
MONETARY COMPENSATION AS A TOOL FOR REDRESS: THE EVOLVING ROLE OF WRITS IN INDIA

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ABSTRACT

Monetary compensation as a tool for redress has emerged as a powerful instrument in the Indian legal system for violations of Fundamental Rights guaranteed in Part-III of the Constitution to individuals by the State. This paper delves into the historical trajectory of this development, tracing its roots from the initial reluctance to award compensation under writ jurisdiction to its present-day acceptance as a vital remedy for rights violations. It examines the landmark cases that have shaped this evolution, highlighting the Supreme Court's pivotal role in expanding the scope of writ remedies to include monetary compensation. The paper will also analyse the challenges and limitations associated with awarding compensation through writs.

Keywords: Monetary Compensation, Writs, Article 32, Fundamental Rights Violations, Compensatory Jurisprudence in India.

MONETARY COMPENSATION AS A TOOL FOR REDRESS – THE EVOLVING ROLE OF WRITS IN INDIA

1. INTRODUCTION:

“The right to monetary 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.”

– *Supreme Court in Rudul Sah v. State of Bihar.*¹

The concept of justice in a democracy transcends punitive measures and includes remedies that address the grievances of individuals in a meaningful manner. Among these remedies, monetary compensation has emerged as a powerful tool for redressal, particularly in cases of violation of fundamental rights. In India, the evolution of writ jurisdiction under Article 32 of the Constitution by the Supreme Court (SC) has played a crucial role in this transformation.

Writs like *mandamus*, *certiorari*, *habeas corpus*, *prohibition*, and *quo-warranto* provide legal mechanisms to address fundamental rights violations. However, equitable principles allow courts to supplement these writs with compensatory relief to remedy harm suffered due to state action or inaction. Eventually over time, the judiciary has creatively expanded the scope of writs to include compensatory relief, especially in cases involving state excesses or infringement of basic human rights in a gross manner.

This evolution signifies a shift from a purely preventive approach to a compensatory model, emphasizing the restoration of dignity of the individual and accountability of the state in the era of Welfare State. this development not only upholds the principles of justice and equity but also strengthens the social contract between the state and its citizens. Respect for the rights of individuals is the true bastion of democracy.² Therefore, the State must repair the damage done by its officers to their rights.

Compensatory Jurisprudence in India has evolved in the last two and half decades as a public law remedy for violation of the fundamental rights guaranteed in Part-III of the Indian

¹ (1983) 3 S.C.R. 508.

² Ibid.

Constitution, in addition to the private law remedy under the Law of Torts.³ The idea is to provide a relief or to make amends for loss, recompense, remuneration or pay. It is counterbalancing of the victim's sufferings. Granting compensatory relief through writs exemplifies how courts balance legal enforcement with equitable remedies. This approach by the Judiciary ensures justice beyond mere procedural correction, addressing the substantive loss or injury faced by the victims of rights violations.

2. EXISTING LEGAL FRAMEWORK WITH RESPECT TO MONETARY COMPENSATION:

2.1 Under International Statutes:

When the Charter of the United Nations imposed a binding obligation on signatory states to respect the human rights and fundamental freedoms of individuals, it recognized that individuals enjoyed such rights and freedoms under International Law. It was a recognition explicitly made by the States parties to the UN Charter. From being solely, a matter of domestic concern and government's treatment of its own nationals became the legitimate concern of the international community.⁴

As per Article 9(5) of the International Covenant on Civil and Political Rights of 1966 an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) of ICCPR reads as follows: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

ICCPR provides that "when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

Article 2(3) of ICCPR provides that "the third obligation is to ensure that any person whose

³ Sube Singh v. State of Haryana & Ors., (2006) 3 S.C.C. 178, para 12

⁴ Jayawickrama, Nihal. The Judicial Application of Human Rights Law: National, Regional, and International Jurisprudence. 2002. New York: Cambridge University Press., pg. 47

rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative, or legislative authorities, or by the legal system, and to develop the possibilities of judicial review; and to ensure that the competent authorities shall enforce such remedies when granted”.

