the police in furnishing contradictory and conflicting statements of facts, is sufficient to hold that no useful purpose would be served in driving the victim to the civil court. The availability of alternative remedy under ordinary law is no bar for the High Court to exercise its power and to grant compensation in appropriate cases vide CHAIRMAN, RAILWAY BOARD v. CHANDRIMA DAS (AIR 2000 SC 988), more so in a case of this type in which the available materials clearly indicate that the action of the respondents is culpable."

47. In Shri Dino DG Dympep v. State of Meghalaya reported in AIR 2007 Gau. 155, a writ petition was filed for the following reliefs, viz., (i) To pay adequate compensation to the petitioner No. 2, wife of the under trial prisoner, namely, Late Phomlin Mawlieh, who died on 11-9-1998 at Civil Hospital, Shillong while in judicial custody; (ii) To cause an enquiry by an independent and impartial agency as to the cause of death of the said under trial prisoner; (iii) To appoint highly qualified Forensic Science Medical Specialist for conducting Post-Mortem Examination on the dead body of the undertrial prisoner and; (iv) To constitute State Human Rights Commission and Human Rights Court as required under Sections 21 and 30 of the protection of Human Rights Act, 1993. Contention was that death due to third degree method by police and not sickness.

Explaining the nature of proceedings in a writ petition, under Article 226 of the Constitution of India, at Paragraphs 10 & 11, the Hon'ble Gauhati High Court, held thus,

"10. It must be remembered that a proceeding under Article 226 of the Constitution of India concerning violation of fundamental rights, more particularly, the fundamental right under Article 21 of the Constitution, is not a criminal proceeding and in a proceeding of this nature, proof beyond reasonable doubt cannot be insisted upon. Once the petitioners have made out a prima facie case of custodial violence which resulted in the death of the deceased, the provision of Section 106 of the Indian Evidence Act can be readily invoked. Under Section 106 of the Evidence Act, it is provided that when any fact especially within the knowledge of any person, the burden of proving that fact is upon him. This section like the preceding one is an exception to the general rule laid down in Section 101, which says that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue. However, I must hasten to say that Section 106 is not intended to relieve any person of that duty or burden, and says that when a fact to be proved (whether affirmative or negative) is peculiarly within the knowledge of a party, it is for him to prove it. For instance, when the incident of murder had taken place inside the house of the accused at the time when the accused person alone were present, they only knew what exactly had happened. It is true that Section 106 cannot be used to shift the onus of proving the evidence from the prosecution to the accused, but when there is satisfactory evidence which fastens or conclusively fixes the liability for the death of the inmates of the house present at the relevant time, in the absence of any other explanation, the only possible inference which can be drawn by this Court will be that all the accused inmates participated in the crime. If any one of them claims to the contrary then under Section 106, the burden of proving that fact would be upon him since that is within his special knowledge. This was the principle laid down by the Apex Court in *Shambhu Nath v. State of Ajmer*. If this is the principle held applicable even in a criminal proceeding requiring proof beyond reasonable doubt, with due respect, there is no difficulty in holding that when there is prima facie evidence to show that the deceased was subjected to physical torture by the police personnel after he was apprehended or taken into custody, it is incumbent

upon the respondents to prove that the Mairang Police Station, which took him to custody or the Jail authority which subsequently took him to custody have no hand in the death of the deceased.

11. In this connection, the observations of the Apex Court in *Munshi Singh Gautam v. State of MP* at paragraphs 6 & 7 are instructive and are reproduced herein below:

"6. Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter.

7. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact-situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times of the Courts as well, because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lockup because there would hardly be any evidence available to the prosecution to directly implicate them in the torture. The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilized society governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under-trial prisoners or suspects furnishes the image of any civilized nation and encourages the men in "Khaki" to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating

the crop, the foundations of the criminal justice delivery system would be shaken and civilization itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The Courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will be a sad day, for anyone to reckon with."

On the aspect, as to whether, public law remedy could be invoked, the Court, at Paragraph 14, held as follows:

"14. Having come to the conclusion that the deceased died due to custodial violence, the next question to be determined what is to be done by this Court on the facts and circumstances of the case. Since a case of breach of fundamental right to life guaranteed by Article 21 of the Constitution by the State and its instrumentality has been made out, the award of compensation against the State respondents can only be the appropriate and effective remedy. The relief of monetary compensation as exemplary damages, in a proceeding under Article 226 by the High Court for established infringement of the enforceable right guaranteed under Article 21 of the Constitution is undoubtedly a remedy available in public law and is based on strict liability for contravention of the guaranteed basic and inalienable right of the citizen. To quote the Apex Court, the purpose of public law is not only to civilize public power but also to assure the citizen they live under a legal system which aims to protect their interests and preserve their rights. When therefore, the Court moulds the relief by granting compensation in proceeding under Article 226 of the Constitution seeking enforcement and protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrongdoer on the State which has failed in its duty to protect the fundamental right of the citizen. The payment of compensation in such a case is not to be understood, as it is generally understood general interest in a civil action for damages under the public law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights

of the citizen. The compensation is in the nature of exemplary damages awarded against the wrongdoer for breach of public duty and is independent of the rights available to the aggrieved party to claim compensation under the prevalent law through a suit instituted in a court of competent jurisdiction. The quantum of compensation will, however, depend on the facts and circumstances of the case. In the instant case, the deceased was 27 years old at the time of his death, was a daily wage earner and is surviving by his wife and two minor children. Considering the condition of the deceased and the circumstances in which he died, I am of the view that a compensation of Rs. 3 lacs will meet the ends of justice."

48. In Lilly Stanislaus v. Chairman, T.N.E.B. [W.P.No.10954 of 1997, dated 11.02.2008] reported in (2008) 3 MLJ 160, this Court granted compensation of Rs.90,000/- to the widow of a person, who was electrocuted due to the negligence of the Electricity Board.

49. In V.Subramaniam v. The State of Tamil Nadu [W.P.No.19260 of 2002 and W.P.No.14436 of 2008, dated 14.08.2008] reported in 2009 (1) CTC 434, a writ of Mandamus, directing the first respondent/State Government to pay compensation of Rs.6,00,000/- for the death of his son, due to the fall of compound wall of the school, was filed. Following the decision of the Hon'ble Supreme Court reported in AIR 2001 SC 3218 (Lata Wadhwa v. State of Bihar) and having regard to the fact that the petitioner therein has lost his only son due to the inaction of the subordinate officials, this Court ordered as follows:

"....the respondents 1 and 2 therein are liable to pay a compensation of Rs.2,00,000/- to the petitioner with interest at the rate of 10% per annum from the date of death of the petitioner's son viz., 13.12.2000. By calculating interest at the rate of 10% for about 7 1/2 years, the interest amount comes to Rs.1.50 lakhs. Thus a total amount of Rs.3.5 lakhs is directed to be paid to the petitioner by the respondents 1 and 2 within a period of six weeks from the date of receipt of copy of this order. W.P.No.19260 of 2002 is allowed with the above direction."

50. In Henri Tiphagne v. State of Tamil Nadu reported in 2008 (2) MWN (Cr.) 313, the petitioner therein, the Executive Director of People's Watch, Tamilnadu, filed a criminal original petition seeking for the relief of directing the transfer of

investigation which was pending in Cr.No.475/2002 on the file of the 2nd respondent, Inspector of Police, Paramakudi Police Station, to the 4th respondent, the Joint Director of Police, CBI, Chennai and for a further direction to expedite the investigation and file the final report within the time frame fixed by this Court and pass such other or further orders as may be necessary in the facts and circumstances of the case. Victim died in police custody and a case in SC.No.105 of 2007, was pending. In the meanwhile, the government awarded payment of interim compensation of Rs.1 Lakh. Though a petition was filed under Section 482 of the Code of Criminal Procedure, following a catena of decisions, a learned single Judge, at Paragraphs 19 and 21, held as follows:

"19. Therefore it is well settled that award of compensation against the State as an appropriate and effective remedy for redress of an established infringement of fundamental right under Article 21 by a public servant and the said award of compensation by the High Court or Supreme Court is a remedy available in public law.

.....

21. Therefore, in view of the above settled principle of law laid down by the Hon'ble Apex Court, this court is also entitled to direct the Government to pay a reasonable compensation to the family of the victim Karuppee in a petition filed under section 482 Cr.P.C."

51. In *M.Kalithai v. State of Tamil Nadu* [W.P.No.11569 of 1999, dated 14.03.2009], wife of the deceased filed a writ petition, claiming compensation of Rs.10 Lakhs from the respondents therein, as damages. Though a contention was raised by the respondents therein that the Government have issued G.O.Ms.No.153, Public (Law and Order-B) Department, dated 31.01.1998, for granting financial assistance in respect of the categories [1] (a) Death in caste/communal clashes; (b) Death due to police torture; (c) Death due to police firing; and (d) Rape by police; and [2] Permanent incapacitation, and on the plea that the deceased therein committed suicide and therefore, not entitled to compensation. After considering the rival submissions, a Hon'ble Division Bench of this Court [Hon'ble Mr. Justice P.K.Mishra and Hon'ble Mr. Justice K.Chandru], at paragraphs 14 to 24, ordered thus,

"19. It is suffice to state that the finding that his arrest was not shown on records is enough to hold that the respondents were guilty of violating Article 22(1) of the Constitution of India as well as the 11 commandments (guidelines) issued by the Supreme Court

in the judgment relating to D.K.Basu -vs- State of West Bengal reported in AIR 1997 SC 610. Therefore, we have no hesitation to reject the stand taken by the respondent State that D.K.Basu guidelines have been followed in the case of arrest of Late Marisamy. We also hold that this G.O. referred to by the respondent State, as extracted above, cannot be a 'be-all and end-all' in the matter of grant of compensation in case of human rights abuse in a police station. Therefore, the primary cause in the present case is that the accused Late Marisamy was taken to the police station and kept in custody without any record.

20. The subordinates of the respondent State have committed gross contempt of the orders of the Supreme Court rendered in D.K.Basu's case (cited supra). In the same judgment, the nature of action to be taken for violation of the order is set out in paragraphs 37 and 38, which is as follows:-

"37. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

38. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier."

