

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.609 of 2016

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Rama Nand Rai Son of Late Keshav Rai Resident of Village-Jethuli, P.S.-
Fatwa, P.O.-Kachchi Dargah, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Secretary, Home Department, Govt. of Bihar, Patna.
4. The District Magistrate, Patna.
5. The Sub-Divisional Officer, Patna City.
6. The Circle Officer, Fatuha.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Hemendra Prasad Singh, Sr. Advocate
Mr. Hitesh Suman, Advocate

For the State : Mr. Swapnil Kumar Singh, AC to GP-19

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 13-11-2020

The present writ petition has been filed for directing the respondents to grant compensation to the petitioner to the tune of Rs. 21,00,000/- as also give employment to the family members of the deceased, who has been killed during the course of police firing in an encounter with the criminals.

2. The brief facts of the case, according to the petitioner, are that the deceased son of the petitioner, namely, Ranvijay Kumar, was working since the month of March, 1996 as a Special Educator in a school meant for mentally retarded namely, Ayurvedic Magneto Research Institute (AMRI), Panchsheel, Kumhrar, Patna and was getting a salary of Rs. 5000/- per month.



On 28.12.2000 at about 4:30 pm., the deceased son of the petitioner was shot dead in a police firing near the Kumhrar police outpost when he was going to the Sandalpur hostel with his two students and he was struck in the cross-firing that had taken place in between the police and the criminals, leading to filing of an FIR bearing Agamkuan P.S. Case No. 265 of 2000 against unknown for the offences under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. On 29.12.2000, post mortem was conducted over the body of the deceased and the death was treated to have been caused by firearms. Thereafter, the petitioner herein had filed an application dated 18.1.2001 before the District Magistrate, Patna for award of compensation, as also employment to one of the dependents of his deceased son. It appears that the District Magistrate, Patna had then, vide letter dated 19.03.2001, directed the S.D.O., Patna City to make an enquiry into the matter, who in turn directed the Circle Officer, Fatuha to conduct enquiry into the cause of death of the son of the petitioner, whereupon the respondent no. 6 i.e. the Circle Officer, Fatuha had submitted his report wherein it was stated that upon enquiry, it has transpired that when the deceased was returning from his school, one gunshot had hit on the chest of the deceased during the course of exchange of fire between the criminals and the police, resulting in death of the deceased, hence, compensation can be granted to the petitioner. The petitioner had also sent a complaint dt. 30.8.2001 to the National Human Rights Commission, New Delhi (hereinafter referred to as the 'NHRC') and the NHRC had taken cognizance of the complaint



whereupon a Case No. 1877/4/2001-02 was registered and notice was issued to the District Collector, Patna, calling for a report in the matter.

3. Since the petitioner had failed to get any relief either from the State Government or from the NHRC, the petitioner had preferred a writ petition bearing CWJC No. 3135 of 2004 for grant of compensation and appointment to one of the dependent of the deceased son of the petitioner. However, in the meantime, NHRC had issued a notice dated 03.10.2006 under Section 18(3) of the Protection of Human Rights Act, 1993 to the Chief Secretary, Patna asking him to show cause as to why interim relief be not recommended for payment to the next of kin of the deceased. Thereafter, the NHRC vide proceedings dated 24.12.2007 had requested the Chief Secretary, Bihar to consider the case of the death of the son of the petitioner on humanitarian grounds and provide interim relief to the next of kin of the deceased and with this observation, the NHRC had closed the case. The petitioner had then filed various representations, both before the Government officials as also before the President of India and the Governor of Bihar. At last the petitioner received a copy of the letter sent by the Governor Secretariat, Bihar dated 27.5.2015 to the Principal Secretary, Home Department, Bihar, Patna to take appropriate action on the claim of the petitioner herein and accordingly, inform the Governors' Secretariat whereupon, the petitioner had become hopeful that his grievances would be redressed by the Government, hence, under the said impression, the earlier writ petition bearing CWJC No. 3135 of 2004 was withdrawn and the



same stood dismissed as not pressed by an order dated 24.07.2015, passed by a coordinate Bench of this Court. However, since nothing happened, thereafter and the respondent State Government authorities slept over the matter, the petitioner herein has been again compelled to knock the doors of this Hon'ble Court by filing a fresh writ petition i.e. the present one.

4. The learned Senior Counsel appearing for the petitioner has submitted that the report of the Circle Officer, Fatuha dated 18.07.2001, as also the report of the Senior Superintendent of Police, Patna dated 22.07.2010 submitted to the Deputy Inspector General of Police, Central Area, Patna, would show that the son of the petitioner had died in the cross-firing that had taken place in between the police and the criminals, hence, the petitioner is liable for grant of compensation, as also one of the dependents of his deceased son is liable to be granted employment in the State Government service.

5. The learned Senior Counsel for the petitioner has relied on a judgment reported in **(1993) 2 SCC 746 (Nilabati Behera (Smt) Alias Lalita Behera vs. State of Orissa & Others)**, paragraph nos. 10, 16, 17, 22 to 24, and 32 to 35 whereof are reproduced herein below:-

10. *In view of the decisions of this Court in Rudul Sah v. State of Bihar, Sebastian M. Hongray v. Union of India, Sebastian M. Hongray v. Union of India, Bhim Singh v. State of J & K, Bhim Singh v. State of J & K, Saheli: A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters and State of*



Maharashtra v. Ravikant S. Patil 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. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle.

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 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.*

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 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 and others in that line have to be understood and Kasturilal 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.*

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 infeasible 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 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.

6. Per contra, the learned counsel for the respondents-State, referring to the counter affidavit filed on behalf of the respondents no. 1 to 3, has submitted that after the notice was received by the District Magistrate, Patna from the NHRC, he had sent a report dated 11.01.2002 to the NHRC wherein it was stated that the deceased, Ranvijay Kumar, was working as teacher in a mentally retarded school and on 18.12.2000, when he was going by scooter with two students, he got injured in firing and he died in hospital. It had been revealed that the deceased had not died in any terrorist activity. It is also stated that the Senior Superintendent of Police, Patna had also sent a report dated 11.4.2007 to the Special Secretary to the Government, Home (Special) Department, Bihar, Patna wherein it has been stated that upon enquiry, it was found that some persons were travelling in a white colour maruti van, who were firing on two persons travelling on a scooter, whereupon one person sitting on the back of the scooter had received gunshot injury, resulting in him being inflicted with serious injuries, leading to his death subsequently, however, the person travelling on the scooter left his scooter at the spot and fled away while firing from his pistol. In the said report, it has been further stated that the deceased, Ranvijay Kumar, died by mistake, on account of him being hit by gunshot resulting in his



death, however, it has transpired that the said deceased had no connection with the criminals. In the said report, it has also been accepted that one innocent person i.e. the deceased, Ranvijay Kumar, was killed by the criminals and despite several attempts made to trace the maruti van, the same could not be traced. It has been further submitted by the learned counsel for the respondents that the aforesaid report of the Senior Superintendent of Police, Patna was sent to the NHRC, whereafter the NHRC had closed the case on 24.12.2007, however, with an observation, which is reproduced herein below:-

“an innocent person died in cross firing exchanged between two groups. No public servant is involved in the case however the Commission request the Chief Secretary, Bihar to consider the case on Humanitarian ground and provide interim relief” with this observation, the case is closed by the Commission.”

