

Compensatory Jurisprudence)

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Description of Module

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(Compensatory Jurisprudence)

As you are aware by now, there is no meaning of right if no remedy is provided for its infringement. Preamble of the Constitution of India, which is a part of the basic structure of the Constitution, secures to all of its citizens "Justice". It is, therefore, the duty of State to ensure justice to all. If there is infringement of fundamental rights then right to claim compensation is secured by the right infringed. This right is specifically provided under Articles 32 of the Constitution. Article 32(1) provides for the right to move the Supreme Court. Further, Article

226 provides for similar right to move the High Court by appropriate proceedings for the enforcement of the fundamental rights. The Supreme Court under Article 32(2) is free to 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".

A question regarding awarding of monetary compensation through writ jurisdiction was first raised before the Supreme Court in *Khatri (11) v State of Bihar* (1981, p.627). In this case, Bhagwati, J. observed: "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?"

Regarding the liability of the State to pay compensation for infringing Article 21, the Court answered in the affirmative saying that if it were not so, Article 21 will be denuded of its significant content.

The seed of compensation for infraction of the rights implicit in Article 21 was first sowed in Khatri case, which sprouted with such a vigorous growth that it finally enabled the Court to hold the State liable to pay compensation. This dynamic move of the Supreme Court resulted in the emergence of compensatory jurisprudence for the violation of right to personal liberty through *Rudul Sah case*. The Supreme Court of India, in *Rudul Sah v State of Bihar* (1983, p.141), brought about a revolutionary breakthrough in human rights jurisprudence by granting monetary compensation of Rs.30,000 to an unfortunate victim of State lawlessness on the part of the Bihar Government for keeping him in illegal detention for over 14 years even after his acquittal of a murder charge.

"It may be mentioned straight away 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 (state cannot commit a legal wrong) does not apply, even though it may be available as a defence in private law in an action based on tort." In this case, the son of petitioner was arrested by the police and next morning his body was found laying down with several injuries on the railway track. The Hon'ble Supreme Court awarded the compensation of Rs. 1,50,000 to be paid by the state.

The case of *Bhim Singh v State of J & K* (1986, p.494) is another important case where Bhim Singh, an MLA, was arrested by the police only to prevent him to attend the Legislative Assembly. The Hon'ble Court not only entertained the writ petition of his wife but also awarded the compensation of Rs.50,000 to be paid by the State. The case of *Meja Singh v SHO Police Station Zira* (1991, p.439) is another case where High Court of P & H took the cause of victim and awarded the compensation of Rs.25,000 for illegal detention of son of the petitioner.

Use of force and misuse of authority by the police on people not in their custody is another instance where gross violation of basic rights of people was reported. In the case of *Saheli v Commissioner of Police* (1990, p.5 13), the son of Kamlesh Kumari died due to ill-treatment by an S.I. of Delhi Police. The Hon'ble Supreme Court directed the Delhi Administration to pay the compensation of Rs.75,000. Another important case is of *Gudalure M. J. Cherian and Ors. v Union Of India (UOI) and Ors.* (1992) where the Hon'ble Supreme Court directed the Govt. of

U.P. to first suspend the police officials and medical officers who tried to save the accused and pay compensation of Rs. 2,50,000 to *thk* victim of rape and Rs. 1,00,000 to victim of other crime.