21. In this context, it is necessary to refer to the Full Bench judgment of this Court in P.P.M.Thangaiah Nadar Firm, rep. by its Partner T.P.Prakasam, Tuticorin and others -vs- Government of Tamil Nadu, rep. by its Chief Secretary, Chennai and others reported in (2007) 2 MLJ 685. The Full Bench after referring to various cases of the Supreme Court in paragraph 38, held as follows:-

"38. Now, the inevitable end of the journey or may be beginning of another. In view of the various decisions noticed by us and many other decisions referred to in such decisions, the following conclusions can be reached. The State is not necessarily liable in every case where there is loss of life or damage to the property during rioting. Where, however, it is established that the officers of the State ordained with duty of maintaining law and order have failed to protect the life, liberty and property of person and such failure amounts to dereliction of duty, the State would be liable to pay

compensation to the victim. Such liability can be enforced through Public Law remedy or Common Law remedy. Where, necessary facts to establish culpable negligence on the part of the officials are available, the High Court under Article 226 can issue appropriate direction".

22. In this context, it is necessary to refer to a latest decision of the Supreme Court in *Dalbir Singh v. State of U.P. and Others* (Writ Petition (Crl.) No. 193 of 2006, decided on February 3, 2009). Paragraphs 6 to 11 are relevant and they may be usefully reproduced below:-

"Para 6. Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

Para 7. If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens' rights.

Para 8. Article 21 which is one of the luminary provisions in the Constitution of India, 1950 (in short the 'Constitution') and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The Article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. Chapter V of the Code of Criminal Procedure, 1973 (for short the 'Code') deals with the

powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is therefore difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of rule of law and administration of criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetrated by the protectors of law. Justice Brandies's observation which have become classic are in following immortal words:

"Government as the omnipotent and omnipresent teacher teaches the whole people by its example, if the Government becomes a law breaker, it breeds contempt for law, it invites every man to become a law unto himself". (in (1928) 277 U.S. 438, quoted in (1961) 367 U.S. 643 at 659).

Para 9. The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in Raghbir Singh's case (supra) more than two decades back seems to have fallen to deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in *Gauri Shanker Sharma v. State of U.P.* (AIR 1990 SC 709), *Bhagwan Singh and Anr. v. State of Punjab* (1992 (3) SCC 249), *Smt. Nilabati Behera @Lalita Behera v. State of Orissa and Ors.* (AIR 1993 SC 1960), *Pratul Kumar Sinha v. State of Bihar and Anr.* (1994 Supp. (3) SCC 100), *Kewal Pati (Smt.) v. State of U.P. and Ors.* (1995 (3) SCC 600), *Inder Singh v. State of Punjab and Ors.* (1995(3) SCC 702), *State of M.P. v. Shyamsunder Trivedi and Ors.* (1995 (4) SCC 262) and by now celebrated decision in *Shri D.K. Basu*

v. State of West Bengal (JT 1997 (1) SC 1) seems to have caused not even any softening attitude to the inhuman approach in dealing with persons in custody.

Para 10. Rarely in cases of police torture or custodial death, there is any direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter.

Para 11. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact-situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times by the courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lockup because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under-trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore,

deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which, if it happens, will be a sad day, for any one to reckon with. " (Emphasis Added)

23. On the strength of the dictum laid down by the Supreme Court, the report of the Revenue Divisional Officer deserves to be discarded. But, however, the view which we have taken herein, we do not think that it is necessary to go into the validity of the finding rendered by the Revenue Divisional Officer, which is only a prima facie finding.

24. Therefore, we hold that the illegal arrest of Late Marisamy and lack of care in saving his life while in police custody are sufficiently proved and those findings established here are enough to order compensation by the State. The respondents are hereby directed to pay a sum of Rs.2 lakhs (Rupees two lakhs only) as compensation towards the death of the petitioner's husband (Late Marisamy) in lockup due to illegalities committed by the policemen. The writ petition will stand allowed to the extent indicated above. No costs. The respondent State is hereby directed to pay the compensation within a period of eight weeks from the date of receipt of a copy of the order of this Court and report compliance."

At this juncture, it is relevant to consider that in P.P.M.Thangaiah Nadar Firm, rep. by its Partner T.P.Prakasam, Tuticorin and Others v. Government of Tamil Nadu rep,by its Chief Secretary, Chennai and others reported in (2007) 2 MLJ 685, the issues raised therein before the Hon'ble Full Bench were, (1) What is the effect of deletion of Article 19(1)(f)?; (2) What is the liability of the State regarding loss of life or damages to the properties during rioting?; and (3) What is the remedy available to a victim, that is to say, whether a writ petition can be filed or the victim is required to file a suit for claiming compensation?. Issue No.3 is relevant for the case before us. At the risk of repetition, Paragraph 38 already extracted in Kalithai's case, is reproduced,

"38. Now the inevitable end of the journey or may be beginning of another. In view of the various decisions noticed by us and many other decisions referred to in such decisions, the following conclusions can be reached. The State is not necessarily liable in every case where there is loss of life or damage to the property during rioting. Where, however, it is established that the officers of

the State ordained with duty of maintaining law and order have failed to protect the life, liberty and property of person and such failure amounts to dereliction of duty, the State would be liable to pay compensation to the victim. Such liability can be enforced through Public Law remedy or Common Law remedy. Where, necessary facts to establish culpable negligence on the part of the officials are available, the High Court under Article 226 can issue appropriate direction. Where, however, the main aspect relating to culpable negligence of the officer is seriously disputed, filing of suit may be more appropriate remedy. No hard and fast rule can be laid down on these aspects and obviously the availability of remedy under Article 226 would depend upon the facts and circumstances of each case. Compensation for loss to the property can also be claimed under Article 226 and merely because right to property has been deleted from the Chapter of Fundamental Rights and has been recognised as a Constitutional right, would not disentitle the High Court to examine that question in any appropriate case."

52. In *Sangaiyya v. State of Tamil Nadu* [W.P.(MD)No.5272 of 2006, dated 06.08.2010], the petitioner therein sought for compensation of Rs.5 Lakhs for the death of his son, caused by the act of the police officials and to initiate both disciplinary and criminal prosecution against those responsible for the untimely death of his son. Government have issued G.O.Ms.No.1094, Public (Law and Order-A) Department, dated 26.09.2008, for department and criminal action and consequently, FIR was also registered. On the aspect of payment of compensation, one of us (Hon'ble Mr. Justice S.MANIKUMAR), by applying the principles, "Just Compensation" and the method adopted in the Motor Vehicles Act, awarded compensation and at Paragraphs 34, 43 to 46, held as follows:

"34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and

preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising 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 citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

43. Having regard to the method adopted by this Court in the decisions, stated supra, in applying the principles of "Just Compensation", as provided under Second Schedule to Section 163-A of Motor Vehicles Act, this Court proposes to quantify the compensation to be awarded in this case. The age of the deceased was 26 years, at the time of the death and survived by his wife, a daughter and sons, aged 5 and 3 years respectively. That apart, the widow was in advance stage of pregnancy. This Court is of the considered view that even a child in the womb is entitled to compensation. As per the second schedule to the Motor Vehicles Act, for the age group of persons, between 25 years and not exceeding 30 years, the appropriate multiplier for computation of loss, towards family contribution is '18'. Though at the time of death, the deceased was said to have been running a mutton stall and earned a sum of Rs.6,000/- per month, in the absence of any proof, this Court is not inclined to determine his monthly income at Rs.4,000/-. However, taking into consideration the number of members in the family, i.e., wife and two minor children besides a child in the womb, the deceased would have earned atleast a sum of Rs.4,000/- in the year 2004, to provide food, shelter, education and other basic needs to the members of his family.

44. Needless to say that the child in the womb and the other minor children have lost the love and affection of their father. The compensation computed should also include loss of consortium of her husband, particularly, when she was in the advanced stage of pregnancy. Taking the above aspects into consideration, even if a minimum multiplier of '15' is applied to the income of the deceased and after deducting 1/3rd towards his personal expenses, the loss of contribution to the family works out to Rs.5,40,000/-.

45. Though the father of the deceased is the only claimant in this writ petition, in the interest of justice and to mitigate the hardship faced by the widow who is now saddled with the responsibility to raise three children without any assistance from her husband, this Court, deems it fit to award compensation of Rs.5,00,000/- (Rupees five lakhs only) to be paid by the State Government to the legal heirs of the victim and that the said amount is further directed to be recovered from the salary of the police personnel, who were prima facie found by the government to be responsible for the death and against whom, the Government have ordered prosecution and departmental action.

46. Taking into consideration, the age of the minor children, wife and age of the father of the deceased, viz., the petitioner herein, this Court further deems it fit to direct the State Government to pay a sum of Rs.1,00,000/- to the petitioner, father of the deceased, and pay a sum of Rs.1,00,000/- to the wife of the deceased and the remaining compensation amount of Rs.3,00,000/- be deposited in the name of the minor children, in a fixed deposit for a period of three years, in a nationalised bank, proximate to the residence of the wife of the deceased. Like in Motor Transport Claims cases, she is also permitted to withdraw the accrued interest from the fixed deposit, till the minor children attain majority. The amount ordered by this Court shall be deposited within one month from the date of receipt of a copy of this order."

53. In Subbulakshmi v. State of Tamil Nadu reported in 2010 (1) MLJ 1300, the victim was raped by a police officer. She sought for a writ of mandamus directing the first respondent to pay a sum of Rs.9 Lakhs as compensation on account of the criminal act committed by the second respondent police officer. The incident occurred on 07.06.1984. After several rounds of litigation, the offender found guilty and the appeal was

dismissed on 06.01.2004. In the meanwhile, she was paid exgratia of Rs.1 Lakh, by G.O.Ms.No.602, dated 13.04.1998. She filed the writ petition for compensation of 9 Lakhs. Taking note of the judgments of the Hon'ble Supreme Court in Nilabati Behera v. State of Orissa, (1993) 2 SCC 746; D.K. Basu v. State of W.B., AIR 1997 SC 610 : (1997) 1 SCC 416; M.S. Grewal v. Deep Chand Sood, AIR 2001 SC 3660 : (2001) 8 SCC 151; Rabindra Nath Ghosal v. University of Calcutta, AIR 2002 SC 3560 : (2002) 7 SCC 478 and other cases, a learned single Judge, has awarded compensation, as follows:

"33. The quantum of compensation in a case like this cannot be estimated with precision or on the basis of structured formula. The injury to her body, mind, dignity and reputation are difficult to be measured in terms of money. The petitioner was only 28 years old at the time of incident. Her ambition to lead a normal happy life was shattered on account of the inhuman conduct of the second respondent. She withstood everything with a vow that the offender would not be allowed to flee from justice. Therefore, the entire background of the case has to be considered for arriving at the compensation. Accordingly, in consideration of the entire matter and background of the case, I am of the view that interest of justice would be subserved if a sum of Rs. Eight Lakhs is awarded as compensation after adjusting the sum of Rupees One lakh already paid by the first respondent."