7. It has also been submitted by the Ld. Counsel for the respondents that the petitioner had earlier filed a writ petition bearing CWJC No. 3135 of 2004 before this Court, however, the same was withdrawn by the petitioner herein. Lastly, it is submitted that there is no provision for award of compensation or providing employment to dependent of the deceased in cases like the present one, hence, no relief can be granted to the petitioner herein and the present writ petition is fit to be dismissed.

8. The learned counsel for the respondents has also relied upon two orders rendered by a coordinate Bench of this Court dated 17.04.2007 passed in CWJC No. 11098 of 2005 and the



one dated 2.04.2007 passed in CWJC No. 7719 of 2005, on the issue that compassionate appointment cannot be granted to a person dehors the provisions of the scheme, as also compassionate appointment can only be provided in a case where an employee dies in harness, but in the present case, the deceased was not a Government servant, hence, neither any compassionate appointment can be provided nor any compensation can be granted. It is also submitted that there is no scheme, as far as the State Government is concerned, for grant of compensation in cases like the present one.

9. I have heard the learned counsel for the parties and perused the materials on record.

10. Firstly coming to the issue regarding the petitioner having filed a writ petition earlier bearing CWJC No. 3135 of 2004, which was withdrawn by the petitioner herein, as a result whereof, the said writ petition stood dismissed as withdrawn by an order dated 24.7.2015 passed by a coordinate Bench of this Court. In this regard, it would suffice to state that since the petitioner had reasonable expectation and hope of him being granted relief by the State Government, he had not pressed the aforesaid writ petition, however, since thereafter, the situation had changed and there had been inaction on the part of the State Government qua the case of the petitioner herein, the petitioner has again approached this Court, being left with no other alternative or efficacious remedy. In this regard, it would be apt to reproduce herein below a paragraph from the celebrated judgment rendered by the Constitution Bench of the Hon'ble Apex Court,



reported in **AIR 1961 SC 1457 (Daryao & Others vs. State of U.P. & Others)**, herein below:-

“Thus, on general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Article 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained.”

11. This Court is thus of the view that since the aforesaid writ petition bearing CWJC No. 3135 of 2004, was neither heard by the Court on merits nor the Court had decided the lis involved in the said writ petition finally by passing a judgment, the dismissal of the aforesaid writ petition bearing CWJC No. 3135 of 2004, as not pressed, would not act as a bar to the present writ petition.

12. Now coming to the merits of the case, it is apparent from the report of the Circle Officer, Fatuha dated 18.07.2001 that the son of the petitioner had died on account of gunshot injury which he had sustained during the course of cross-firing in between the police and the criminals. **This report of the Circle Officer,**



Fatuha has neither been controverted nor refuted by the respondents. Even in the report of the Senior Superintendent of Police, Patna dated 22.07.2010, it has been accepted that while the petitioner was coming back from the school along with two students on foot, he had received gunshot injury on account of firing being made by the persons, travelling in a maruti car, on two criminals travelling on a scooter resulting in death of one criminal other than the petitioner herein while the second criminal had managed to flee away. It has also been stated in the said report that during the course of investigation, it has transpired that it could not be ascertained as to whether police personnel were travelling in the maruti car or not and from where they had come. In fact one of the person travelling on the scooter, who was a veteran criminal, was also shot dead by gunshot firing made by the persons sitting in the maruti car. In the said report of the Senior Superintendent of Police, Patna dated 22.07.2010, it has also been mentioned that the deceased, Ranvijay Kumar, died due to firearm injury, as is apparent from the post mortem report. The fact remains that the criminals on the scooter were being chased by persons in a Maruti Car whereafter, gun shots were fired from the Maruti Car resulting in death of the son of the petitioner and one criminal and even the Senior Superintendent of Police, Patna, in his report dated 22.07.2010 has not categorically denied that the police personnel were not present in the Maruti Car whereas the Circle Officer, Fatuha, in his report dt. 18.7.2001, which is the earliest report of the incident in question, has categorically stated that the son of the petitioner had died on account of gunshot injury



which he had sustained on his chest during the course of cross-firing in between the police and the criminals. Thus, from the aforesaid materials on record, this Court finds that it cannot be denied that the death of the deceased, Ranvijay Kumar, had taken place on account of gunshot injury which he had sustained on his chest during the course of cross-firing which had taken place in between the police personnel and the criminals.

13. Now adverting to the issue, as to whether this Court is competent to grant compensation in such cases or not, this court would at the outset refer to a judgment rendered by the Hon'ble Apex Court, reported in **(1999) 1 SCC 741** (U.P. State Cooperative Land Development Bank Ltd. Vs Chandra Bhan Dubey & Others), paragraph no. 27 whereof is being reproduced herein below:-

“In view of the fact that control of the State Government on the appellant is all-pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of the English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not



necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious



alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226"

14. Another judgment which I would like to refer, is the one rendered by the Hon'ble Apex Court in the case of ***Air India Statutory Corporation & Ors. vs. United Labour Union & Ors.***, reported in ***(1997) 9 SCC 377***, paragraph no. 59 whereof is reproduced herein below:-

"The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as reach injustice wherever it is found. The court as sentinel in the qui vive is to mete out justice in given facts....."

15. A claim in public law for compensation for contravention of human rights, fundamental freedoms and for injuries caused on account of laxity and apathy of Government authorities is an acknowledged remedy. This aspect of the matter has been aptly dealt with in paragraph no. 17 of the Judgement rendered by the Hon'ble Apex Court in the case of ***Nilabati Behera (Smt) Alias Lalita Behera*** (supra).

16. It would now be apt to refer to the principle of no fault liability. This principle was enunciated in the celebrated case of ***Rylands vs. Fletcher***, reported in ***(1868) LR 3 HL 330***. In this case the defendants (John Rylands and Jehu Horrocks), owners of



a mill, retained independent contractors to build a reservoir on their land to supply water to their mill. In course of the work the contractors came across some old shafts and passages in the land of the defendants which communicated with mines of the plaintiff but the contractors could not, on account of their negligence, discover the fact that the shafts communicated with the plaintiff's mines, for the shafts appeared to be filled with earth, hence they did not block the shafts up. Consequently, when the reservoir was filled, the water escaped down the shafts and flooded the mines of the plaintiff, causing damage.

Originally the suit, titled as "Fletcher v. Rylands", was tried at the Liverpool Summer Assizes 1862 and the verdict was in favour of the defendants. The plaintiff took a writ of error to the Court of Exchequer Chamber, which gave him judgment, even though the defendants were neither themselves negligent nor vicariously liable in the tort of negligence for the negligence of their independent contractors who were not their employees. The basis of liability in the case was propounded by Blackburn J, as follows:-

"We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by shewing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of vis major, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."