India is signatory to these agreements, subject to the reservation on enforceable right to compensation. Under the Indian legal system, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State. However, in *D.K. Basu*,⁵ Supreme Court observed that “...reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen”.

2.2 Under the Constitution of India:

Article 32⁶ and Article 226⁷ of the Constitution of India provide the powers to Supreme Court and High Courts of States respectively to enforce the fundamental rights guaranteed under the Constitution. Dr. Ambedkar has remarked about these provisions that it is the very soul of the Constitution and the very heart of it.⁸

Unless there is effective machinery for the enforcement of the rights, the declaration of the Fundamental rights is meaningless. It is a remedy which makes the right real. If there is no remedy there is no right at all. It was therefore thought fit, after enumerating a long list of Fundamental Rights, by our Constitution framers, that there must also be some effective remedy for the enforcement of these rights and embedded Article 32 by which the individual may secure a guaranteed remedy in case of the infringement of fundamental rights. Article 32 of the Indian Constitution confers wide powers to the Supreme Court to ensure enforceability of these rights.

Enforcement of the fundamental rights under Article 32(1) provides for the right to move the Supreme Court by appropriate proceedings. Under Article 32(2) the Supreme Court is free to

⁵ *D.K. Basu v. State of West Bengal*, 1997 (1) SCC 416.

⁶ Article 32 - Remedies for enforcement of rights conferred by this Part.

⁷ Article 226 - Power of High Courts to issue certain writs.

⁸ CAD Vol. VII, at 953.

devise any procedure for the enforcement of fundamental right and it has the power to issue any process necessary in a given case. In view of this constitutional provision, the Supreme Court may even give remedial assistance, which may include compensation in “appropriate cases”.⁹ Similar power exists with High Courts to issue writs. However, the word compensation has neither been used in Article 32 nor Article 226.

Article 32 is itself a fundamental right and cannot be diluted or whittled down by any law. The powers of Supreme Court under Article 32 are plenary and are not fettered by any legal constraints.¹⁰ The Supreme Court is not bound to follow the ordinary adversary procedure and may adopt such procedure as may be effective for the enforcement of fundamental rights.¹¹ This has led to the growth of judicial activism and dilution of the locus standi rule to an extent that even a post-card has been considered by the as a petition under Article 32.¹²

The clause (2) of Article 32 has a wide interpretation and extends to issuing of any directions or orders that may be appropriate for the enforcement of any of the fundamental rights. In the exercise of that wide power the court has directed state to pay compensation and exemplary costs for breach of fundamental rights guaranteed under Part-III of the Constitution.¹³

The Supreme Court by interpreting Article 32 of the Constitution has innovated new methods, techniques and strategies for purposes of securing the enforcement of Fundamental Rights of the individuals. The purpose of such an activist interpretation is to entrench rule of law and to secure the sacrosanct nature and inalienability of the fundamental rights.

3. EMERGENCE OF COMPENSATORY JURISPRUDENCE IN INDIA:

In the late 1970s, a new wave of human rights litigation flooded the Supreme Court. New concepts replaced old notions. This period along with 1980s was characterized by the active role played by the Judiciary¹⁴. This era ushered in new human rights jurisprudence ranging from development of prison to expansion of Article 21¹⁵. There was also a marked departure

⁹ Justice G. Yethirajulu, Article 32 and the Remedy of Compensation, (2004) 7 SCC (J) 49

¹⁰ S. Nagaraj v. State of Karnataka, (1993) Supp (4) S.C.C. 595.

¹¹ Bandhua Mukti Morcha v. Union of India, A.I.R. 1984 SC 802.

¹² Epistolary jurisdiction of the Supreme Court.