54. In S.Anand v. State of Tamil Nadu [W.P.No.15794 of 2003, dated 02.07.2012], one of us (Hon'ble Justice S.MANIKUMAR) considered a prayer for a direction to the Human Rights and Social Justice C.I.D., under the control of the 2nd respondent therein, to investigate the matter, on the basis of the petitioner's complaint dated 14.05.2003 and to prosecute the 5th respondent therein and other policemen who had illegally detained and brutally attacked the petitioner and directing the 1st respondent therein to pay compensation of Rs.5,00,000/- to the petitioner for the atrocities committed by the employees against the petitioner and also for a direction to respondents 1 to 3 therein, to take departmental action against the 5th respondent and other policemen who abetted him. In Anand's case, after trial, mother of the deceased, the petitioner therein was awarded compensation of Rs.3,500/- by the trial Court, under Section 357(1) of the Criminal Procedure Code. Mother has filed a Criminal Appeal No.102 of 2004, before this Court and withdrawn the same and hence, the respondents have contended that the proceedings have reached finality. Contention was also made that the trial Court considered the quantum of compensation

and therefore, writ petition is not maintainable. On the aspect of right to life, violation of human rights, compensation to be awarded to a victim, powers of the Hon'ble Supreme Court and the High Court, under Articles 32 and 226 of the Constitution of India, to award compensation, by way of public law remedy and maintainability of the writ petition, it was held that a writ petition is maintainable and ordered compensation.

55. In *Duraisamy v. The Executive Engineer, Operation & Maintenance* reported in 2012 (2) CWC 401, the petitioner therein sought for compensation for the death of his son, due to electrocution. Besides the explaining the cause for electrocution, the Electricity Board has contented that the only remedy available to the petitioner is by way of instituting a suit. While dispelling the said plea and by applying the principles followed in the Motor Vehicles Act, one of us (Hon'ble Mr. Justice S.MANIKUMAR), at Paragraphs 40 and 41, held as follows:

"40. The deceased was stated to be aged 25 years and earned Rs.2,500/- per month. The petitioner, father, dependant was aged 60 years at the time of filing the writ petition. There is no specific method for computing the compensation provided under the Electricity Act and the Rules framed thereunder in the case of death, due to electrification. However, as the death has been caused due to negligence and illegal use of electricity, it would be appropriate to apply the method, as provided for in Motor Vehicles Act, for the purpose of computation, which works out to Rs.3,40,000/- (Rs.2,500 x 12 x 17 x 1/3).

41. In the result, the Writ Petition is allowed as against respondents 3 and 4, who are directed to pay compensation of Rs.3,40,000/-. As the compensation is ordered against private individuals, the petitioner is at liberty to move the Board to recover the amount from the land owners from the deposit made, within a period of two months from the date of receipt of a copy of this order. The respondents 1 and 2 are also directed to take all steps to recover the amount from the landowners and disconnect the supply for wrongful act."

56. This Court in *Mrs.Saroja v. The Government of Tamil Nadu* and another [W.P.No.11757 of 2008, dated 13.02.2014] reported in 2014 Writ L.R. 316, held as follows:

"7. The contention of the respondents that the petitioner has to approach the Civil Court for

claiming compensation is not correct. This court considering the various decisions held that if the facts are not in dispute, and the death is due to negligence on the part of the State authorities, the legal heirs of the deceased can claim compensation in writ proceedings, vide the decision in the case of K.Sambath - v. - The Superintendent Engineer-I, Puducherry Electricity Board reported in 2013 Writ Law Reporter 176. Relevant portion of the decision reads as follows:-

"8. It is a well settled principle of law declared by the Honourable Supreme Court that if the facts are not in dispute, the legal heirs of the victims of riot, custodial killing or death due to negligence on the part of the State authorities, can claim compensation in writ proceedings. The only impediment in entertaining writ petition is, there may be factual disputes such as the manner of death, whether there was negligence or not, age and income of the deceased, etc. In this case there is no dispute with regard to the manner of death, age of the deceased and income of the deceased.

9. Payment of compensation can be ordered by the High Court in appropriate case, particularly when there is no factual disputes, under Article 226 of the Constitution of India, is no longer res integra. In this regard, the following decisions can be usefully referred to.

(i) In AIR 2000 SC 988 : (2000) 2 SCC 465 (Chairman, Railway Board v. Chandima Das), a sum of Rs.10 lakhs was awarded as compensation to a Bangladeshi National, who was sexually assaulted by Eastern Railway Employee. Order of the High Court awarding the said compensation was upheld by the Supreme Court.

(ii) In 2002-1-L.W. 491 = AIR 2001 SC 3668 : (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood), Rs.4.10 lakhs each was awarded for the unfortunate death of 14 young children, who died due to drowning in a river, when they were on picnic organised by the School authorities.

(iii) In (2005) 9 SCC 586 (MCD v. Association of Victims of Uphaar Tragedy) the Supreme Court ordered payment of compensation to the families of those, who died in Uphaar Tragedy and directed the MCD to deposit Rs.3,01,40,000/- (Rupees Three Crores One lakh and Forty thousand) and 50% of the said amount was directed to be distributed to the Claimants.

(iv) In 2011 AIR SCW 4916 (Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage

and Allied Workers), the Supreme Court enhanced the compensation awarded by the High Court of Delhi to sewerage workers' family to Rs.3.29 lakhs, over and above Rs.1.71 lakhs already paid by the Government.

Insofar as our High Court is concerned, the said issue is dealt with in several cases. Few decisions are as follows:

(a) 2001 WLR 174 (C.Chinnathambi v. State of Tamil Nadu) - Rs.1.50 lakhs with 12% interest was ordered to be paid to each school students, who died while water tank broke and fell on them.

(b) 2004 WLR 346 (Smt.R.Dhanalakshmi v. Government of Tamil Nadu) - Rs.9.00 lakhs was ordered to be paid to the family of a prisoner, who was killed while in custody.

(c) 2004 WLR 611 (DB) (The Chief Secretary to the Government of Tamil Nadu v. Mrs.R.Selvam) - Rs.5.00 lakhs was ordered to be paid by the State due to the killing of a medical student inside the Government Medical College Hostel.

(d) 2006 WLR 13 (DB) (C.Thekkamalai v. State of Tamil Nadu) - The Division Bench enhanced the compensation from Rs.75,000/- to Rs.5.00 lakhs for the rape victim, who was illegally arrested and raped.

(e) 2006 WLR 608 (Lakshmana Naidu (decd) v. State of Tamil Nadu & Another) - A sum of Rs.5.00 lakhs was ordered as compensation to the family of the deceased.

(f) 2008 (6) CTC 144 (P.N.Kanagaraj v. Chief Secretary, State of Tamil Nadu) - Rs.4.10 lakhs with 9% interest was ordered for the death of a school boy.

(g) 2009 (1) CTC 434 (Subramaniam v. State of Tamil Nadu) - A sum of Rs.3.50 lakhs was directed to be paid for the death of a student in the school due to negligence of the Government School Teacher.

(h) 2010 WLR 851 (DB) : 2010 (1) CWC 455 (T.Sekaran v. State of Tamil Nadu & Others) - A sum of Rs.9,07,000/- was directed to be paid to the family of a person, who was shot dead by the Security Warden of Madurai Central Prison.

(i) 2011 (1) CWC 786 (The Registrar Administration, Madurai Bench of Madras High Court v. Secretary to Government, Home Department) - A sum of Rs.10 lakhs was ordered to the family of an advocate, who died due to not providing immediate medical treatment, in the High Court premises.

(j) 2011 (6) CTC 636 (P.Ravichandran v. The Government of Tamil Nadu) - A sum of Rs.18.00 lakhs was ordered as compensation to the victim, who suffered 100% disability while doing drainage work.

(k) 2012 (2) CTC 848 (Ganesan v. The State of Tamil Nadu) - A sum of Rs.10.00 lakhs was ordered to be paid by the State to the family of a victim, who died due to bomb attack while travelling in a Transport Corporation Bus.

(l) In (2011) 1 MLJ 1409 (V.Ramar v. Director of Medical and Rural Health Services) this Court directed the State to pay a sum of Rs.5.00 lakhs to the family of a woman, who died during delivery due to the negligence of the Government Hospital authorities.

(m) In (2011) 1 MLJ 1329 (Thangapandi v. Director of Primary Health Services) - A sum of Rs.5 lakhs was ordered to the family of a woman, who died after delivery, due to not giving proper treatment by Government Hospital Doctors.

(n) In W.P.No.23003 of 2011 dated 24.11.2011 this Court awarded a sum of Rs.10.00 lakhs to the family of a deceased student as he was killed while staying in Government Hostel.

(o) In W.P.No.20081 of 2007 dated 4.6.2012 I had an occasion to award a sum of Rs.29.26 lakhs to the petitioner therein, who lost both his parents due to fall of a tree on the road side.

Applying the above decisions to the facts of this case, I am of the view that the respondent department is liable to pay compensation to the family of the petitioner for the death of petitioner's wife Malathy due to electrocution on 17.5.2009.

.....

13. Though the petitioner has claimed a sum of Rs.5,00,000/-, it is well known that the courts have got powers to enhance the compensation. This Court in the case of Arulmeri vs. - Superintendent Engineer, TNEB reported in (2013)2 MLJ 302, citing various decisions of this Court and the Apex Court granted higher compensation than the claim of the petitioner.

14. In view of the above, the Writ Petition is allowed as follows:-

(1) The petitioner is entitled to a sum of Rs.6,04,600/- (Rupees Six Lakhs Four Thousand and Six Hundred only) towards compensation on the death of her minor son.

(2) The respondents are directed to pay the above amount with interest at 7.5% per annum from the date of writ petition till date of deposit.

(3) The respondents are granted eight weeks time from the date of receipt of a copy of this order to deposit the above amount.

(4) There will be no order as to costs."