On being defeated in the Court of Exchequer Chamber, the defendants preferred an appeal to the House of Lords, where the case was titled as "**Rylands vs. Fletcher**", which upheld the judgment of Blackburn J. with, however, an important qualification made by Lord Cairns, namely that the liability would arise where the defendant made a 'non-natural use' of the land. Thus finally a rule of "No fault" liability was established which is stated as follows:-

"A person who, in the course of non-natural user of land, is held to be responsible for the accumulation on it of anything likely to do harm if it escapes is liable for the interference with the use of the land of another which results from the escape of the thing from his land."

17. The aforesaid rule in **Rylands vs. Fletcher** (supra) was subsequently interpreted to cover a variety of things 'likely to do mischief on escape, irrespective of whether they were dangerous per-se e.g. water, electricity, explosions, oil, noxious fumes, colliery spoil, poisonous vegetation, etc. The Hon'ble Apex Court in the case of *M. C. Mehta & Anr. vs. Union of India & Ors.*, reported in **(1987) 1 SCC 395** held that the rule was evolved in the case of **Rylands vs. Fletcher** (surpa) in the 19th Century at a time when all these developments of science and technology had not taken place, hence the same cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. The Hon'ble Apex Court, thus, held as follows:-



"31.We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of



the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher (supra)."

18. It is now a well accepted proposition of law that monetary or pecuniary compensation can be awarded by a writ court and 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. 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. This aspect of the matter has been dealt with by the Hon'ble Apex Court from time to time in a catena of decisions, some of which are being referred to and their relevant paragraphs are being reproduced herein below:-

I. **(1983) 4 SCC 141 [Rudul Sah vs State Of Bihar & Anr.] Paragraphs No. 8 to 11 are reproduced herein below:-**



"8. That takes us to the question as to how the grave injustice which has been perpetrated upon the petitioner can be rectified, in so far 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 fourteen years after his acquittal in a full-dressed trial. He filed a Habeas Corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison- after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass appropriate order for the payment of compensation in this Habeas Corpus petition itself.



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 to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of [Article 21](#) secured, is to mulct its 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 civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's



rights. It may have recourse against those officers.

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. 5,000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Govt. of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent."

II. (1997) 1 SCC 416 [D.K. Basu Vs. The State of West Bengal] Paragraphs No. 44, 45 and 54 are reproduced herein below:-

"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 of 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 Constitutions is 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 226 of the Constitution of India for the established violation or the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong door 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 court 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 damage is a long drawn and 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 bread winner of the family.

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 revive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. 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 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, That award of compensation in the public law juris-



diction 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, in addition to the traditional remedies and not the 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."

III. (2000) 2 SCC 465 [Chairman, Railway Board & Ors. vs. Chandrima Das (Mrs.) & Ors.]:-

In the aforesaid case, while the Hon'ble Apex Court had emphasized the obligation of the State to protect the women from violence, including rape and held that this right is a part of right to life guaranteed under Article 21 of the Constitution, it had rejected the Central Government's disclaimer of liability, and declared that the right of the victim under Article 21 had been violated and had awarded a sum of Rs. 10 lakhs as public law damages. It is pertinent to mention that the *Hon'ble Apex Court* did not examine who was the perpetrator, or what duty he owed to the *Government* and it was held sufficient that a wrong *had* occurred in a *railway* coach, which was *under* the control of the *railway* authorities.

Reference be also had to paragraphs No. 9 to 11, 13, 36, 37 and 42.

IV. (2006) 3 SCC 178 [Sube Singh vs State of Haryana & Ors.] Paragraphs No. 44, 45 and 54 are reproduced herein below:-



"38. It is thus now well settled that 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 enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357 of Code of Criminal Procedure.

V. (2011) 14 SCC 481 [Municipal Corporation of Delhi, Delhi vs Uphaar Tragedy Victims Association & Ors.] Paragraphs No. 64, 65, 67, 84, 96 to 98 and 103 are reproduced herein below:-

"64. Therefore what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs.15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs.15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs.18 lakhs in the



case of persons above the age of 20 years and Rs.15 lakhs for persons below that age, as a public law remedy, may not be proper.

65. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as the determinative factor. The reliance upon Neelabati Behera in this behalf is of no assistance as that case related to a single individual and there was specific evidence available in regard to the income. Therefore the proper course would be to award a uniform amount keeping in view the principles relating to award of compensation in public law remedy cases reserving liberty to the legal heirs of deceased victims to claim additional amount wherever they were not satisfied with the amount awarded. Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs.10 lakhs in the case of persons aged above 20 years and Rs.7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs.1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the LRs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively.

67. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this court. (See for example Sarla Verma Vs. Delhi Transport Corporation (2009) 6 SCC 121. If three factors are available the compensation can be determined. The first is the age of the deceased, the second is



the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one third towards personal expenses. Therefore just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two third of which becomes the annual loss of dependency the age of the deceased which will furnish the multiplier in terms of Sarla Verma. The annual loss of dependency multiplied by the multiplier will give the compensation. As this is a comparatively simple exercise, we direct the Registrar General of Delhi High Court to receive applications in regard to death cases, from the claimants (legal heirs of the deceased) who want a compensation in excess of what has been awarded that is Rs.10 lakhs/Rs.7.5 lakhs. Such applications should be filed within three months from today. He shall hold a summary inquiry and determine the compensation. Any amount awarded in excess of what is hereby awarded as compensation shall be borne exclusively by the theatre owner. To expedite the process the concerned claimants and the Licensee with their respective counsel shall appear before the Registrar without further notice. For this purpose the claimants and the theatre owner may appear before the Registrar on 10.1.2012 and take further orders in the matter. The hearing and determination of compensation may be assigned to any Registrar or other Senior Judge nominated by the Learned Chief Justice/Acting Chief Justice of the Delhi High Court.

84. The general principle of law enunciated in Rylands v. Fletcher, (1868) LR 3 HL 330, Donoghue v. Stevenson, [1932] AC 562, however, still guides us. In several situations, where officials are dealing with hazardous or explosive substance, the maxim re ipsa loquitur applies. Reference may be made to the decision in Lloyd v.



Westminster, [1972]All E.R.1240, Henderson v. eHenry Jenkins & Sons, [1969] 2 All E.R. 756.

96. Courts have held that due to the action or inaction of the State or its offices, if the fundamental rights of a citizen are infringed then the liability of the State, its officials and instrumentals is strict. Claim raised for compensation in such a case is not a private law claim for damages, under which the damages recoverable are large. Claim made for compensation in public law is for compensating the claimants for deprivation of life and personal liberty which has nothing to do with a claim in a private law claim in tort in an ordinary civil court.