¹³ Mahendra Pal Singh, V. N. Shukla's Constitution of India, Pg 344

¹⁴ Justice P.N. Bhagwati, Justice V.R. Krishna Iyer, Justice Chinnappa Reddy, etc. played an active role.

¹⁵ Article 21 - Right to Life and Personal Liberty.

from the traditional rules in conducting litigation, especially in writ petitions.¹⁶ This era also marked the emergence of public interest litigation, liberation of locus standi and expansion of the definition of State under Article 12 of the Constitution¹⁷.

Before of 1983, compensation under Article 32 for infringement of Fundamental Rights was not paid. In such a situation, the victim had to file a civil suit under law of torts for claiming compensation, which by all methods was slow and tedious and subject to other statutory constraints.

The Supreme Court in *Khatri v. State of Bihar*¹⁸ (infamously known as Bhagalpur Blinding Case) considered the issue of monetary compensation for the first time on infringement of right to life and liberty. Justice Bhagwati in this case remarked that: *“Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious Fundamental Right to life and personal liberty?”*¹⁹ He also observed that the Supreme Court should not be afraid of devising new instruments and devices to safeguard the fundamental rights guaranteed.

One of the issues raised in the *Khatri* case was whether the State should be liable to compensate for the acts of its servants outside the purview of their power and authority, which affect the fundamental rights of the citizens. Though the court in this case granted just interim compensation, and denied the use of Article 32 in this case, it did recognize the power of the Supreme Court under Article 32 and the High Court’s under Article 226 to award compensation in the event of infringement of Fundamental Rights.²⁰

But to build the basis of judgments, the *Sant Bir v. State of Bihar*²¹ also raised the question of compensating the victim for the lawlessness of the state, again in *Veena Sethi v. State of Bihar*²² the court delved on the question of whether the petitioners are entitled to compensation from the State government for the violation of their fundamental right.

¹⁶ *S.P. Gupta v. Union of India*, A.I.R. 1982 SC 149.

¹⁷ *Ajay Hasia v. K.M. Sehravavardi*, (1981) 1 S.C.C. 722.

¹⁸ (1981) 2 S.C.R. 408.

¹⁹ *Ibid*.

²⁰ *Supra*. note 18.

²¹ (1982) 3 S.C.C. 131

²² (1982) 4 S.C.C. 141

These few cases brought about many discussions and enabled the court to finally hold state liable to pay compensation. But the dynamic move and landmark precedent that set up the basis of Compensatory Jurisprudence for the violation of fundamental rights came at the time of Rudul Sah v. State of Bihar²³.

4. ROLE OF THE JUDICIARY IN EXPANDING THE HORIZONS OF WRITS:

Rudul Sah v. State of Bihar:

Rudul Sah v. State of Bihar²⁴ is a milestone in compensatory jurisprudence developed by the Supreme Court. It was held in this case that in a petition under Article 32 of the Constitution, Supreme Court can grant compensation for deprivation of a fundamental right. Hon'ble CJ, Chandrachud, stated as under "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...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 nature of compensation consequential upon the deprivation of a fundamental right."

In Rudul Sah case, petitioner was detained for more than 14 years in spite of his acquittal by Court of Session. Petitioner sought relief through Habeas Corpus petition under Article 32 seeking his release from detention in jail. SC awarded compensation for illegal detention to the tune of Rs. 30,000 to the petitioner in addition to Rs. 5,000 already paid to him, without affecting the right of petitioner to sue for damages.

The order was in the nature of palliative as Supreme Court felt that "*petitioner could not be left penniless until the end of his suit, the many appeals, and the execution proceedings*". This was a landmark judgment in the growth of Compensatory Jurisprudence in the domain of Public Law by Supreme Court. The compensation granted to the petitioner was ex-gratia payment protecting the right of further redressal in appropriate forum.