57. In *Jehara Beevi and another v. State of Tamil Nadu* [W.P.No.33001 of 2002, dated 15.04.2014], compensation of Rs.5 lakhs with interest at 18% p.a., was sought for the death of one Noor Mohammed, son of the first petitioner and husband of the second petitioner, due to police excess, while he was in the police custody. A learned single Judge, while awarding compensation, has considered the decision of the Hon'ble Division Bench reported in (2008) 3 MLJ 167 : 2008 CrI.LJ 2280 (*Rajammal v. State of Tamil Nadu*), which considered the decisions of the Hon'ble Apex Court, with regard to awarding compensation for the custodial deaths. After considering the decisions, viz., (i) *SAHELI, A WOMEN'S RESOURCES CENTRE vs. COMMISSIONER OF POLICE, DELHI AND OTHERS* [AIR 1990 SC 513], (ii) *STATE OF M.P. vs. SHYAMSUNDER TRIVEDI AND OTHERS* [(1995) 4 SCC 262], (iii) *D.K.BASU vs. STATE OF W.B.* [(1997) 1 SCC 416] and (iv) *D.RANGANAYAGI AND OTHERS vs. STATE OF TAMIL NADU AND ANOTHER* [2000-1-L.W. (CrI.) 96], at Paragraph 12, held as follows:

"12. There is no quarrel regarding the propositions laid down in the above judgments. Article 21 of the Constitution guarantees protection of life and personal liberty. In the case on hand, serious allegations of custodial death are made against the guardians of law and as has been held by the Honourable Apex Court in *D.K.Basu's* case, *supra*, torture in custody flouts the basic rights of the citizens recognised by the Constitution and is an affront to human dignity. It is now a well settled law that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. But, as has already been adverted to *supra*, the findings rendered by the learned single Judge, holding the respondents liable to pay the compensation to the petitioner reached the finality and therefore, it is not necessary for this Court again to go into such aspects. Further more, as has been correctly observed and held by the learned single Judge, since a criminal case is pending regarding the death of the deceased, any opinion expressed in these proceedings regarding the cause of death is unwarranted." By applying the views of the Hon'ble Apex Court and Division Bench and Single Judges of this court to the facts of the present case, this court is of the view that this is a fit case, wherein, the petitioners are entitled to get compensation for the death of their bread winner Noor Mohammed, due to police excess."

58. Ossie Fernades, a Former Co-Convenor of Campaign for Custodial Justice and Abolition of Torture, has filed W.P.No.18154 of 2014, for a Mandamus to direct an impartial and detailed enquiry by a retired District Judge for the custodial torture and custodial death of Suresh. Initially, on 07.06.2016, a Hon'ble Division Bench in [Ossie Fernades v. State of Tamil Nadu] passed the following orders,

"The CBCID has stated in their affidavit before the Court that the investigation is complete and final report has been filed against two officers, who have committed the offences under Section 176(1) Cr.P.C. read with Section 304 (ii) I.P.C. The same is stated to have been pending on the file of the Magistrate. It is further submitted in Court that necessary permission to prosecute these officers has been granted by the State Government.

2. In so far as the disciplinary proceedings are concerned, it is stated that statutory notice has been issued, but final order has not been passed, as that could be done once the final report has been filed by the CBCID. The order qua the departmental enquiry will be passed by the competent authority within a maximum period of one (1) month from today.

3. No further orders are required."

Subsequently, when the matter came up on 28.07.2015, the Hon'ble Division Bench of this Court, ordered as follows:

"The Chief Medical Officer / Hospital Superintendent in the Government District Head Quarters Hospital, Nagapattinam, has filed an affidavit on behalf of 7th respondent relating to the incident happened on the night of 31.12.2013. It is averred that the deceased was brought by the escort police for preliminary check-up before sending him to prison and at that time, the deceased was conscious, stuttering and was in an inebriated state. He suddenly collapsed and fell down and ultimately, passed away at 1.15 a.m. The Medical Officer has mentioned lacerated injury measuring 3x0.5x0.5 cm. found on the left hand palm of the deceased.

2. The affidavit also states that on post-mortem being conducted, three external injuries have been mentioned as under:

1. Laceration injury on the 4th web space of left hand;

2. Contusion (multiple transverse) over back; and

3. Abrasions (two linear) about 5 cm. over back.

The certificate also mentioned that there was

blood discharge on the left ear and frothy secretion in the mouth and nostrils and 30 cc blood clot present in the right ventricle. The viscera report reveals that alcohol or other poison was not detected and thus, in the post-mortem opinion, the cause of death is stated to be shock.

3.It is only the last order passed by us which seemed to have triggered some Government action finally, as is apparent from a letter dated 25.07.2015 placed before us, which refers to a Government Order of the even date sanctioning financial relief of Rs.5,00,000/- to the family of the deceased. Learned Government Pleader assures this Court that the payment would be made within one week.

4.In order to secure the money for the benefit of the family, an amount of Rs.2,00,000/- (Rupees two lakhs only) be kept in an interest-bearing three-year deposit for the benefit of the wife of the deceased, while a sum of Rs.1,00,000/- (Rupees one lakh only) each to be kept for the benefit of the two children for a period of five years. An amount of Rs.1,00,000/- (Rupees one lakh only) be released to the wife of the deceased for her immediate benefit.

5.In so far as the fate of Tr.N.S.Rajendran is concerned, who was the then Inspector of Police, Nagoor Police Station, who has exceeded his powers and has used unwarranted force, the letter dated 25.07.2015 states that a decision has been taken to initiate both criminal and departmental proceedings in view of the findings of the magisterial enquiry. The officer is stated to be under suspension. A status report be filed of the progress made in this behalf at least three days prior to the next date of hearing.

6.Learned counsel for the petitioner fairly states that nothing else is required to be done and we, accordingly, dispose of the writ petition. No costs."

59. In Extra-Judicial Execution Victim Families v. Union of India reported in 2016 (14) SCC 536, there were several issues before the Hon'ble Supreme Court. One such issue was that compensation ordered by the High Court of Gauhati High Court and the National Human Rights Commission was not paid. Periodical orders were issued. Reason assigned was pendency of the case before the Hon'ble Supreme Court. Overruling the objection in W.P.(Crl.)No.129 of 2012, with W.P.(C) No.445, on 08.12.2015, the Hon'ble Supreme Court issued directions, as follows:

(2016) 14 SCC 576 (2)
Order dated 8-12-2015

(Before Madan B. Lokur and Uday U. Lalit, JJ.)

WP (Crl.) No. 129 of 2012 with WP (C) No. 445 of 2012

63. We have been given to understand that compensation has not been paid to some of the next of kin of the deceased in spite of the orders of the Gauhati High Court or of the National Human Rights Commission. The justification for that seems to be the pendency of the case before us.

64. We make it clear that compensation should be paid to the next of kin of the deceased regardless of the pendency of this case.

65. The learned Senior Counsel appearing for the State of Manipur says that in some cases, an order of compensation has been made by the Gauhati High Court as well as by the National Human Rights Commission. We clarify that the higher of the amount should be paid to the next of kin of the deceased. Payment should be made expeditiously."

One of the issues raised before the Hon'ble Supreme Court therein, was the maintainability of a writ petition, under Article 32 or 226 of the Constitution of India vis-a-vis the availability of invoking the Criminal Procedure Code. On the above issue, the Hon'ble Supreme Court, on the facts and circumstances of the case, at Paragraphs 160 to 164, held as follows:

"Maintainability of the writ petition

160. An objection was raised by the learned Attorney General to the effect that in a writ petition like the present one, a prayer to order a police investigation is not maintainable. It was submitted that the procedure laid down in CrPC is quite adequate and if there is any inaction on the part of the authorities, recourse may be had to the grievance redressal procedure laid down in CrPC. In this context reliance was placed on *Hari Singh v. State of U.P.* [*Hari Singh v. State of U.P.*, (2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63] , *Aleque Padamsee v. Union of India* [*Aleque Padamsee v. Union of India*, (2007) 6 SCC 171 : (2007) 3 SCC (Cri) 1] , *Sunil Gangadhar Karve v. State of Maharashtra* [*Sunil Gangadhar Karve v. State of Maharashtra*, (2014) 14 SCC 48 : (2015) 1 SCC (Cri) 298] and *Doliben Kantilal Patel v. State of Gujarat* [*Doliben Kantilal Patel v. State of Gujarat*, (2013) 9 SCC 447 : (2014) 1 SCC (Cri) 218] .

161. We are not impressed by this submission. This is not an ordinary case of a police complaint or a simple case of an FIR not being registered. This case involves allegations that the law enforcement

authorities, that is, Manipur Police along with the Armed Forces acting in aid of the civil power are themselves perpetrators of gross human rights violations. This is also not a case where the ordinary criminal law remedy provides an adequate answer. A particular situation of internal disturbance has prevailed for decades and the ordinary citizens of Manipur have had little access and recourse to law in the situation that they find themselves placed in. To make matters worse, FIRs have been registered against the victims by the local police thereby leaving the next of kin of the deceased with virtually no remedy under CrPC.

162. This case immediately brings to mind the view expressed by Dr Ambedkar with respect to Article 32 of the Constitution: (CAD Vol. VII, p. 953)

"... 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...."

If in a case such as the present, the petitioners are precluded, at the threshold, from approaching this Court or a High Court under Article 226 of the Constitution, possible grave injustice would have been done to the next of kin of the victims who are alleged to have been killed in a fake encounter or have been victims of alleged extra-judicial executions. We are not satisfied that this petition under Article 32 of the Constitution should not be entertained. The truth has to be found out however inconvenient it may be for the petitioners or for the respondents. In matters concerning gross violations of human rights this Court and every constitutional court should adopt an "open door policy". The preliminary objection is rejected."

60. One of the submissions of the learned Additional Government Pleader, in the case before us, is that the trial is still pending, guilt is yet to be arrived at and therefore, compensation need not be ordered at this stage. However, it was submitted that if this Court deems it fit to award compensation, as ordered in P.Amaravathy Vs. The Government of Tamil Nadu & 10 others reported in 1996 (2) CTC 478, right of recovery from the wrong doer may be given. Same was the submission by Mr.Aravind Pandian, learned Additional Advocate General, Government of Tamil Nadu. Contention that no compensation can be awarded to the victims, pending trial, cannot be accepted for the reason that such an argument has already been rejected in P.Amaravathy

v. The Government of Tamil Nadu & 10 others reported in 1996 (2) CTC 478, wherein, the writ Court, while awarding an interim compensation of Rs.1,00,000/-, at Paragraphs 14 and 15, held as follows:

"14. Taking notice of all the above circumstances under consideration, I am of the opinion that a sum of Rs.1,00,000 (Rupees one lakh only) can be paid to the petitioner as and by way of interim compensation to be adjusted at a later stage when regular compensation is claimed. Out of the said sum of Rs. 1, 00, 000, a sum of Rs.25, 000 (Rupees twenty-five thousand only) shall be immediately paid to the petitioner within four weeks from the date of receipt of a copy of this order. The balance of Rs.75, 000 (Rupees seventy-five thousand only) shall be invested in a nationalised bank in Gudalur permitting the petitioner to draw monthly interest directly from the bank. The deposit shall be made within eight weeks from the date of receipt of this order. The writ petition is disposed of in the above matter. There will be no order as to costs.

15. At the time of the grant of a regular compensation after the persecution is over, it will be open to the State Government to recover the amounts from the guilty parties."