97. This Court in Union of India v. Prabhakaran (2008) (9) SCC 527, extended the principle to cover public utilities like the railways, electricity distribution companies, public corporations and local bodies which may be social utility undertakings not working for private profit. In Prabhakaran (supra) a woman fell on a railway track and was fatally run over and her husband demanded compensation. Railways argued that she was negligent as she tried to board a moving train. Rejecting the plea of the Railways, this Court held that her "contributory negligence" should not be considered in such untoward incidents - the railways has "strict liability". A strict liability in torts, private or constitutional do not call for a finding of intent or negligence. In such a case highest degree of care is expected from private and public bodies especially when the conduct causes physical injury or harm to persons. The question as to whether the law imposes a strict liability on the state and its officials primarily depends upon the purpose and object of the legislation as well. When activities are hazardous and if they are inherently dangerous the statute expects highest degree of care and if someone is injured because of such activities, the State and its officials are liable even if they could establish that there was no negligence and that it was not



intentional. Public safety legislations generally falls in that category of breach of statutory duty by a public authority. To decide whether the breach is actionable, the Court must generally look at the statute and its provisions and determine whether legislature in its wisdom intended to give rise to a cause of action in damages and whether the claimant is intended to be protected.

98. But, in a case, where life and personal liberty have been violated the absence of any statutory provision for compensation in the Statute is of no consequence. Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high, compared to the statutory powers and supervision expected from officers functioning under the statutes like Companies Act, Cooperative Societies Act and such similar legislations. When we look at the various provisions of the Cinematographic Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and the Electricity Laws the duty of care on officials was high and liabilities strict.

103. Legal liability in damages exist solely as a remedy out of private law action in tort which is generally time consuming and expensive and hence when fundamental rights are violated claimants prefer to approach constitutional courts for speedy remedy. Constitutional courts, of course, shall invoke its jurisdiction only in extraordinary circumstances when serious injury has been caused due to violation of fundamental rights especially under [Article](#)



[21](#) of the Constitution of India. In such circumstances the Court can invoke its own methods depending upon the facts and circumstances of each case."

VI. (2012) 9 SCC 791 [Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra & Anr.] Paragraphs No. 17 and 22 are reproduced herein below:-

"17. It is trite principle of law that in matters involving infringement or deprivation of a fundamental right; abuse of process of law, harassment etc., the courts have ample power to award adequate compensation to an aggrieved person not only to remedy the wrong done to him but also to serve as a deterrent for the wrong doer.

22.The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under [Article 21](#) of the Constitution are violated are thus, well-established."

VII. (2014) 4 SCC 786 [In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014] Paragraphs No. 16, 19, 20 and 26 are reproduced herein below:-

"16. Ultimately, the question which ought to consider and assess by this Court is whether the State Police Machinery could have possibly prevented the said occurrence. The response is certainly a 'yes'. The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of [Article 21](#) of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the States incapacity or inability to protect the Fundamental Rights of its citizens.

19. No compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim's fundamen-



tal right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

20. In 2009, a new [Section 357A](#) was introduced in [the Code](#) which casts a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government whereas, previously, [Section 357](#) ruled the field which was not mandatory in nature and only the offender can be directed to pay compensation to the victim under this Section. Under the new [Section 357A](#), the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case. However, no rigid formula can be evolved as to have a uniform amount, it should vary in facts and circumstances of each case. In the case of *State of Rajasthan vs. Sanyam, Lodha*, (2011) 13 SCC 262, this Court held that the failure to grant uniform ex-gratia relief is not arbitrary or unconstitutional. It was held that the quantum may depend on facts of each case.

26. The report of the Chief Secretary indicates the steps taken by the State Government including the compensation awarded. Nevertheless, considering the facts and circumstances of this case, we are of the view that the victim should be given a compensation of at least Rs. 5 lakhs for rehabilitation by the State. We, accordingly, direct the Respondent No. 1 (State of West Bengal through Chief Secretary) to make a payment of Rs. 5 lakhs, in addition to the already sanctioned amount of Rs. 50,000, within one month from today. Besides, we also have some reservation regarding the benefits being given in the name of mother of the victim, when the victim herself is a major (i.e. aged about 20 years). Thus, in our



considered view, it would be appropriate and beneficial to the victim if the compensation and other benefits are directly given to her and accordingly we order so."

VIII. (2014) 15 SCC 1 [Raman vs Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.] Paragraphs No. 15 to 18 and 21 are reproduced herein below:-

"15. Having regard to the age of the boy as 5 years at the time of the incidence and longevity of life of Indian citizen as 70 years, the remaining 65 years the appellant is required to suffer from mental agony and hardship. He is virtually dead wood and further he has to undergo continuous pain and suffering at the time of attending the nature's call, sitting, standing, walking and sleeping. He has to face difficulties on all walks of life, which is worse than death. His childhood is lost, the marital status and happiness is lost, which cannot be compensated in terms of money. He has to undergo the great ordeal and agony throughout his life. He requires a permanent attendant throughout his lifetime to assist him for all purposes, to whom the appellant is required to pay minimum at an average of Rs.10,000/- to Rs.15,000/- p.m. and it is a hard reality that the cost of living in our country is also steadily increasing day by day. This aspect of the matter should have been taken into consideration by the Division Bench of the High Court at the time of reducing the compensation awarded to the appellant.

16. The learned Single Judge of the High Court has awarded compensation keeping all these aspects of the matter and has applied the guiding principle of multiplier method after advertent to the case of [Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.](#) for the purpose of computation of just and reasonable compensation in favour of the appellant which method should not have been applied to the case on hand, particularly, having regard to the statutory negligence on the part of the respondents in not providing the safety measures to see that live elec-



tric wires should not fall on the roof of the building by strictly following the Rules to protect the lives of the public in the residential area. This Court in the case of [Dr. Balram Prasad v. Kunal Saha](#), has deviated from following the multiplier method to award just and reasonable compensation in favour of the claimant in a medical negligence case. The same principle will hold good in the case on hand too. The following case law is followed by this Court in the above referred case, the relevant paragraphs are extracted herein to award just and reasonable compensation in favour of the appellant:

68. three-Judge Bench decision of this Court in [Indian Medical Assn. v. V.P. Shantha](#), wherein this Court has categorically disagreed on this specific point in another case wherein "medical negligence" was involved. In the said decision, it has been held at para 53 that to deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice to the claimant.

99. In [Govind Yadav v. New India Insurance Co. Ltd.](#) this Court at para 15 observed as under which got reiterated at SCC pp. 639-40, para 13 of [Ibrahim v. Raju](#):

"15. In [Reshma Kumari v. Madan Mohan](#) [(2009) 13 SCC 422] this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also



lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guesswork may be inevitable. That may be so.

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46. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in [Oriental Insurance Co. Ltd. v. Jashuben](#) held that even dearness allowance and perks with regard thereto from



which the family would have derived monthly benefit, must be taken into consideration.

47. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries, in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and- fast rule, however, can be laid down therefore.'

112. The claimant has also placed reliance upon Nizam's [Institute of Medical Sciences v. Prasanth S.Dhananka's](#) [(2009) 2 SCC 688] case in support of his submission that if a case is made out, then the Court must not be chary of awarding adequate compensation. The relevant paragraph reads as under:

"88. We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The 'adequate compensation' that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned."

