



Invocation of Writ Jurisdiction for the Award of Compensation: Indian Judicial Approach

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Abstract

Socio-economic justice is the signature tune of the Indian Constitution. It is well settled law that for the violation of fundamental rights by the State instrumentalities compensation must be awarded. The Constitution guarantees fundamental rights which cannot be ordinarily derogated. In protecting these rights, the Constitution has provided for writ remedies enforceable by the High Courts and the Supreme Court. Often these rights are violated by the State, though in some cases private parties may also be involved. An important dimension of these remedies is the award of compensation as a part of the reliefs that can be granted to the affected person. This arises from the fact that not only does the state have a legal duty in protecting the rights guaranteed, but also a social duty to compensate the affected, when the state violates these rights. Through the various decisions of the Courts in India, it may be stated that this dream of human rights enthusiasts is now an obligation of the state. The rights have been interpreted to imply a contract between the State and the citizens, a breach of which may be regressive monetarily. This article seeks to examine this new trend through a focus on various aspects of compensating through writs.

Keywords: Writ, Compensation, Constitution, Remedy, PIL

1. Introduction

The Indian Constitution, under Articles 32 and 226, grants the Supreme Court and High Courts the authority to issue directions and orders for specific purposes. While this power is often referred to as 'writ jurisdiction,' it is not limited to issuing writs alone. This jurisdiction has gained significance over the past few decades and has become a focal point of attention for many. It is frequently used in recent years, and some people seem to think that a writ is the answer to every problem, whether legal or moral, real or perceived. There are

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also those who believe that this extraordinary power can be used to fix every issue—whether individual, social, or national.¹

However, these beliefs are not correct. The framers of the Indian Constitution did not intend for this jurisdiction to be used to address every dissatisfaction or complaint. That said, the growing frequency with which this jurisdiction is being invoked in India makes it important for everyone to have a basic understanding of its scope and limits. It is essential to know who can apply for writs, under what circumstances they can be used, and the conditions under which the courts can exercise this power.

2. Importance of Remedies

A Latin Phrase, *Ubi jus ibi remedium*’ which means where there is a right, there is a remedy, underscores the principle that for every violation of a legal right, there must be an available remedy. This concept is foundational in ensuring that justice is not only theoretical but also practical, providing individuals the means to seek redress when their rights are infringed upon. Remedies like writs are crucial in upholding this principle, offering a pathway for citizens to challenge unlawful actions and secure the protection of their rights.

The Constitution’s creators likely to have chosen writs because they were already familiar to legal professionals, including lawyers and judges, prior to the Constitution’s adoption. Writs had been a key tool for challenging government actions even before the Constitution came into effect, and they formed a significant part of public law at that time.

3. The Contours of Writ Compensation

Before 1970s, in an important number of instances Courts did not follow the pattern of awarding compensation. In a several decisions, the Supreme Court has held that compensation could not be awarded in writ petitions. A meaningful alteration in perspectives was affected during the approximate middle of the decade of the 1970s.

The Indian judiciary’s actions are characterized by an important degree of “Judicial Activism”. That particular Supreme Court is not a general conservative tradition-bound institution, in its evolution, became sensitive to the needs of a meaningful number of weaker

¹ Justice B.P. Banerjee, *Writ remedies*, (LexisNexis, 3rd Edn. 2002).

sections, the downtrodden and the customarily oppressed classes of India. The circumstances popular at that time offer a compelling explanation for this meaningful change. During those intensely difficult emergency years, a meaningful number of governmental excesses were observed. The people grievously harmed by the extreme excess affected not only the deeply downtrodden but also the privileged elite residing in the urban centers. The Supreme Court urgently sought to rectify its errors and powerfully reaffirm its authority as the guardian of citizens' rights, a fact clearly demonstrated in later rulings.

It is pertinent to note that 'writ compensation' is an extraordinary remedy and a creation of the judiciary. No statute has provided for it. Therefore, in light of this the importance of Article 32 has to be understood. In *Keshavananda Bharathi v. State of Kerala*², a 13 Judge Bench opined that the chapter on fundamental rights was a part of the basic structure of our Constitution and thus could not be amended. It also held Article 32 to be the most fundamental of the fundamental rights guaranteed under the Constitution.