Thus, Rudal Sah's case added a 'new dimension to judicial activism' and raised a set of vital questions, such as, 'liability of State to compensate for unlawful detention', 'feasibility of

²³ (1983) 3 S.C.R. 508.

²⁴ Ibid.

claiming compensation from the State under Article 32 for wrongful deprivation of fundamental rights', 'propriety of the Supreme Court passing an order for compensation on a habeas corpus petition for enforcing the right to personal liberty'.

Sebastian Hongray v. Union of India:

Sebastian M. Hongray v. Union of India²⁵ involved two persons taken away by the army officers missing mysteriously. The liability of govt. was established in this case and the court asked the govt. to provide 'exemplary cost' of 1,00,000 to each of the wives of the missing individuals. The court maintained that exemplary costs are maintainable in such cases. The court also failed to cite any basis for the judgment. Though it can be inferred from the judgment that the court wanted to reflect both a deterrent policy and a relief for such victims.²⁶

Bhim Singh v. State of Jammu & Kashmir:

In the case of Bhim Singh v. State of J&K²⁷ petitioner MLA was prevented deliberately from attending session of Legislative Assembly by arresting and illegally detaining him in police custody. SC severely condemned the action of police officers and observed that "if the personal liberty of a MLA is to be played with in this fashion, one can only wonder what may happen to lesser mortals!...custodians of law and order should not become depredators of civil liberties..." SC held that constitutional rights of the petitioner were violated with impunity and relying upon the decisions of Rudul Sah²⁸ and Sebastian Hongray²⁹ directed the State of Jammu & Kashmir to pay to the petitioner a sum of Rs. 50,000 within two months from the decision as compensation for infringement of his personal liberty.

Nilabati Behera v. State of Orissa:

The three-judge bench of the SC in the case of Nilabati Behera v. State of Orissa³⁰ again reiterated the principle of award of compensation under public law for infringement of fundamental rights. This was the case where writ petition was filed by a mother claiming

²⁵ AIR 1984 SC 571

²⁶: J.L.Kaul & Anju Vali Tikoo, Revisiting Award of Compensation for violation of fundamental human rights: An analysis of Indian Supreme Court decisions, Available at:

http://www.ailtc.org/publications/revisiting_award_of_compensation.pdf

²⁷ (1985) 4 SCC 677.

²⁸ (1983) 3 S.C.R. 508.

²⁹ AIR 1984 SC 571.

³⁰ (1993) 2 S.C.R. 581.

compensation alleging death of his son aged 22 years in police custody in violation of Art. 21. In this case, custodial death was established. Supreme Court observed that “the court is not helpless and the wide powers given to the Supreme Court by Art. 32, which itself is fundamental right, imposes a constitutional obligation on the Court to forge such new tools, which may be guaranteed in the constitution, which enable the award of monetary compensation in appropriate cases where that is the only mode of redress available. The power available to the Supreme Court under Art. 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process.”³¹ Having regard to the age of the deceased and his monthly income, State was directed to pay Rs. 1 lakh as compensation to deceased’s mother and Rs. 10,000 as costs to Supreme Court Legal Aid Committee.

Saheli case:

In *Saheli* case, the police were in violation and in excess of power vested in them, where a child was done to death on account of beating by police, the Supreme Court has held that mother of the child was entitled to exemplary compensation of Rs. 75,000/- from State for the death of the child. State was held responsible for the tortuous acts of its employees. However, it was indicated that the State might take appropriate steps for recovery of the amount of compensation paid or part thereof from the officers who will be found responsible, if they are so advised.³²

Ravikant Patil case:

In the case of *State of Maharashtra & Ors. vs. Ravikant S. Patil*³³ a compensation of Rs. 10,000/- was awarded to the undertrial prisoner who was taken through the streets handcuffed in a procession by police during investigation. This was held to be violation of fundamental rights. However, the police officer responsible for the said act was held to have acted only as an official and was not made personally liable to pay compensation to the victim undertrial, but

³¹ Ibid, para 20.