17. Further in para 119, it is held: (Kunal Saha case, SCC



pp. 447-48)

"119this Court has rejected the use of multiplier system to calculate and award the quantum of compensation which must be just and reasonable. The relevant paragraph is quoted hereunder: (Nizam's Institute case, SCC para 92)

"92. Mr Tandale, the learned counsel for the respondent has, further submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method." (emphasis in original)

18. Further under paragraph No. 121, the relevant paragraph from [United India Insurance Co. Ltd. v. Patricia Jean Mahajan](#) read as under: (Kunal Saha case, SCC p. 448)

"121.....'20. The court cannot be totally oblivious to the realities. The Second Schedule while prescribing the multiplier, had maximum income of Rs 40,000 p.a. in mind, but it is considered to be a safe guide for applying the prescribed multiplier in cases of higher income also but in cases where the gap in income is so wide as in the present case income is 2,26,297 dollars, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible. Therefore, a deviation from applying the multiplier as provided in the Second Schedule may have to be made in this case. Apart from factors indicated earlier the amount of multiplicand also becomes a factor to be taken into account which in this case comes to 2,26,297 dollars, that is to say, an



amount of around Rs 68 lakhs per annum by converting it at the rate of Rs 30. By Indian standards it is certainly a high amount. Therefore, for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand. A deviation would be reasonably permissible in the figure of multiplier even according to the observations made in Susamma Thomas where a specific example was given about a person dying at the age of 45 leaving no heirs being a bachelor except his parents." (emphasis supplied)

21. *In view of the law laid down by this Court in the above referred cases which are extensively considered and granted just and reasonable compensation, in our considered view, the compensation awarded at Rs. 60 lakhs in the judgment of the learned Single Judge of the High Court, out of which 30 lakhs were to be deposited jointly in the name of the appellant represented by his parents as natural guardian and the Chief Engineer or his nominee representing the respondent-Nigam in a nationalised Bank in a fixed deposit till he attains the age of majority, is just and proper but we have to set aside that portion of the judgment of the learned Single Judge directing that if he survives, he is permitted to withdraw the amount, otherwise the deposit amount shall be reverted back to the respondents as the same is not legal and valid for the reason that once compensation amount is awarded by the court, it should go to the claimant/appellant. Therefore, the victims/ claimants are legally entitled for compensation to be awarded in their favour as per the principles/ guiding factors laid down by this Court in catena of cases, particularly, in Kunal Saha's case referred to supra. Therefore, the compensation awarded by the Motor Vehicle Tribunals/Consumer Forums/State Consumer Disputes Redressal Commissions/National Consumer Disputes Redressal Commission or the High Courts would absolutely belong*



to such victims/ claimants. If the claimants die, then the [Succession Act](#) of their respective religion would apply to succeed to such estate by the legal heirs of victims/ claimants or legal representatives as per the testamentary document if they choose to execute the will indicating their desire as to whom such estate shall go after their death. For the aforesaid reasons, we hold that portion of the direction the of the learned Single Judge contained in sub-para (v), to the effect of Rs. 30 lakhs compensation to be awarded in favour of the appellant, if he is not alive at the time he attains majority, the same shall revert back to the respondent-Nigam after paying Rs.5 lakhs to the parents of the appellant, is wholly unsustainable and is liable to be set aside. Accordingly, we set aside the same and modify the same as indicated in the operative portion of the order.

IX. (2016) 14 SCC 58 [Anil Kumar Gupta vs Union Of India And Ors.] Paragraphs No. 13 to 17 are reproduced herein below:-

13. Those who were in charge of Railway Administration in the concerned Divisions ought to have taken sufficient precaution. The Administration can certainly be taken to be aware of the fact that the Foot-Over Bridges or any structures on the way could possibly be a hindrance and could have caused such incident with people in large number on roof top. The Administration alone would be in a position to know about the existence of infringements with regard to certain structures and what could be possible implications if the train were to run at a great speed with large number of people on roof top. Reasonable care would naturally be expected of those incharge of the Administration. We therefore do not agree with the conclusion in the Report that Railway Administration was not responsible.

14. [In Chairman, Railway Board v. Chandrima Das\[1\]](#), while considering the liability of Railways when some of the em-



ployees had taken a lady from Bangladesh to Rail Yatri Niwas and subjected her to rape, it was observed by this Court,

“42. 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.”

15. [In M.S. Grewal v. Deep Chand Sood](#)[2] this Court considered the concept, “Duty of care” in a fact situation where teachers who had accompanied school children for a picnic on the bank of a river when the mishap happened and stated as under:-

“16. Duty of care varies from situation to situation — whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the playfield. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to a playground near a river for fun and a swim, the degree of care required stands at a much higher degree and no devia-



tion therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for a swim by reason of popular sayings will not be a sufficient compliance. As a matter of fact the degree of care required to be taken, especially against the minor children, stands at a much higher level than adults: children need much stricter care.

..... "23. Turning attention, however, on to the issue of vicarious liability, one redeeming feature that ought to be noticed at this juncture is that to escort the children was the duty assigned to the two teachers and till such time thus the period of escorting stands over, one cannot but ascribe it to be in the course of employment — the two teachers were assigned to escort the students: the reason obviously being — the children should otherwise be safe and secure and it is the act of utter negligence of the two teachers which has resulted in this unfortunate tragedy and thus it is no gainsaying that the teachers were on their own frolic and the School had done all that was possible to be done in the matter — safety of the children obviously was of prime concern so far as the school authorities are concerned and till such time the children returned to school, safe and secure after the picnic, the course of employment, in our view continued and thus resultantly, the liability of the School.

16. In Chandrima Das (supra) compensation of Rs.10 lakhs as awarded by the High Court was upheld while in M.S. Grewal (supra) this Court sustained the order awarding compensation of Rs.5 lakhs in case of death.

17. In the backdrop of the aforesaid precedents, in our view, it must be expected of the persons concerned to be aware of the inherent danger in allowing the train to run with such speed having large number of persons travelling on roof top. Though the people who travelled



on roof top also contributed to the mishap, the Railway Administration, in our view, was not free from blame. Concluding so, we direct that the next of kin of those who died in the incident and those who sustained injuries must be duly compensated by the Railway Administration. Those who died were obviously very young in age for they had come to compete for the jobs. Taking all these factors in consideration we direct Railway Administration to pay:

(a) Compensation of Rs.5 lakhs to the next of kin in case of every death;

(b) Compensation of Rs.1.5 lakhs in every case of permanent disability suffered by anyone in the incident;

(c) Compensation of Rs.75,000/- in case of any grievous injury suffered by anyone; and

(d) Compensation of Rs.25,000/- in case of simple injury suffered by anyone.