That apart, in Extra-Judicial Execution Victim Families' case, the Hon'ble Supreme Court directed payment of compensation, even during the pendency of the case.

61. On the aspect that in the absence of any method to arrive at compensation to the victim, whether multiplier method, followed in the case of accident victims, can be applied for compensating victims of custodial violence, death or other offences, a Hon'ble Supreme Court in various decisions, held that compensation ordered in writ proceedings under Articles 32 or 226 of the Constitution of India, as the case may be, would not disable the victims from claiming compensation, under private law remedy. Any such compensation awarded by the Hon'ble Supreme Court or High Court, as the case may be, is less, than what the victims or legal representatives, are entitled to, under private law remedy, the Hon'ble Supreme Court has also observed that what is awarded by the Courts under Articles 32 or 226 of the Constitution of India, as the case may be, be given credit to. Reference can be made to the decisions in D.K.Basu v. State of W.B reported in 1997 (1) SCC 416 and Nilabati Behera v. State of Orissa reported in 1993 (2) SCC 746, relied on by the learned Additional Advocate General. The Hon'ble Supreme Court in various decisions quoted supra, has also made it clear that

objection to the maintainability of a writ petition is technical.

62. In the foregoing paragraphs of this judgement, we have extensively extracted the relevant portion of the judgements of the Hon'ble Supreme Court, wherein, it is categorically held that public law remedy is available and therefore, objection of the State in the present writ petition, is overruled.

63. Hon'ble Supreme Court has also observed that there is no need to relegate the litigant to approach the Civil Court for compensation. The Hon'ble Supreme Court has also given the liberty to the victim to approach the Civil Court, if the compensation awarded in writ proceedings is not adequate.

64. Compensation to be awarded should be just and reasonable. What applies to the victims of the motor accident cases in the matter of awarding compensation namely, "just compensation", can be awarded in cases of the custodial violence death or other cognizance offences.

65. When the State cannot claim sovereign immunity in the matter of custodial death or violence and other offences and deny the payment of compensation under the public law remedy, application of the method in compensating accident victims, can be safely applied, in cases on custodial violence, torture and death also. The Hon'ble Supreme Court in M.S.Grewal v. Deep Chand Sood reported in 2001 (8) SCC 151, it is clear that method adopted in compensating accident victims, can be taken as a guide, in the matter of compensating victims of the custodial violence and death etc.

66. In the light of the above discussion and decisions, we are of the view that computation of compensation as done in compensating accident victims, can be applied in cases, relating to custodial death or violence, etc.

67. Though Mr.E.Manoharan, submitted that the quantum of compensation be restricted to Rupees five lakhs only and that the principles applied for determining of compensation under the Motor Vehicles Act need not be followed, we are not inclined to accede the said contention for the reason that in case of death in custody or electrocution or any other act involving negligence or offence, there is no prescribed method under the enactment for computing the compensation, but the compensation to be determined by the Court should be just compensation. At this juncture, it is also useful to refer the meaning of the word, "Compensation",

(i) The word 'Compensation' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

"An act which a court orders to be done or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss or be made whole in respect of his injury; the consideration or price of a privilege purchased; something given or obtained as an equivalent; the rendering of an equivalent value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received; recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

(ii) In State of Gujarat v. Shantdal Mangaldas reported in (1969) 1 SCC 509, the Hon'ble Supreme Court has defined the word, "compensation", as follows:

"In ordinary parlance the expression compensation means any thing given to make things equivalent; a thing given to or to make amends for loss, recompense, remuneration or pay; it need not therefore necessarily be in terms of money."

(iii) In Divisional Controller, KSRTC v. Mahadeva Shetty reported in 2003 (7) SCC 197, the Hon'ble Supreme observed as follows:

"The term 'compensation' as stated in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. 'Damages' on the other hand constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of something lost or withheld. The term 'compensation' etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent."

'Compensation' means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay: it need not, therefore, necessarily be in terms of money, because law may specify principles on which and manner in which compensation is to be determined and given. Compensation is an act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss; or be made whole in respect of his injury; something given or obtained as equivalent; rendering of equivalent in value or amount; an equivalent given for property taken or for an injury done to another; a recompense in value; a recompense given for a thing received; recompense for whole injury suffered; remuneration or satisfaction for injury or damage of every description. The expression 'compensation' is not ordinarily used as an equivalent to 'damages', although compensation may often have to be measured by the same rule as damages in an action for a breach. The term 'compensation' as pointed out in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered; 'damages' on the other hand constitute the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained. 'Compensation' is a return for a loss or damages sustained. Justice requires that it should be equal in value, although not alike in kind."

(iv) In *Ghaziabad Development Authority v. Balbir Singh* reported in 2004 (5) SCC 65, the Hon'ble Supreme Court said that,

"The word 'compensation' is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss."

68. One of the issues raised is whether, a Public Interest Writ Petition is maintainable, when the litigant can approach the Civil Court for remedy. Let us consider few decisions on the Public Interest Litigation,

(i) In *Strouds Judicial Dictionary*, Volume 4 (IV Edition), 'Public Interest' is defined thus:

"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

(ii) In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :

"Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."

(iii) In *Balco Employees' Union (Regd.) v. Union of India* reported in 2002 (2) SCC 333, the Hon'ble Supreme Court, held that,

"Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. "litigation in the interest of the public."

.....
97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are

not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties. None of these contingencies arise in this present case.

(iv) In *Guruvayoor Devaswom Managing Committee and another vs. C.K.Rajan and others*, reported in 2003 (7) SCC 546, the Hon'ble Supreme Court observed as follows:

41. The courts exercising their power of judicial review found to their dismay that the poorest of the poor, the deprived (sic), the illiterate, the urban and rural unorganized labour sector, women, children, those handicapped by "ignorance, indigence and illiteracy" and other downtrodden persons have either no access to justice or had been denied justice. A new branch of proceedings known as "social action litigation" or "public interest litigation" was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The courts in pro bono publico granted relief to inmates of prisons, provided legal aid, directed speedy trials, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass real issues on merits by suspect reliance on peripheral procedural shortcomings. (See *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai* (1976) 3 SCC 832)

46. But with the passage of time, things started taking different shapes. The process was sometimes abused. Proceedings were initiated in the name of public interest litigation for ventilating private disputes. Some petitions were publicity-oriented.

50. The principles evolved by this Court in this behalf may be suitably summarized as under:

(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfil its constitutional promises. (See S.P. Gupta v. Union of India [1981 Supp SCC 87] , People's Union for Democratic Rights v. Union of India [(1982) 2 SCC 494 : 1982 SCC (L&S) 262] , Bandhua Mukti Morcha v. Union of India [AIR 1963 SC 1638 : (1964) 1 SCR 561] and Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] .)

(ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-à-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See Charles Sobraj v. Supdt., Central Jail [(1978) 4 SCC 104 : 1978 SCC (Cri) 542] and Hussainara Khatoon (I) v. Home Secy., State of Bihar [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] .)

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial. In Maneka Sanjay Gandhi v. Rani Jethmalani [(1979) 4 SCC 167 : 1979 SCC (Cri) 934 : AIR 1979 SC 468] it was held: (SCC p. 169, para 2)

"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the

parties and from that angle the court may weigh the circumstances."

(See also Dwarka Prasad Agarwal v. B.D. Agarwal [(2003) 6 SCC 230 : (2003) 5 Scale 138] .)

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the deprived (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. [See Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India [(1981) 1 SCC 568 : AIR 1981 SC 344] , S.P. Gupta [1981 Supp SCC 87] , People's Union for Democratic Rights [(1982) 2 SCC 494 : 1982 SCC (L&S) 262] , D.C. Wadhwa (Dr) v. State of Bihar [(1987) 1 SCC 378] and BALCO Employees' Union (Regd.) v. Union of India [(2002) 2 SCC 333] .]

(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition. (See Bandhua Mukti Morcha [(1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67] .)

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case. [See Rural Litigation and Entitlement Kendra v. State of U.P. [1989 Supp (1) SCC 504] and Forward Construction Co. v. Prabhat Mandal (Regd.) [(1986) 1 SCC 100]

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See Ramsharan Autyanuprasi v. Union of India [1989 Supp (1) SCC 251] .)

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil v. Dr Mahesh Madhav Gosavi [(1987) 1 SCC 227] .)

(ix) The Court in special situations may

appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See *Bandhua Mukti Morcha* [(1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67] , *Rakesh Chandra Narayan v. State of Bihar* [1989 Supp (1) SCC 644] and *A.P. Pollution Control Board v. Prof. M.V. Nayudu* [(1999) 2 SCC 718]) In *Sachidanand Pandey v. State of W.B.* [(1987) 2 SCC 295] this Court held: (SCC pp. 334-35, para 61)

"61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

In *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] this Court opined: (SCC p. 348, para 109) "109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold." The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.

(v) In *Ashok Kumar Pandey v. State of W.B.*, reported in 2004 (3) SCC 349, the Hon'ble Apex Court, after considering few decisions, on the aspect of public interest litigation, observed as follows:

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paaise income litigation". If not properly regulated and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in The Janta Dal v. H.S.Chowdhary [1992 (4) SCC 305] and Kazi Lhendup Dorji vs. Central Bureau of Investigation (1994 Supp (2) SCC 116). A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See Ramjas Foundation v. Union of India (AIR 1993 SC 852) and K.R.Srinivas v. R.M.Premchand (1994 (6) SCC 620).

.....

7. In Janata Dal case (supra) this Court considered the scope of public interest litigation. In para 52 of the said judgment, after considering what is public interest, has laid down as follows :

"The expression 'litigation' means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "PIL" means the legal action initiated in a Court of law for the enforcement of public interest or general interest

in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:

"Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 96 of the said judgment, it has further been pointed out as follows:

"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows:

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold". सतयमेव जयते

11. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving

properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of

such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu [(1994) (2) SCC 481]) and Andhra Pradesh State Financial Corporation v. M/s.GAR Re-Rolling Mills and Another [AIR 1994 SC 2151]. No litigant has a right to unlimited drought on the Court time and public money

in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See Buddhi Kota Subbarao (Dr.) v. K.Parasaran, (1996) 7 JT 265]. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr.Duryodhan Sahu and Ors., v. Jitendra Kumar Mishra and Ors., (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so- called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

17.