4. Dawn of the Human Rights Era

In the late 1970s, a transformative shift began to reshape the landscape of legal practice in India, particularly in the realm of human rights. The Supreme Court saw a surge in human rights litigation, marking the beginning of a new era. This period witnessed the replacement of outdated legal doctrines with more progressive and inclusive concepts. The 1980s, in particular, were characterized by the rise of activist judges³ who played a crucial role in introducing a new human rights jurisprudence. These judges helped expand the scope of rights, including significant advancements in prison reform and the broader interpretation of Article 21,⁴ which protects the right to life and personal liberty.

This era also saw a departure from traditional legal practices, especially in the way litigation was conducted, particularly in writ petitions.⁵ The courts began to embrace more flexible and expansive

² AIR 1973 SC 1461.

³ P.N. Bhagwati, V.R. Krishna Iyer, Chinnappa Reddy etc.

⁴ *J.P. Unnikrishnan v. State of Andhra Pradesh* 1993 SC

⁵ *S.P. Gupta v. Union of India*, A.I.R. 1982 SC

approaches, particularly through the advent of public interest litigation. Public Interest Litigation (PIL) allowed individuals or groups to approach the court on behalf of the public interest, even if they weren't directly affected by the issue at hand. This movement also led to a liberation of the doctrine of *locus standi*, meaning that individuals no longer had to prove direct personal harm to bring a case before the court. Additionally, the term 'State' was expanded to include not just government institutions but a broader range of public authorities, thus widening the scope of judicial scrutiny and accountability.

One of the most significant outcomes of this period was the groundwork for the development of a jurisprudence focused on compensation for wrongs committed by the state. This shift seemed to follow naturally from the growing recognition of human rights as enforceable legal rights, which, in turn, led to a more robust framework for holding the government accountable for violations. The recognition that individuals could seek compensation for state-inflicted harm became a natural extension of the growing human rights framework.

In summary, the late 1970s and 1980s marked the beginning of a transformative period in Indian law, where the focus shifted toward expanding human rights protections and increasing access to justice through writs. The courts, driven by activist judges, paved the way for a more inclusive, rights-based approach to litigation, which would fundamentally reshape the country's legal landscape for years to come.

(a) Rudul Shah's Case: A Landmark in Compensation Jurisprudence

The issue of compensating individuals for the violation of their fundamental rights was first raised in the infamous *Bhagalpur Blinding case*.⁶ In that instance, the Supreme Court refused to order compensation through its writ jurisdiction. However, the tide changed with the landmark case of *Rudul Shah v. State of Bihar*,⁷ where compensation was awarded for the wrongful detention of an innocent person. This case marked the beginning of a new phase in Indian legal history, introducing the concept of compensatory justice for violations of fundamental rights.⁸

⁶ *Khatri v. State of Bihar*, AIR 1981 SCR (2).

⁷ A.I.R. 1983 SC 1086.

⁸ Madhav Menon, "S.C.'s breakthrough Judgement." Hindustan Times, 2023.

In its judgment, the Supreme Court explained that the compensation awarded in Rudul Shah was not merely a financial remedy, but a way to give true meaning to the right to life enshrined in Article 21 of the Constitution. The decision was groundbreaking as it made the State liable to pay compensation for its own failures and unlawful actions. Rudul Shah's case was the first of its kind, and although the Court limited compensation to 'exceptional cases', a rule that could be criticized today, the case was significant for laying the groundwork for a new approach to justice and compensation in India.

(b) Bhim Singh's Case and Sebastian Hongray's Case: Expanding the Scope of Compensation

Following Rudul Shah, two other important cases further expanded the idea of compensatory justice. The first was *Sebastian Hongray v. Union of India*,⁹ where the Supreme Court awarded compensation for individuals who went missing while in army custody. This was followed by *Bhim Singh v. State of Jammu & Kashmir*,¹⁰ where the Court recognized that compensation could address wrongs related to unlawful arrests and violations of an individual's rights.

In Bhim Singh's Case, the Court moved away from the traditional view that Habeas Corpus was merely a remedial process and instead treated it as a punitive measure as well. This case brought together various strands of reasoning from Rudul Shah and Sebastian Hongray, blending the ideas of compensatory justice and exemplary punishment, where the State was not only required to compensate the victims but also face consequences for its actions.