X. (2016) 15 SCC 525 [Anita Thakur & Ors. Vs. Govt. of J & K & Ors.] Paragraphs No. 18 is reproduced herein below:-

"18. When we examine the present matter in the afore-said conspectus, we find that initially it was the petitioners/ protestors who took the law into their hands by turning their peaceful agitation into a violent one and in the process becoming unruly and pelting stones at the police. On the other hand, even the police personnel continued the use of force beyond limits after they had controlled the mob. In the process, they continued their lathi charge. They continued to beat up all the three petitioners even after overpowering them. They had virtually apprehended these petitioners making them immobile. However, their attack on these petitioners continued even thereafter when it was not at all needed. As far as injuries suffered by these petitioners are concerned, such a situation could clearly be avoided. It is apparent



that to that extent, respondents misused their power. To that extent, fundamental right of the petitioners, due to police excess, has been violated. In such circumstances, in exercise of its power under Article 32 of the Constitution, this Court can award compensation to the petitioners {See - Saheli, A Women's Resources Center, Through Ms. Nalini Bhanot & Ors. v. Commissioner of Police, Delhi Police Headquarters & Ors.; Joginder Kaur v. The Punjab State & Ors.; The State of Rajasthan v. Mst. Vidhywati & Anr.; and Smt. Nilabati Behera @ Lalita Behera (through the Supreme Court Legal Aid Committee) v. State of Orissa & Ors.}. The ratio of these precedents can be explained thus:

First, it is clear that a violation of fundamental rights due to police misconduct can give rise to a liability under public law, apart from criminal and tort law.

Secondly, that pecuniary compensation can be awarded for such a violation of fundamental rights.

Thirdly, it is the State that is held liable and, therefore, the compensation is borne by the State and not the individual police officers found guilty of misconduct.

Fourthly, this Court has held that the standard of proof required for proving police misconduct such as brutality, torture and custodial violence and for holding the State accountable for the same, is high. It is only for patent and incontrovertible violation of fundamental rights that such remedy can be made available.

Fifthly, the doctrine of sovereign immunity does not apply to cases of fundamental rights violation and hence cannot be used as a defence in public law."

XI. (2018) 11 SCC 572 [Ms. Z Vs. The State of Bihar & Ors.] Paragraphs No. 27, 28, 48, 53, 54, 56 and 57 are reproduced herein below:-

"27. Thus, the opinion has to be formed by the regis-



tered practitioners as per the Act and they are required to form an opinion that continuance of pregnancy would involve a grave mental or physical harm to her. We have already referred to Explanation 1 which includes allegation of rape. As is perceivable, the appellant had gone from a women rehabilitation centre, had given consent for termination of pregnancy and had alleged about rape committed on her, but the termination was not carried out. In such a circumstance, we are obliged to hold that there has been negligence in carrying out the statutory duty, as a result of which, the appellant has been constrained to suffer grave mental injury.

28. In such a situation, submits Ms. Grover, the State is bound to compensate the appellant under public law remedy. It is her proponentment that the appellant was suffering from mental retardation, but not from mental illness and the distinction is clear from the language of sub-section (4) of Section 3 of the Act. That apart, her contention is that the victim was a destitute and in such a situation, impleadment of her husband and father for obtaining their consent was wholly unwarranted and, in a way, allow time to 'rule'.

48. In Mehmood Nayyar Azam v. State of Chhattisgarh, the Court has observed that the word "torture" in its denotative concept includes mental and psychological harassment. It has the potentiality to cause distress and affects the dignity of a citizen. Under the present Act, the appellant is covered by the definition. In such a situation, there was no justification to push back her rights and throw her into darkness to corrode her self-respect and individual concern. She had decided to exercise her statutory right, being a victim of rape, not to bear the child and more so, when there is possibility of the child likely to suffer from HIV+ve, the authorities of the State should have been more equipped to assist the appellant instead of delaying the process. That apart, as is seen,



the State in a way contested the matter before the High Court on the foundation of State interest. The principle of State interest is not at all applicable to the present case. Therefore, the concept of grant of compensation under public law remedy emerges.

53. In Chairman, Railway Board (supra), the Court copiously adverted to the public law remedy and finding fault with the Railways and opined that:

“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 decision⁴⁶ therefore, cannot be 52 pressed into aid. Moreover, we are dealing with this case 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.”

54. On the aforesaid basis, this Court affirmed the judgment of the High Court and directed that the amount of compensation should be made over to the High Commissioner for Bangladesh in India for payment of the same to the victim as she was entitled to it.



56. *In the instant case, it is luminescent that the appellant has suffered grave injury to her mental health. The said injury is in continuance. It is a sad thing that despite the prompt attempt made by this Court to get her examined so that she need not undergo the anguish of bearing a child because she is a victim of rape, it could not be so done as the medical report clearly stated that there was risk to the life of the victim. Therefore, we are inclined to think that the continuance of the injury creates a dent in the mind and the appellant is compelled to suffer the same. One may have courage or cultivate courage to face a situation, but the shock of rape is bound to chain and enslave her with the trauma she has faced and cataclysm that she has to go through. Her condition cannot be reversed. The situation as is unredeemable. But a pregnant one, she has to be compensated so that she lives her life with dignity and the authorities of the State who were negligent would understand that truancy has no space in a situation of the present kind. What needed is promptitude.*

57. *This Court had earlier directed that she should be paid compensation under the Victims Compensation Scheme as framed under Section 357-A of the Code of Criminal Procedure. She has been paid Rs. 3,00,000/- as she has been a victim of rape. It may be clearly stated that grant of compensation for the negligence and the suffering for which the authorities of the State are responsible is different as it comes within the public law remedy and it has a different compartment. Keeping in view the mental injury that the victim has to suffer, we are disposed to think that the appellant should get a sum of Rs. 10,00,000/- (Rs. ten lakhs only) as compensation from the State and the same shall be kept in a fixed deposit in her name so that she may enjoy the interest. We have so directed as we want that money to 56 be properly kept and appropriately utilized. It may also be*



required for child's future. That apart, it is directed, that the child to be born, shall be given proper treatment and nutrition by the State and if any medical aid is necessary, it shall also be provided. If there will be any future grievance, liberty is granted to the appellant to approach the High Court under Article 226 of the Constitution of India after the birth of the child."

19. It would be apropos to refer to a judgment rendered by the Hon'ble Delhi High Court in the case of Kamla Devi Vs. Government of NCT of Delhi & Anr., reported in 2004 SCC OnLine Del 721. In this case, the court granted compensation on the death of a deceased electrician, due to an explosion caused by terrorist activity. The court further held that public law demands, as distinct from private law tort remedy, that crime victims be given compensation even in no fault situations by the state, as it is the breach of constitutional guarantee under Article 21 of the constitution. It would be relevant to quote paragraphs No. 5 to 7, 21 and 22 of the judgment rendered in the case of Kamla Devi (Supra):-

" 5. Let us see who are the persons responsible for the wrong. Primarily it is the terrorist who was assembling the bomb. Next, it is the State as it failed in living up to its guarantee that "no person shall be deprived of his life except according to procedure established by law". The State failed to prevent the terrorist from harming innocent citizens like Uday Singh. Terrorism itself is an indicia of the inability of the State to curb resentment and to quell fissiparous activities. Social malaise in itself is a reflection of the State's inefficiency in dealing with the situation in a proper manner. Apart from the general inability to tackle the volatile situation, in this case, the State



agencies failed in their duty to prevent terrorists from entering Delhi. It was their responsibility to see that dangerous explosives such as RDX were not available to criminals and terrorists. The incident occurred as there was a failure on the part of state to prevent it. There was failure of intelligence as they did not pick up the movement of this known and dangerous terrorist. So, it would be extremely difficult even to suggest that the State did not fail in its duty towards the late Uday Singh and his family. The other players in this sad drama could be the owner of the Guest House. Did he take due care in permitting such a dangerous person to enter and reside in the guest house? Did he maintain his guest house in good repair so as to have prevented the same from collapsing under the impact of the explosion? Then, the municipal officials may also be roped in. Did they inspect the property from time to time? Did they take any action if the building was in any way not in accordance with the regulations and law? Did they find the building to be structurally sound? Of course, these are questions which need a thorough investigation and cannot be gone into in this writ petition. But, this does not mean that without these questions being answered the petitioner is to be left without a remedy.