³² *Saheli v. Commissioner of Police*, (1990) 2 S.C.C. 422.

³³ (1991) 2 SCC 373.

authorities were allowed, if they consider necessary, to hold an enquiry against the police officer and then decide whether any further action needs to be taken against him or not.

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.³⁴ 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 compensation³⁵ under Section 357 of Code of Criminal Procedure³⁶.

Other cases where monetary compensation was granted through Writs:

There are a number of other cases in which compensation was granted by Supreme Court and High Courts, such as birth after vasectomy³⁷, denial of pension for 12 years³⁸, loss of vision in eye-camps³⁹, injury to newly born infant⁴⁰, death due to open manholes⁴¹, death due to electrocution⁴², death due to landslide, death due to police firing⁴³, custodial deaths⁴⁴, police encounter⁴⁵ and many more. Out of these Police atrocities top the list in which compensation has been granted by the Supreme Court. Further, in Consumer Education & Research Center vs. Union of India⁴⁶ it was held that in public law, claim for compensation is a remedy available under Articles 32 and 226 for the enforcement and protection of fundamental rights.

In PUDR vs. Police Commissioner, Delhi Police Headquarters⁴⁷, “one of the labourers was taken to the police station for doing some work, when he demanded wages, he was severely

³⁴ Ibid.

³⁵ Sube Singh vs. State of Haryana and Ors., (2006) 3 SCC 178, para 17 and also Ankush Shivaji Gaikwad v. State of Maharashtra, A.I.R. 2013 SC 2454, para 25.

³⁶ Section 357 of CrPC, 1973 - Order to Pay Compensation

³⁷ Shankuntala Sharma v. State of UP, A.I.R. 2000 All 219.

³⁸ Dewaki Nandan Prasad v. State of Bihar, A.I.R. 1983 SC 1134 – Award of Rs. 25,000/- was granted.

³⁹ MP Human Rights Commission v. State of MP, A.I.R. 2003 MP 17

⁴⁰ Jasbir Kaur v. State of Punjab, A.I.R. 1995 P&H 278

⁴¹ Punjab Civil and Consumer Welfare Front v. UT of Chandigarh, A.I.R. 1999 P&H 32

⁴² Haneefa Bano v. State of J. & K. & Ors., A.I.R. 1998 J&K 37.

⁴³ Aheibam Ongbi Laihao Devi v. State of Manipur, A.I.R. 1999 Gau 9.

⁴⁴ P.J. Gogoi v. State of Assam, 1992 Cri L.J. 154.

⁴⁵ Malkiat Singh v. State of U.P., A.I.R. 1999 SC 1522, A compensation of Rs. 5 Lakhs was granted to petitioner for his son's death due to fake police encounter.

⁴⁶ A.I.R. 1995 SC 922

⁴⁷ (1989) 4 S.C.C. 730.

beaten and as a result of which he died. It was held that the State was liable to pay compensation of Rs. 75,000/- to the family of the deceased”.

In *Chiranjit Kaur v. Union of India*⁴⁸, the husband of the petitioner was a major in army who died while in service in mysterious circumstances. No proper investigation was made regarding the cause of his death. His case was handled with culpable negligence and cynical indifference by the authorities concerned. It was held that widow and her children were entitled to a compensation of 6 Lakhs as well as other benefits.

In *Kewal Pati v. State of Uttar Pradesh*⁴⁹, the Court awarded compensation to the petitioner, the wife of a convict who was killed by a co-accused in jail while serving out his sentence under Section 302, IPC. It was held that the killing in jail resulted in deprivation of his life contrary to law.

In *Chambara Soy v. State of Orissa*⁵⁰, some persons had blocked a road due to which the petitioner was delayed in taking his ailing son to the hospital and his son died on arrival at the hospital and violated his right move freely under Article 19(1)(d) and right to life under Article 21. The Court held that the State is liable to pay the compensation of Rs 1,00,000 to the victim.