18. In S.P.Gupta v. Union of India [1981 Supp. SCC 87], it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the

guise of a public interest litigant. He has also left the following note of caution: (SCC p.219, para 24)

"But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

19. In *State of H.P. vs. A Parent of a Student of Medical College, Simla and Ors.* (1985 (3) SCC 169), it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

20. Khalid, J. in his separate supplementing judgment in *Sachidanand Pandey vs. State of W.B.*, (1987 (2) SCC 295, 331) said:

"Today public spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public. They must be above suspicion. (SCC p. 331, para 46)

* * *

Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. (SCC p.334, para 59)

* * *

I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants." (SCC p.335, para 61)

21. Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in *ramsharan Autyanuprasi v. Union of India* (1989 Supp (1) SCC 251), was in full agreement with the view expressed by Khalid, J. in *Sachidanand Pandey's case* (supra) and added that 'public interest litigation' is an instrument of the administration of justice to be used properly in

proper cases. [See also separate judgment by Pathak, J. (as he then was) in *Bandhua Mukti Morcha v. Union of India* (1984 (3) SCC 161)].

22. *Sarkaria, J. in Jasbhai Motibhai Desai v. Roshan Kumar* (1976 (1) SCC 671) expressed his view that the application of the busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37)

"It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

23. *Krishna Iyer, J. in Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India* (1981 (1) SCC 568) in stronger terms stated: (SCC p.589, para 48)

"48. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him." सत्यमेव जयते

24. In *Chhetriya Pardushan Mukti Sangharash Samiti v. State of U.P.*, (1990 (4) SCC 449), *Sabyasachi Mukharji, C.J.* observed: (SCC p.452, para 8)

"While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."

25. In *Union Carbide Corporation v. Union of India* (1991 (4) SCC 584, 610), Ranganath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus: (SCC p.610, para 21)

"I am prepared to assume, nay, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."

26. In *Subhash Kumar v. State of Bihar*, (1991 (1) SCC 598) it was observed as follows:

"Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation".

27. In the words of Bhagwati, J. (as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J. has pointed out, "the doors of the courts should not be ajar for such vexatious litigants".

(vi) In Dr.B.Singh vs. Union of India, reported in 2004 (3) SCC 363, the Hon'ble Supreme Court held as follows:

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, courts must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

(vii) In Vikas Vashishth v. Allahabad High Court reported in 2004 (13) SCC 485, the Hon'ble Supreme Court held as follows:

"At the very outset, we put it to the petitioner that a bare perusal of the petition shows that it is based entirely on newspaper reports and asked him whether before filing the petition he has taken care to verify the facts personally. His answer is in the negative. In the writ petition all the 21 High Courts have been included as respondents and Union of India has also been impleaded as the 22nd respondent. We asked the petitioner what has provoked him to implead all the High Courts as respondents and he states that it is his apprehension that similar incidents may occur in other High Courts though there is no factual foundation for such appreciation.

5. After affording the full opportunity of hearing, we are satisfied that what purports to have been filed as a public interest litigation is nothing more than a "publicity interest litigation". It is writ large that it has been filed without any effort at verifying the facts by the petitioner personally."

(viii) In *Dattaraj Nathuji Thaware Vs. State of Maharashtra*, 2005 (1) SCC 590, the Hon'ble Supreme Court observed as follows:

"12..... The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

(ix) In *R & M.Trust Vs. Koramangala Residents Vigilance Group* reported in 2005 (3) SCC 91, the Hon'ble Supreme Court, at Paragraphs 23 and 24, observed as follows:

"23. Next question is whether such Public Interest Litigation should at all be entertained & laches thereon. This sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

24. Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been

abused by some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities."

(x) In *Gurpal Singh v. State of Punjab* reported in 2005 (5) SCC 136, the Hon'ble Supreme Court, while considering the scope of a petition styled as a public interest litigation, held as follows:

"5. The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see

that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

6.

7. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

8.

9. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not

lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

(xi) In Rohit Pandey v. Union of India reported in 2005 (13) SCC 702, Hon'ble Apex Court held as follows:

"1. This petition purporting to be in public interest has been filed by a member of the legal fraternity seeking directions against the respondents to hand over the investigation of the case pertaining to recovery of light machine gun, which is said to have been stolen from the army according to reports published in two newspapers, to the Central Bureau of Investigation for fair investigation to ensure that the real culprits who are behind such theft of army arms and ammunition endangering the integrity and sovereignty of the country may be brought to book and action may be taken against them in accordance with law. The only basis for the petitioner coming to this Court are two newspaper reports dated 25-1-2004, and the other dated 12-2-2004. This petition was immediately filed on 16-2-2004 after the aforesaid second newspaper report appeared. On enquiry from the learned counsel, we have learnt that the petitioner is a young advocate having been in practice for a year or two. The Union of India,

the State of Uttar Pradesh and the Chief Minister of the State of Uttar Pradesh, have been arrayed as party respondents. In the newspaper reports, there is no allegation either against the Union of India or against the Chief Minister.

2. We expect that when such a petition is filed in public interest and particularly by a member of the legal profession, it would be filed with all seriousness and after doing the necessary homework and enquiry. If the petitioner is so public-spirited at such a young age as is so professed, the least one would expect is that an enquiry would be made from the authorities concerned as to the nature of investigation which may be going on before filing a petition that the investigation be conducted by the Central Bureau of Investigation. Admittedly, no such measures were taken by the petitioner. There is nothing in the petition as to what, in fact, prompted the petitioner to approach this Court within two-three days of the second publication dated 12-2-2004, in the newspaper Amar Ujala. Further, the State of Uttar Pradesh had filed its affidavit a year earlier i.e. on 7-10-2004, placing on record the steps taken against the accused persons, including the submission of the charge-sheet before the appropriate court. Despite one year having elapsed after the filing of the affidavit by the Special Secretary to the Home Department of the Government of Uttar Pradesh, nothing seems to have been done by the petitioner. The petitioner has not even controverted what is stated in the affidavit. Ordinarily, we would have dismissed such a misconceived petition with exemplary costs but considering that the petitioner is a young advocate, we feel that the ends of justice would be met and the necessary message conveyed if a token cost of rupees one thousand is imposed on the petitioner."

(xii) In *DIVISIONAL MANAGER, ARAVALI GOLF CLUB AND ANOTHER* 2008 (1) SCC 683, in paragraphs Nos.17, 19, 20 and 22, the Hon'ble Supreme Court held thus:-

"17. Before parting with this case, we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative

functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily, it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State - the legislature, the executive and the judiciary - must have respect for the other and must not encroach into each other's domains.

22. In *Tata Cellular Vs. Union of India* (vide AIR para 113 : SCC para 94), this Court observed that the modern trend points to judicial restraint in administrative action. The same view has been taken in a large number of other decisions also, but it is unfortunate that many Courts are not following these decisions and are trying to perform legislative or executive functions. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges' preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the field of administration while the Court does not. In the words of Neely VJ (SCC p.681, para 82).

"82.... I have very few illusions about my own limitations as a Judge ... I am not an accountant, electrical engineer, financier, banker, expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation."

(xiii) In *Common Cause (A Regd. Society) v. Union of India* reported in 2008 (5) SCC 511, Hon'ble Mr. Justice Markandey Katju (as he then was), held as follows:

40. "The justification given for judicial activism is that the executive and legislature

have failed in performing their functions. Even if this allegations is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not: firstly, because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly, because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g., peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs."

.....

"59. Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As stated in *Dattaraj Nathuji Thaware v. State of Maharastra* reported in AIR 2005 SC 540, public interest litigation has nowadays largely become 'publicity interest litigation', 'private interest litigation', or 'politics interest litigation' or the latest trend 'paise income litigation'. Much of P.I.L. is really blackmail.

60. Thus, Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together."

In the same judgment, concurring with the view of his Brother Judge, Hon'ble Mr. Justice H.K.Sema (as he then was), further added, as follows:

"69. Therefore, whether to entertain the petition in the form of Public Interest Litigation either represented by public-spirited person; or private interest litigation in the guise of public interest litigation; or publicity interest

litigation; or political interest litigation is to be examined in the facts and circumstances recited in the petition itself. I am also of the view that if there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public interest, judiciary must occupy the field to subserve public interest. Therefore, each case has to be examined on its own facts."

(xiv) Villianur Iyarkkai Padukappu Maiyam v. Union of India, reported in (2009) 7 SCC 561, the Hon'ble Supreme Court held thus:

168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

170. Normally, there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or against public

interest because there are large number of considerations, which necessarily weigh with the Government in taking an action.

(xv) In State of Uttranchal Vs. Balwant Singh Chauhal, reported in (2010) 3 SCC 402, the Hon'ble Supreme court has held as follows:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

(xvi) In *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale* reported in 2012 (2) SCC 425, the Hon'ble Supreme Court observed as follows:

"57. In the light of the above, we shall first consider whether the High Court committed an error by entertaining the writ petition filed by Subhash Rahangdale as public interest litigation. This Court has, time and again, laid down guiding principles for entertaining petitions filed in public interest. However, for the purpose of deciding the appellants' objection it is not necessary to advert to the plethora of precedents on the subject because in *State of Uttaranchal v. Balwant Singh Chaufal* (2010) 3 SCC 402, a two-Judge Bench discussed the development of law relating to public interest litigation and reiterated that before entertaining such petitions, the Court must feel satisfied that the petitioner has genuinely come forward to espouse public cause and his litigious venture is not guided by any ulterior motive or is not a publicity gimmick.

58. In paragraphs 96 to 104, the Bench discussed Phase-III of the public interest litigation in the context of transparency and probity in governance, referred to the judgments in *Vineet Narain v. Union of India* (1998) 1 SCC 226, *Centre for Public Interest Litigation v. Union of India* (2003) 7 SCC 532, *Rajiv Ranjan Singh "Lalan" (VIII) v. Union of India* (2006) 6 SCC 613, *M.C. Mehta v. Union of India* (2007) 1 SCC 110, *M.C. Mehta v. Union of India* (2008) 1 SCC 407 and observed:

"These are some of the cases where the Supreme Court and the High Courts broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public interest. These cases regarding probity in governance or corruption in public life dealt with by the courts can be placed in the third phase of public interest litigation."

59. Reference also deserves to be made to the judgment of the three-Judge Bench in Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi (1987) 1 SCC 227 in which a new dimension was given to the power of the Superior Courts to make investigation into the issues of public importance even though the petitioner may have moved the Court for vindication of a private interest. In that case the High Court had entertained a writ petition filed by Assistant Medical Officer of K.E.M. Hospital, Bombay questioning the assessment of answer sheets of the Post Graduate Medical Examinations held by the Bombay University in October 1985. He alleged malpractices in the evaluation of the answer sheets of the daughter of the appellant who, at the relevant time, was Chief Minister of the State. The learned Single Judge held that altering and tampering of the grade sheets was done by Dr. Rawal at the behest of the Chief Minister. The Division Bench affirmed the order of the learned Single Judge with some modification.