6. A crime has been committed. A wrong has been done and a citizen has lost his life because the State was not vigilant enough. A fundamental right has been violated. But, mere declarations such as these will not provide any succour to the petitioner. She needs to be compensated. It is too late in the day to now suggest, that in a situation such as this, the petitioner should be relegated to the ordinary civil courts to seek her tort law remedy. In D.K Basu v. State of W.B., (1997) 1 SCC 416 (para 41), the



Supreme Court held that—

“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.”

The Supreme Court cleared the ground for the grant of compensation under article 226 in situations where there was a dereliction of public duty on the part of the State. The following passages from D.K. Basu (supra) clarifies the legal position:—

“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."

"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."

Earlier, in Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 the Supreme Court had held:—

"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 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."

The current position of the law is stated by the Supreme Court in M.S. Grewal v. Deep Chand Sood, (2001) 8 SCC 151 as under—

"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 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.”

7. It is true that the cases which came up before the Supreme Court related to custodial death, death of school children on a picnic, death of a passenger in a train as a result of the inaction on the part of the railway employees. In all these cases it could be said that the victims were under some sort of State custody, punitive or protective. It could be argued that Uday Singh was not in any such situation. He died as a result of a terrorist act and, perhaps, contributed, in part, due to the structural defect in the guest house building. What has the State got to do with this? I am afraid, the State has everything to do with this. The state owed a duty to protect the life and liberty of an innocent citizen such as Uday Singh. The State owes a duty to the widow (Kamla Devi) and the child (Mukesh), now that Uday Singh has been snatched away from them, that they live their lives with dignity. Compensation, in this case, would not only be a balm on their scars, it would also provide them with hope for the future. The fact of the matter is that Uday Singh lost his life on account of an act of terrorism. The State failed to prevent it. The Primary duty of the State is to maintain peace and harmony amongst its citizens. If for some reason, it is unable to put the lid on simmering discontent, then it is its duty to protect innocent citizens from harm. If it fails in this duty, then it must compensate the citizens who have been wronged.

21. The principles which emerge can be summarized as follows:—

1. Whenever an innocent citizen is killed as a result of a crime, particularly when it is an act of terror or communal violence or a case of custodial death, the State would have failed in its public



duty to ensure the guarantee enshrined in Article 21 of the Constitution.

2. The modern trend and the international norm is to focus on the victims of crime (and their families) by, inter alia, ensuring that they are promptly compensated by the State in adequate measure under a well-laid out Scheme.

3. In India, there is no such criminal injury compensation scheme in place and the private law remedies of damages and compensation are grossly inadequate. Legislation on this aspect is not forthcoming.

4. In such a situation the High Court, in exercise of its powers under article 226 of the Constitution can and ought to direct the State to compensate the crime victim and/or his family.

5. The compensation to be awarded by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:—

(a) 'standard compensation' or the so-called 'conventional amount' (or sum) for non-pecuniary losses such as loss of consortium, loss of parent, pain and suffering and loss of amenities; and

(b) Compensation for pecuniary loss of dependency.

6. The 'standard compensation' or the 'conventional amount has to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee. Keeping this in mind, in case of death, the standard compensation in 1996 is worked out at Rs. 97,700/-. This needs to be updated for subsequent years on the basis of the Consumer Price Index for Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of



India.

7. Compensation for pecuniary loss of dependency is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MV Act, 1988 cannot be relied upon, however, the appropriate multiplier can be taken therefrom. The multiplicand is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency.

8. The total amount paid under 6 and 7 above is to be awarded by the Court along with simple interest thereon calculated on the basis of the inflation rate based on the Consumer Prices as disclosed by the Government of India for the period commencing from the date of death of the deceased till the date of payment by the State.

9. The amount paid by the State as indicated above would be liable to be adjusted against any amount which may be awarded to the claimants by way of damages in a civil suit or compensation under the Criminal Procedure Code.

22. In view of the foregoing discussion, it is directed that the Respondents shall, within a period of four weeks from today, pay to the petitioner (for herself



and her minor son, Mukesh) an amount of Rs. 4,36,500/-alongwith simple interest thereon @ 7% for the period 20.4.1996 (i.e., the date of the explosion) till date. The writ petition stands disposed of accordingly."

20. The position that emerges from the aforementioned decisions is that award of compensation in a proceeding 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. It is equally a well accepted proposition of law 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 wrong doer. 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.

It thus 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.

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 to the offender (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. It is also an equally settled law that an award of compensation in the public law jurisdiction is 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, in addition to the traditional remedies and not its 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.

21. Thus the incontrovertible corollary, at least in cases where the relevant facts are not in dispute; there is established acts and omissions of the respondent authorities on the face of the record and; there is consequent deprivation of a fundamental right of the petitioner, is that the writ court can award monetary compensation. It would, undoubtedly, cover a case where the State or its instrumentality has failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Accordingly, Article 21 of the Constitution is attracted and Article 226 of the Constitution can be invoked to claim monetary compensation, since such a remedy is available in public law, based on strict liability for breach of fundamental rights.

22. In the present case, it is not in dispute that the son of the petitioner has died on account of him being hit by gunshot, on account of firing being made by the persons, travelling in a maruti car, on two criminals travelling on a scooter, resulting in death of one criminal other than the son of the petitioner herein while the second criminal had managed to flee away. In fact, the Circle Officer, Fatuha, in his report dated 18.07.2001, has stated that the son of the petitioner had died on account of gunshot injury, which he had sustained during the course of cross-firing in between the police and the criminals. In fact, the respondents have also admitted that the son of the petitioner has died on account of firearm injury in which there was no mistake on the



part of the deceased and moreover, he did not have any connection with the criminals as well. The respondents have also accepted that the life of one innocent person has been lost. In fact, the Senior Superintendent of Police, Patna, in his report dated 11.04.2007, has also admitted that some persons were travelling in a white colour maruti van and while they were firing on two persons travelling on a scooter, the deceased, Ranvijay Kumar i.e the son of the petitioner herein, died by mistake on account of him being hit by gunshot, however, the said deceased had no connection with the criminals, nonetheless, it could not be ascertained as to whether police personnel were travelling in the maruti car or not and the said maruti van could also not be traced. This Court further finds that the respondents have neither controverted nor refuted the aforesaid report of the Circle Officer, Fatuha dated 18.07.2001 and moreover, it has been admitted by the respondents that an innocent person has been killed without any mistake on his part. Thus, from the materials available on record, this Court finds that the death of the son of the petitioner has taken place on account of gunshot injury, which he had sustained on his chest during the course of cross-firing, which had taken place in between the police personnel and the criminals. In such view of the matter, since there has been an established infringement of the indefeasible right guaranteed under Article 21 of the Constitution, this Court is competent to award monetary compensation especially in view of the fact that the State has failed to discharge its duty of care cast upon it, resulting in deprivation of life of the son of the petitioner. Even if, it is accepted for a moment that the son of the