(c) Widening of Writ Jurisdiction in M.C. Mehta's Case

Another pivotal case, *M.C. Mehta v. Union of India*,¹¹ set a new precedent in the realm of compensation, especially with regard to environmental issues. In anticipation of litigation related to the *Bhopal Gas Tragedy*, the Court ruled that a strict, overly technical approach could not be applied when dispensing justice.¹² This ruling proved to be more helpful for later cases involving compensation through writ petitions than it did for the specific Bhopal case itself. It laid the

⁹ A.I.R. 1984 SC 571

¹⁰ A.I.R. 1986 SC 494. The Court awarded a compensation of Rs. 50,000 to a legislator who was prevented from attending the session of the Assembly.

¹¹ A.I.R. 1987 SC 1086

¹² It was similarly held in *Bandhu a Mukti Morcha v. Union of India*. A.I.R. 1984 SC that Art. 32 is very broad.

foundation for a more flexible approach to justice, emphasizing the need for fairness and accountability even in complex situations.

(d) Fundamental Rights v. Sovereign Immunity

Building on the principles established in Rudul Shah, Sebastian Hongray, and Bhim Singh, the Andhra Pradesh High Court¹³ made a significant ruling in a case that questioned the application of sovereign immunity in matters involving deprivation of life or personal liberty. The Court held that the principle established in *Kasturi Lal's Case*¹⁴, which had granted the state immunity in certain circumstances—did not apply when fundamental rights under Article 21¹⁵ were violated.

This judgment marked an important step in advancing individual rights against the state, highlighting that even the government cannot escape accountability when it comes to violations of life and personal liberty. This shift in judicial activism towards awarding compensation for the state's wrongdoings continues to evolve, and these cases together represent a growing commitment to ensuring that the state's actions are scrutinized, and victims receive appropriate redress.

As this area of law continues to develop, it reflects a broader trend toward upholding fundamental rights and ensuring that the courts remain accessible to those who have been wronged, particularly by state actions.

5. Custodial Death: The Role of Compensation in Judicial Activism

Custodial deaths have become a significant focus of judicial activism, particularly when it comes to awarding compensation to the victims' families. The Supreme Court has established a clear stance: compensation should be granted when a person dies in custody, considering this as a key indicator for determining when compensation is appropriate. However, this approach might not always be the most accurate, as it could lead to arbitrary applications and inconsistent outcomes across different cases.

While the Guwahati High Court has been notably active in addressing custodial deaths, it should not be assumed that such incidents are

¹³ *Ramakomnda Reddy v. State of Andhra Pradesh*, A.I.R. 1989 A.P. 235.

¹⁴ *Kasturilal v. State of U.P.* 1965 AIR 1039.

¹⁵ A case of a bomb attack on under trials in a prison due to the negligence of officials. It was held that the State was liable to the extent of Rs. 1,44,000

limited to this region. In fact, custodial deaths are a nationwide issue, but many High Courts have not utilized this remedy to the same extent.

Additionally, it has often been the case that compensation is awarded only to the wives of the deceased, leaving out other potential dependents who may have also suffered from the loss.

6. Atrocities and Ill-Treatment by Authorities: The Need for Compensation

When fundamental rights such as life and liberty are violated, the courts have recognized that compensation is necessary, especially when these violations also involve the dignity of the individual. The landmark case of *Maneka Gandhi v. Union of India*¹⁶ marked a turning point, establishing that the violation of a person's dignity is just as significant as a violation of their life and liberty. For instance, handcuffing an individual unjustly has been ruled to necessitate compensation.

In a similar vein, the use of third-degree interrogation methods by authorities has been strongly condemned by the courts, with compensation being awarded to victims of such practices. This approach signifies a growing recognition that the treatment of individuals by authorities should be respectful and dignified. This trend is expected to have a lasting impact on future litigation, ensuring that the state's power is not abused and that citizens' rights are protected.¹⁷

7. Addressing Atrocities Against Women: A Special Focus on Compensation

The judiciary has also demonstrated a heightened awareness of atrocities committed against women, which is a crucial and positive development. This area of law has garnered special attention because it involves not only fundamental rights but also aspects of the Directive Principles of State Policy and fundamental duties. Compensation in such cases serves as a means to help women rebuild their lives, as seen in cases like *Saheli v. Commissioner*,¹⁸

¹⁶ A.I.R. 1978 ASC 597

¹⁷ *Lakshmi v. Sub inspector*, 1991 cri.