60. While rejecting the objection raised on behalf of the appellant that the writ petition filed by the respondent cannot be treated as a petition filed in public interest, this Court observed:

"The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the Court, it was the duty of the Court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice." (emphasis supplied)

(xvii) The Hon'ble Supreme Court in *Kishore Samrite v. State of Uttar Pradesh* reported in (2013) 2 SCC 398, once again laid down the principles governing obligations of the litigants while approaching the Court and the consequences for abuse of process of law while filing the Public Interest Litigation.

(xviii) In *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and others* reported in (2013) 4 SCC 465, the Hon'ble Supreme Court held that in a public interest litigation, the Court must ensure that there is an element of genuine public interest is involved.

(xix) In *State of Jaipur Shahar Hindu Vikas Samiti vs State of Rajasthan and Others*, reported in 2014 (5) SCC 530, the Hon'ble Supreme Court has held as follows:

47. The scope of public interest litigation is very limited, particularly, in the matter of religious institutions. It is always better not to entertain this type of public interest litigations simply on the basis of affidavits of the parties. The public trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the properties of the trust and the management thereof. It is not proper for the court to entertain such litigation and pass orders. It is also needless to mention that the forums cannot be misused by the rival groups in the guise of public interest litigation.

48. We feel that it is apt to quote the views expressed by this Court in *Guruvayoor Devaswom Managing Committee* [(2003) 7 SCC 546] wherein this Court observed: (SCC pp. 574-75 & 578, paras 60, 64 & 76)

"60. It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory functionaries. That may be so but the Act is a self-contained code. Duties and functions are prescribed in the Act and the Rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as *parens patriae* as also in discharge of its statutory duties.

64. The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices should be followed by the temple authorities. There may be dispute as regards the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may hurt the sentiments of the other. The courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step.

76. When the administration of the temple is within its control and it exercises the said power in terms of a statute, the State, it is expected, normally would itself probe into the alleged irregularities. If the State through its machinery as provided for in one Act can arrive at the requisite finding of fact for the purpose of remedying the defects, it may not find it necessary to take recourse to the remedies provided for in another statute. It is trite that recourse to a provision to another statute may be resorted to when the State finds that its powers under the Act governing the field are inadequate. The High Courts and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the courts would ask the State to perform its statutory functions, if necessary within a time-frame and undoubtedly, as and when an order is passed by the State in exercise of its power under the statute, it will examine the correctness or legality thereof by way of judicial review."

49. The concept of public interest litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other downtrodden people. Through the public interest litigation, the cause of several people who are not able to approach the court is espoused. In the

guise of public interest litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The courts have to be very cautious and careful while entertaining public interest litigation. The judiciary should deal with the misuse of public interest litigation with iron hand. If the public interest litigation is permitted to be misused the very purpose for which it is conceived, namely, to come to the rescue of the poor and downtrodden will be defeated. The courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of public interest litigation, the courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people whose rights are adversely affected or are at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum instead of entertaining the writ petition filed as public interest litigation.

(xx) In *D.N.Jeevaraj vs. Chief Secretary, Government of Karnataka and Others* reported in 2016 2 SCC 653, the Hon'ble Supreme Court observed as follows:

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra v. State of U.P.* to this effect as follows:

"The writ petitions before us are not inter-partes disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court."

36. A considerable amount has been said about public interest litigation in R & M Trust and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organization or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they should be encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in Union of India v. S.B. Vohra[6] that:

"Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted."

38. A salutary principle or a well recognized rule that needs to be kept in mind before issuing a writ of mandamus was stated in Saraswati Industrial Syndicate Ltd. v. Union of India, in the following words:

"The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well recognised rule that no writ or order in the nature of a mandamus would issue when there is no

failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd Edn.), Vol. 13, p. 106): "As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal." In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution."

39. It is not necessary for us to definitively pronounce on the contention of learned counsel for Sadananda Gowda and Jeevaraj that the litigation initiated by Nagalaxmi Bai was not a public interest litigation or that no mandamus ought to have been issued by the High Court since no demand was made nor was there any refusal to meet that demand. But we do find it necessary to reaffirm the law should a litigant be asked to avail of remedies that are not within the purview of public interest litigation. Exercise of discretion

40. Learned counsel for Sadananda Gowda and Jeevaraj also addressed us on the issue that the High Court had exceeded its jurisdiction in questioning the sanctioning of the building plans by the BBMP and further mandating the BDA to take action against Sadananda Gowda and Jeevaraj in terms of condition No. 4 of the lease-cum-sale agreement and the affidavit undertaking given by them, thereby effectively requiring the BDA to forfeit the lease.

41. This Court has repeatedly held that where discretion is required to be exercised by a statutory authority, it must be permitted to do so. It is not for the courts to take over the discretion available to a statutory authority and render a decision. In the present case, the High Court has virtually taken over the function of the BDA by requiring it to take action against

Sadananda Gowda and Jeevaraj. Clause 10 of the lease-cum-sale agreement gives discretion to the BDA to take action against the lessee in the event of a default in payment of rent or committing breach of the conditions of the lease-cum-sale agreement or the provisions of law.[8] This will, of course, require a notice being given to the alleged defaulter followed by a hearing and then a decision in the matter. By taking over the functions of the BDA in this regard, the High Court has given a complete go-bye to the procedural requirements and has mandated a particular course of action to be taken by the BDA. It is quite possible that if the BDA is allowed to exercise its discretion it may not necessarily direct forfeiture of the lease but that was sought to be pre-empted by the direction given by the High Court which, in our opinion, acted beyond its jurisdiction in this regard.

42. In *Mansukhlal Vithaldas Chauhan v. State of Gujarat*[9] this Court held that it is primarily the responsibility and duty of a statutory authority to take a decision and it should be enabled to exercise its discretion independently. If the authority does not exercise its mind independently, the decision taken by the statutory authority can be quashed and a direction given to take an independent decision. It was said: "Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must". But this is not conclusive as "shall" and "must" have, sometimes, been interpreted as "may". What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the "duty" has been set out. Even if the "duty" is not set out clearly and specifically in the statute, it may be implied as correlative to a "right".

In the performance of this duty, if the authority in whom the discretion is vested under the statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in

the matter, quash the order and issue a mandamus to that authority to exercise its own discretion."

43. To this we may add that if a court is of the opinion that a statutory authority cannot take an independent or impartial decision due to some external or internal pressure, it must give its reasons for coming to that conclusion. The reasons given by the court for disabling the statutory authority from taking a decision can always be tested and if the reasons are found to be inadequate, the decision of the court to by-pass the statutory authority can always be set aside. If the reasons are cogent, then in an exceptional case, the court may take a decision without leaving it to the statutory authority to do so. However, we must caution that if the court were to take over the decision taking power of the statutory authority it must only be in exceptional circumstances and not as a routine. Insofar as the present case is concerned, the High Court has not given any reason why it virtually took over the decision taking function of the authorities and for this reason alone the mandamus issued by the High Court deserves to be set aside, apart from the merits of the case which we have already adverted to.

(xxi) In Joint Secretary, Political Department, State of Meghalaya, Main Secretariat, Shillong vs. High Court of Meghalaya, reported in 2016 (11) SCC 245, the Hon'ble Supreme Court observed as follows:

11. There can be no doubt, the court can initiate suo motu proceedings in respect of certain issues which come within the domain of public interest. In Budhadev Karmaskar (1) v. State of W.B.[5] the Court, while dismissing an appeal, observed thus:-

"14. Although we have dismissed this appeal, we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as the 'prostitutes' as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

15. As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.

16. Hence, we direct the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment. For instance, if a technical training is for some craft like sewing garments, etc. then some arrangements should also be made for providing a market for such garments, otherwise they will remain unsold and unused, and consequently the woman will not be able to feed herself."

13. Suo motu public interest litigation can be initiated to ameliorate the conditions of a class of persons whose constitutional or otherwise lawful rights are affected or not adequately looked into. The Court has adopted the said tool so that persons in disadvantaged situation because of certain reasons - social, economic or socio-economic - are in a position to have access to the Court. The Court appoints Amicus Curiae to assist the Court and also expects the executive to respond keeping in view the laudable exercise.

14. In Ramlila Maidan Incident, In Re[6], suo motu probe of incident was ordered by the Court against imposition of prohibitory order at night and hasty and forcible evacuation of public on the basis of media reports and CCTV camera footage. In Nirmal Singh Kahlon v. State of Punjab & others [7], the Court has held:-

"33. The High Court while entertaining the writ petition formed a prima facie opinion as regards the systematic commission of fraud. While dismissing the writ petition filed by the selected candidates, it initiated a suo motu public interest litigation. It was entitled to do so. The nature of jurisdiction exercised by the High Court, as is well known, in a private interest litigation and in a public interest litigation is different. Whereas in the latter it is inquisitorial in nature, in the former it is

adversarial. In a public interest litigation, the court need not strictly follow the ordinary procedure. It may not only appoint committees but also issue directions upon the State from time to time. (See Indian Bank v. Godhara Nagrik Coop. Credit Society Ltd.& another[8] and Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar.)"

16. Be it noted, the constitutional courts can entertain letter petitions and deal with them as writ petitions. But it will depend upon the nature of the issue sought to be advanced. There cannot be uncontrolled or unguided exercise of epistolary jurisdiction.

(xxii) In Re-Inhuman conditions in 1382 Prisons, reported in 2018 SCC Online SC 1662, the Hon'ble Supreme Court in paragraphs, 2 to 4, held as follows:

2. During the last several decades, public interest litigation has compelled this Court to consider issues relating to the environment, social justice, violation of human rights and disregard for Article 21 of the Constitution; either because of an absence of governance due to the failure of the State to faithfully and sincerely implement laws enacted by Parliament or due to mis-governance by the State, that is, the Central Government, the State Governments and Union Territory Administrations leading to rampant illegalities. The failure of the State to take remedial steps to fill in the gap when there is no operative law, except that enshrined in the Constitution, more particularly Article 21 has resulted in public interest litigation and at least two cases where a treaty obligation ought to be fulfilled.

3. In recent times, usually and regrettably, the State has chosen to challenge the idea of public interest litigation or denigrate it by chanting the mantra of 'judicial activism' or 'separation of powers'. In most cases, these mantras are nothing but a fig leaf to cover the failure of the State to recognise the existence of the rule of law and the need for providing social justice to the people of the country, as stated in the Preamble to our Constitution. There must be a realization that public interest litigation has given a voice to millions of marginalized sections of society, women and children. Public interest litigation is one of the more important

contributions of India to jurisprudence. In fact, the Indian experience has encouraged some other countries to introduce public interest litigation in their jurisprudence.