petitioner was killed on account of cross-firing in between the criminals, then also, the respondents would be liable to pay compensation inasmuch as the State owes a duty to protect the life and liberty of an innocent citizen such as the son of the petitioner herein and now that the life of the deceased, Ranvijay Kumar, has been snatched away from the petitioner herein, it's the State's obligation towards the petitioner that he and his family live their lives with dignity, thus, award of compensation, in the present case, would not only be a balm on the scars of the petitioner and his family members, but it would also provide the petitioner with hope for the future. This aspect of the matter stands fully covered by the various pronouncements of the Hon'ble Apex Court, as referred to hereinabove, in the preceding paragraphs, thus I hold that this writ petition for grant of compensation is maintainable against the respondents, and the petitioner is entitled to grant of compensation.

23. Now, I proceed to consider the quantum of damages to be granted to the petitioner herein, in the present case, for the death of his son.

24. This Court finds that the Hon'ble Apex Court in the case of ***Nizam's Institute of Medical Sciences vs. Prasanth S. Dhanaka & Ors.***, reported in ***(2009) 6 SCC 1***, has rejected the use of multiplier system to calculate and award the quantum of compensation. In this connection, it would be apt to refer to paragraph no. 92 of the said judgment herein below:-

"92. Mr Tandale, the learned counsel for the respondent has, further submitted that the proper



method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method."

25. In General manager, Kerala State Road Transport Corporation, Trivandrum v Mrs Susamma Thomas & Ors (1994) 2 SCC 176, the Supreme Court held as under:-

"The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales." All this means that the sum awarded must be fair and reasonable by accepted legal standards."

26. The Hon'ble Supreme Court in Sube Singh v State Of Haryana AIR 2006 SC 1117 has held that:-

"It is thus now well settled that 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 enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering



compensation under Section 357 of Code of Civil Procedure"

27. In Oriental Insurance Co. Ltd v Ram Prasad Varma & Ors 2009 (2) SCC 712, the Supreme held that "just" must be given its logical meaning. Though, the compensation awarded cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

28. The Hon'ble Supreme court in Association of Victims of Uphaar Tragedy and Ors., reported in (2011) 14 SCC 481, held:-

"Therefore what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more."

29. The occurrence/accident in question, admittedly, is not covered by the provisions of the Motor Vehicles Act, 1988 (herein after referred to as the "MV Act"). In my view, the [MV Act](#) cannot, therefore, be invoked for the purposes of calculation of damages to which the petitioner may be entitled to. Consequently, this Court finds that considering the law laid down by the Hon'ble Apex Court, with regard to award of compensation in cases of victims of violence etc. including rape resulting in permanent disability, physical incapacitation, mental injury and death, like in the present case, as referred to herein above in the cases of D.K. Basu (Supra), reported in (1997) 1 SCC 416, Chandrima Das (Mrs.) & Ors. (Supra), reported in (2000) 2 SCC 465, Uphaar Tragedy Victims Association & Ors. (Supra), reported in (2011) 14 SCC 481, In Re: Indian Woman says gang-raped on orders of Village Court (Supra), reported in (2014) 4 SCC 786, Raman (Supra), reported in (2014) 15 SCC 1, Anil Kumar Gupta (Supra),



reported in (2016) 14 SCC 58, Anita Thakur & Ors. (Supra), reported in (2016) 15 SCC 525 and Ms. Z (Supra), reported in (2018) 11 SCC 572, a sum of Rs. 10,00,000/- would be just, reasonable and an adequate compensation, in the facts and circumstances of the present case> Accordingly I hold and direct that the petitioner is liable to get a sum of Rs 10,00,000 (Rupees Ten lakhs only) as compensation from the State.

30. Alternatively, even if the multiplier method provided for in the Motor Vehicle Act, 1988 is applied to the facts and circumstances of the present case, the amount of just compensation / total loss of dependency, to which the petitioner would be entitled to, in view of the law laid down by the Hon'ble Apex Court in case of Sarla Verma and Ors. Vs. Delhi Transport Corporation and Others, reported in (2009) 6 SCC 121 and in the case of National Insurance Company Ltd. Vs. Pranay Sethi & Ors., reported in (2017) 16 SCC 680, would work out in the following manner:-

Annual income (5,000 X 12)	= Rs. 60,000/-
Income for Future prospect (@50%)	= Rs. 30,000/-
Total Income	= Rs. 90,000/-
Less deduction for personal and living expenses (considering that deceased was a bachelor) (@50%)	= Rs. 45,000/-
Loss of dependency	= Rs. 45,000/-
Multiplier (18) - (45,000x18)	= Rs. 8,10,000/-
Add loss of estate	= Rs. 15,000/-
Loss of consortium	= Rs. 40,000/-
Funeral expenses	= Rs. 15,000/-
Total compensation	= Rs. 8,80,000/-

Note:- 1. It is stated in paragraph no. 4 of the writ petition that the deceased, Ranvijay Kumar, was in employment



since March, 1996 as Special Educator in a mentally retired school, namely, Ayurvedic Magneto Research Institute, Panchsheel Kumhrar, Patna and was getting a salary of Rs. 5,000/- per month and this fact has not been either controverted or refuted by the respondents.

Note:- 2. The details of the deceased has been obtained from the report of Circle Officer, Fatuha dt. 18.7.2001 (annexed as Annexure-2, Pg. no. 18 of the writ petition).

Thus even as per the multiplier method, provided for in the MV Act, 1988, the amount of just compensation / total loss of dependency, to which the petitioner is entitled to, would work out to a sum of Rs. 8,80,000/-, to which a reasonable amount of interest is also required to be added for the period starting right from the day of filing of the present writ petition i.e 11.01.2016 till date, which would in fact work out to a sum greater than Rupees Ten lakhs.

31. In view of the forgoing discussion, the respondents are directed to pay to the petitioner a sum of Rs. 10,00,000/- in lump sum, by way of compensation, within a period of four weeks from today. It is needless to state that though this Court is distressed by the attitude of the respondents-State and the resultant delay of 20 years caused in award of compensation to the petitioner herein, which is solely on account of laches on the part of the State, nonetheless, this Court is restraining itself from penalizing the State authorities by way of awarding exemplary cost, in the hope and belief that the State would not further cause any delay/impediment in making payment of the aforesaid sum of Rs. 10,00,000/- to the petitioner herein within a period of four weeks from today. It is, however, made clear that in case, the aforesaid sum of Rs. 10,00,000/- is not paid to the petitioner within a period of four weeks from today, any delay in making payment



thereof shall entail payment of interest at the rate of 24% per annum on the said sum of Rs. 10,00,000/-.

32. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	22.08.2019
Uploading Date	23.11.2020
Transmission Date	NA