In *P.K. Koul v. Estate Officer*⁵¹, the Court has acknowledged the petitioner's right to reside and settle in any part of the territory of India under Article 19(1)(e) along with Article 21, which was being violated by the State officials and granted compensation of Rs 25,000 to each petitioner.

In *Indibily Creative (Pvt.) Ltd. v. State of West Bengal*⁵², the SC has granted compensation under Article 19(1)(g) for consequential financial losses caused by State authorities. In this case the petitioner has suffered violation of fundamental rights under Articles 19(1)(a) & (g), 14 and 21. The respondent State authorities were directed to pay compensation of Rs 20 lakhs, which was a huge amount.

⁴⁸ (1994) 2 S.C.C. 1.

⁴⁹ (1995) 3 S.C.C. 600

⁵⁰ 2007 S.C.C. OnLine Ori 42.

⁵¹ 2010 S.C.C. OnLine Del 4207.

⁵² (2020) 12 S.C.C. 436.

In *Re: Direction in the matter of Demolition of Structures*,⁵³ the Supreme Court granted compensation for illegal demolitions of houses of accused persons. The court observed that when the right of an accused or a convict is violated on account of illegal or arbitrary exercise of power by the State or its officials or on account of their negligence, inaction, or arbitrary action, there has to be an institutional accountability. One of the measures for redressing the grievance for violation of a right would be to grant compensation. At the same time, if any of the officers of the State has abused his powers or acted in a totally arbitrary or mala fide manner, he cannot be spared for such an illegal, arbitrary, mala fide exercise of power.

An analysis of the cases where compensation has been awarded by Supreme Court would show that in all the cases “the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation”.

5. RATIONALE FOR GRANTING COMPENSATION THROUGH WRITS:

“*Ubi jus ibi remedium*” is a fundamental principle of law which means that “where there is a right, there is a remedy”. In the judgment of *Ashby v. White*,⁵⁴ Holt C.J. observed that “if man will multiply injuries, action must be multiplied too: for every man who is injured ought to have recompense”. Man is a social being and overlapping and encroaching of the other’s right by one’s action is quit deducible in the human society. For such situations, the law has developed the concept of compensation.

It is an age-old concept of recompensing an injured person by some pecuniary amount. The "standard of law" requires that the wrongs ought not to remain unredressed. Every one of the people or persons carrying out wrongs ought to be at risk in an activity for harms for rupture of common law or for criminal discipline.⁵⁵

Article 32 gives us no right; it essentially makes room for the guaranteed remedy in case any other fundamental right is violated. In other words, it is a fundamental right which can be used

⁵³ 2024 INSC 866.

⁵⁴ *Ashby v. White*, 92 Eng. Rep. 126, 136 (1703) (Holt, C.J.), cited from RATANLAL & DHIRAJLAL, LAW OF TORTS 20 (G.P. Singh ed., 2002).

⁵⁵ Bharati law review, COMPENSATION ON BREACH OF FUNDAMENTAL RIGHTS Mr.Parmindra Dadhich

to protect other fundamental rights. As Justice Gajendra Gadkar has rightly noted, *no other Constitution of the world has made a remedial article as a Fundamental Right*⁵⁶.

The reasoning behind awarding compensation can be viewed in two ways; one is the Jurisprudential reasoning another is the Theoretical reasoning. Jurisprudential Reasoning has been discussed in detail in the judicial pronouncements while theoretical reasoning needs to be brought to light.

One of the reasons why compensation should be granted when violation of fundamental rights takes place is to make monetary amends. Compensation is not to be comprehended, as it is for the most part comprehended in a civil action for harms under the private law yet in the more extensive feeling of giving help by a request of making 'fiscal amends' under the public law for the wrong done because of breach of obligation, for not securing the privileges of the citizens.⁵⁷

When an individual's constitutional rights are violated, remedies, such as injunctions can only serve to restrict future constitutional harm. Unless he is paid damages for the past loss he has suffered, his constitutional rights would be meaningless. Compensations paid for past violations, as opposed to writs for habeas corpus, etc. serve to underline the sacred nature of the rights concerned, and the stringent outlook of the judiciary towards any State transgression. Monetary compensation will not only financially support the aggrieved but also encourage him to seek justice.