4. This is not to suggest that public interest litigation has not been misused or that occasionally this Court has not exceeded its jurisdiction, but it must be emphasised that wherever this Court might have exceeded its jurisdiction, it has always been in the interest of the people of the country prompted by administrative mis-governance or absence of governance. There are, therefore, occasional transgressions on both sides, but that cannot take away from the significance of public interest litigation as a non-adversarial source of righting some wrongs and encouraging social change through accountability and, in cases, transparency.

(xxiii) In *Tehseen Poonawalla v. Union of India* reported in 2018 (6) SCC 72, the Hon'ble Supreme Court, at Paragraphs 96 to 98, held as follows:

"96. Public interest litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in *Bandhua Mukti Morcha v. Union of India* [*Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 : 1984 SCC (L&S) 389]. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and undertrials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the

present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process."

69. In the case on hand, the petitioner has produced the latest photograph of the widow and children of the deceased. He has narrated the entire events right from the day, when the deceased was picked by the police and died later. Further, earlier criminal original petition filed by an activist, Henri Tiphagre has been entertained. Writ petition filed by a former convenor of the very same organization, has also been entertained. Instant writ petition is filed by the said organization. There are no materials to doubt the credentials of the petitioner. On the contra, this Court has entertained a writ petition and granted relief. Keeping in view of the principles of law, in dealing with Public interest Litigations in *M.C. Mehta v. Union of India* reported in A.I.R. 1987 S.C. 1086, *People's Union for Democratic Rights v. Police Commissioner* reported in 1989 (4) SCC 730, *Saheli v. Commissioner of Police* reported in 1990 (1) SCC 422 and *D.K.Basu v. State of W.B* reported in 1997 (1) SCC 416, claiming compensation and law of the land in other cases, we hold that the public interest writ petition is maintainable.

70. Now, we deem it fit to determine the avocation of the deceased at the time of death. Candid admission of the Inspector of Police, CBCID, is that the deceased was a painter. As per the provisions of the Minimum Wages Act, rates of minimum wages has been fixed for different classes of employees in three different Zones. According to the learned counsel for the petitioner, the deceased was in Zone-B. The said fact has been acknowledged by Ms.P.Deepa, Inspector of Police, CB-BID. Minimum rates of wages for those residing in Zone-B for Painter and Varnishers falling within Class-II of employees was Rs.378.50 in 2015. Therefore, we deem it fit to determine the per day income of the deceased per day, as Rs.378.50. Further, for the assessment year 2015-16, no income tax would get attracted, as the annual income of the deceased would fall below the exemption limit of Rs.2,50,000/-.

71. A Hon'ble Division Bench of this Court in *Royal Sundaram Alliance Insurance Co. Ltd., Salem v. Vennila* reported

in CDJ 2015 MHC 6685, while awarding dearness allowance, observed as follows:

"61. At this juncture, it should be borne in mind that Consumer Price Index is fixed, taking into consideration that the majority consumers are from unorganised sectors. Thus, with reference to Gross Domestic Product, Per Capita Income, Consumer Price Index and such other economic factors, determined on the basis of participation and contribution of both organised and unorganised sectors, the classification that those engaged in unorganised sectors, should be totally denied of any addition of income under the head, future prospects, would in our humble view, would affect Article 14 of the Constitution of India. When the majority of persons, in unorganised sectors, also decide the economic factors, stated supra, it would be unjust and unreasonable to contend that there would not any prospect or addition in the earning of those engaged in unorganised sector, forever. If there is addition of Variable Dearness Allowance to the basic wages, in the case of organised sector, depending upon the Consumer Price Index, applicable for a particular period, one would reasonably expect the same factor of variable Dearness Allowance, to be a relevant factor, for determining the variation in the wage in case of unorganised sector also, as Consumer Price Index is common to all, whether engaged in organised or unorganised sector.

62. At this juncture, we deem it fit to consider, what Dearness Allowance means? Dearness Allowance is a cost of living adjustment allowance paid to Government employees, Public sector employees (PSU) and pensioners. Dearness Allowance is calculated as a percentage of an Indian's basic salary to mitigate the impact of inflation. Variable Dearness Allowance is always linked to Consumer Price Index. The notifications of Minimum wages by the Central and State Government reflects how much is the Variable Dearness in each field."

72. In National Insurance Co. Ltd., v. Pranay Sethi reported in 2017 (16) SCC 680, the Hon'ble Supreme Court has partly modified the parameters enunciated in the two-Judge Bench decision in Sarla Verma v. Delhi Transport Corporation reported in 2009 ACJ 1298 (SC), and laid down the principles as follows:-

"59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

73. In the case on hand, at the time of death, the deceased was aged 36 years and self-employed as painter. As stated supra, we determine the income as Rs.378.50 per day. That apart, by G.O.(2D)No.27, Labour and Employment (J1), dated 18.06.2014 (Notification No.II(2)/LE/420/2014, Published in Tamil Nadu Government Gazette, Part-II, Section 2, dated 16.07.2014, at pages 479-482), besides awarding minimum rates of wages, the dearness allowance for the period from 01.04.2015 to 31.03.2016, shall be payable at Rs.151.80 per day.

74. As per the decision in Pranay Sethi's case (cited supra), an addition of 40% of the established income, should be the added towards future prospects. As stated supra, age of the deceased at the time of his death was 36 years and survived by his wife, aged 28 years and four children, aged about 9 years, 6 years, 4 years and 3 years respectively. Therefore, this Court deems it fit to deduct $\frac{1}{4}$ towards personal and living expenses. The deceased was aged 36 years and 16 would be the proper multiplier. Hence, we determine the loss of contribution to the family, as follows:

Basic Wages (per day)	: Rs.378.50
DA	: Rs.151.80

	: Rs.530.30

Wages per month(26 days)	: Rs.13,788/-
Annual Compensation	: Rs.1,65,456/-
40% towards future prospects	: Rs. 66,182/-

Annual compensation	: Rs.2,31,638/-

After $\frac{1}{4}^{\text{th}}$ towards personal and living expenses, monthly contribution works out to	: Rs. 57,910/-

	: Rs.1,73,728/-
Total Compensation works out to	: Rs.27,79,648/-
(Rs.1,73,728 x 16)	

75. Wife of the deceased was aged about 28 years. 'Consortium' as per the decision in Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." This Court is inclined to enhance the compensation under head loss of consortium to Rs.40,000/-, as per Pranay Sethi's case.

76. Minor children have lost the love and affection of the deceased. Loss of love and affection cannot be precisely measured in terms of money. But the same has to be quantified, taking into consideration the age of the claimants and therefore, this Court is inclined to award Rs.40,000/- for the minor children. The total compensation under the head, loss of love and affection, would be Rs.40,000/- each. Considering the

age of the children, loss of Estate can also be awarded at Rs.15,000/-. Rs.15,000/- is awarded towards Funeral Expenses. Hence, the total compensation works out to Rs.30,09,648/- with interest at the rate of 6% per annum.

77. With the above directions, writ petition is allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Secretary,
Government of Tamil Nadu
Fort St.George, Chennai-9.
2. The Home Secretary,
Government of Tamil Nadu,
Fort St.George, Chennai-9.
3. The Director General of Police,
Mylapore, Chennai - 4.
4. The Additional Director General of Police,
(Social Justice and Human Rights)
Mylapore, Chennai - 4.
5. The District Collector,
The Collector Office,
Cuddalore District, Cuddalore.
6. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram District, Villupuram.
7. The Superintendent of Police,
Cuddalore District, Cuddalore.

8. The Deputy Superintendent of Police, CBCID
District Police Office Compound, Cuddalore.

9. The Inspector of Police
Nellikuppam Police Station,
Nellikuppam, Cuddalore District.

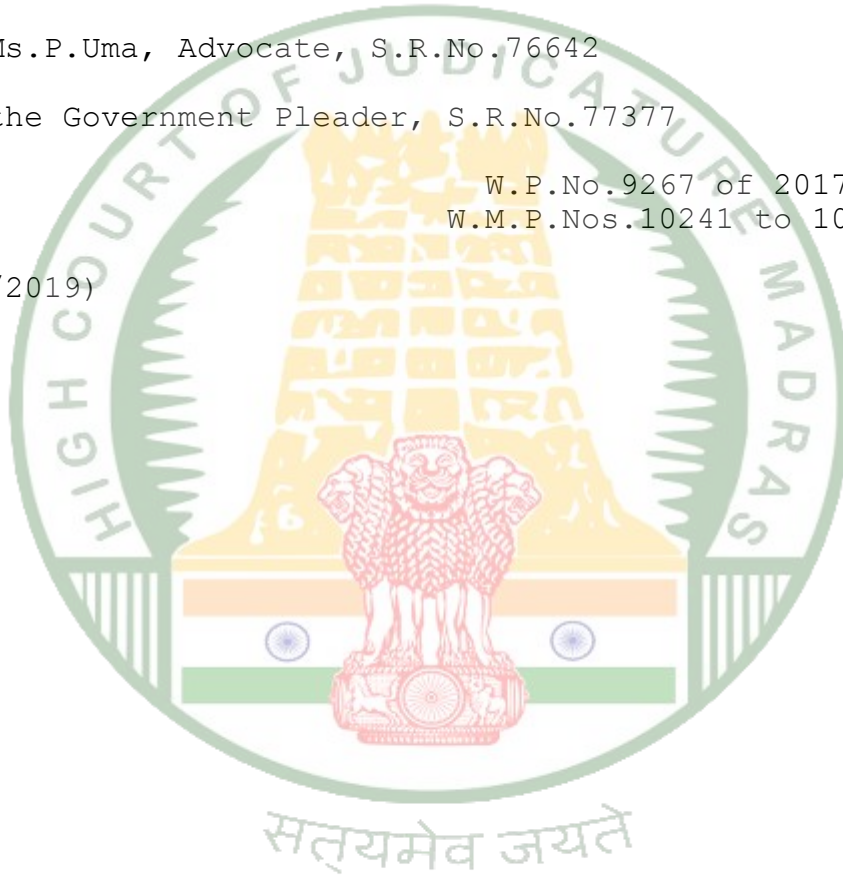
10. The Dean,
JIPMER, Dhanvantri Nagar,
Gorimedu, Pondicheery-605006.

+1 cc to Ms.P.Uma, Advocate, S.R.No.76642

+1 cc to the Government Pleader, S.R.No.77377

W.P.No.9267 of 2017 and
W.M.P.Nos.10241 to 10243 of 2017

RJI (CO)
SSM(09/10/2019)



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