6. CHALLENGES ASSOCIATED WITH AWARDING COMPENSATION THROUGH WRITS:

For granting Monetary Compensation, the Supreme Court has invoked the principles of human rights jurisprudence to compensate the victims of rights violations. However, there are a few lingering uncertainties in this sphere of Compensatory Jurisprudence.

In most cases, courts have not specified any basis for calculating compensation. There is thus, no uniformity or continuity in the amounts awarded. The Court came closest to laying down

⁵⁶ Nirmalendu Bikash Rakshit, Right to Constitutional Remedy Significance of Article 32 Economic and Political Weekly August 21-28, 1999

⁵⁷ Nilabati Behera v. State Of Orissa And Ors., (1993) 2 S.C.R. 581.

some principles, in *Nilabati Behera* case. However, the calculation was made on a fact specific basis, and its application to all situations, may not be feasible. There is, therefore, an acute need for guidelines and rules for the award of compensation, which has so far been left to the judges' absolute discretion, subjecting victims to "the fluctuating fortunes of justice."

The judicial approach in awarding compensation has been ad hoc, and not systematic, about the circumstances in which, persons for whom and persons against whom compensation is to be awarded. Moreover, 'which is the fit case to grant compensation' depends on the judge who hears it. In absence of any guidelines there are bound to be inconsistencies.

Further, in *Rudul Sah*, the Apex Court held that writ compensation will be awarded only in "cases of gross violation." Subsequently, in the *M.C. Mehta*, the Court imposed a restriction on itself, declaring that a rights violation, which was 'serious enough to shock the Court's conscience, was a mandatory pre-requisite'. In petition for mandamus against the Inspector of Factories, in the *Bhopal Gas Leak Case*⁵⁸, SC laid down the following proposition: "The power to award compensation under Article 32 extends to the violation of any fundamental right, whenever the violation is gross, patent and incontrovertible...though every case of infringement of a fundamental right is not a fit case for awarding compensation, thereby supplanting the ordinary remedy of a suit in the Civil Court."⁵⁹

7. CONCLUSION:

"Compensation is not only a balm for the victims of rights violations but also an effective way to make the violators accountable."

– Supreme Court in D.K. Basu v. State of West Bengal⁶⁰.

The Compensatory Jurisprudence is relatively new but has made remarkable progress since the *Rudul Sah* case. The power and jurisdiction of Supreme Court and the High Courts to grant monetary compensation through writs in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights are infringed are well-established.

⁵⁸ *M.C. Mehta v. Union of India (I)*, AIR 1967 SC 965.

⁵⁹ *M.C. Mehta v. Union of India (II)*, AIR 1987 SC 1086.

⁶⁰ *D.K. Basu v. State of West Bengal*, 1997 (1) SCC 416.

While the judicial initiative is a commendable step, it serves as a guiding light in the ongoing battle of victims of constitutional rights violations against the oppressive forces of a politicized bureaucracy, bureaucratized politicians, and the overarching entity of the State. This judicial trend is unquestionably a move in the right direction which serves as an effective measure to keep the State on guard. But at the same time, the principle of granting compensation should not be allowed to be whittled down and proper scrutiny of genuine cases needs to be done.

By awarding compensation, courts uphold the principles of accountability, deterrence, and restitution, reinforcing the trust of citizens in the justice system. As this jurisprudence continues to evolve, it reaffirms the Judiciary's role as the custodian of the Fundamental Rights and a cornerstone of constitutional democracy, paving the way for a more equitable and just society.