¹⁸ A.I.R., 1990 SC 513

where the courts took steps to ensure women received practical support.

In some cases, such as *Padmini v. State of Tamil Nadu*,¹⁹ the courts have even gone further, directing the government to deposit compensation in a fixed deposit scheme for the victim's future benefit. This innovative approach ensures that the woman receives tangible support, and the compensation isn't just a one-time payout. However, there have been instances where courts, such as in the Guwahati High Court,²⁰ opted to award *ex gratia* payments instead of compensation. This distinction between *ex gratia* and compensation can be problematic, as it could diminish the gravity of the harm suffered by the victim and the state's obligation to provide justice.

8. Illegal Detention: Holding Authorities Accountable Through Compensation

In cases of illegal detention, the writ of Habeas Corpus has evolved to include not only the release of the detainee but also the possibility of compensation for the unlawful detention. This expansion of the writ has added a new dimension to the concept of personal liberty, emphasizing that authorities responsible for illegal detention should be held accountable, and the victims compensated for their suffering. This principle is especially relevant in the North Eastern states of India, where the Armed Forces Special Powers Act (AFSPA) has been used to justify detention by the military. The courts have the opportunity to make a strong statement by ensuring that victims of illegal detention are not only released but also compensated, thereby promoting accountability among officers responsible for such acts. This approach could significantly deter future violations and strengthen the enforcement of personal liberty in the region.²¹

So, the evolution of compensation law in India reflects a growing commitment to protecting individual rights, holding authorities accountable, and ensuring that victims of state actions are adequately compensated. These legal developments show a broader trend toward ensuring justice and fairness, particularly in cases involving custodial deaths, mistreatment by authorities, and illegal

¹⁹ 1993 Cri. L.J. 2964

²⁰ *In Re, a Police Gang Rape*, 1988 (2) Cri. 14

²¹ *Susheela v. State of Karnataka*, 1991 Cri. L.J. 2675

detention. As judicial activism continues to evolve, it holds the promise of a more just and accountable legal system.

9. Negligence by Police in Handling the Injured

The courts have increasingly focused on high-profile cases, particularly those involving police misconduct, like the poor treatment of individuals injured during police shootings at the Mandal agitation, which gained media attention through the *News Track*²² video magazine. Police are held accountable if they fail to provide necessary care or medical treatment. This area highlights the importance of media evidence, especially when there are few other witnesses or concrete evidence, particularly in cases of police misconduct like encounter deaths or police shootings.

(a) Encounter Deaths and Police Shootings

A crucial aspect of awarding compensation is the recognition by the highest courts that so-called ‘encounter deaths’ which are often denied by authorities do occur.²³ This acknowledgment is just the beginning, as the full details of such incidents are often kept secret. The courts should ensure that any compensation is accompanied by a requirement for the authorities to disclose all relevant materials related to these incidents. In the case of *P.U.D.R. v. State of Bihar*,²⁴ a formula for compensating victims of police shootings was sought, an issue that demands urgent judicial attention.

(b) Communal Riots

In two significant rulings, the Madras²⁵ and Jammu & Kashmir²⁶ High Courts became the first to award compensation for victims of communal riots. These courts held that the state must compensate those who lost their livelihoods due to the state’s failure to protect their property. This was a groundbreaking decision, but it could lead to complex issues such as determining responsibility and the amount of compensation. Given that such incidents are on the rise, the courts may soon face an influx of such cases, which could place a heavy

²² *P.V. Kapoor v. Union of India*, 1992 Cri. L.J. 128

²³ *R.S. Sodhi v. State of Uttar Pradesh*. 1991 (2) SCALE 463.

²⁴ A.I.R. 1987 SC 355.

²⁵ *R. Gandhi v. Union of India* A.I.R. 1989 Mad. 205

²⁶ *Inder Puri General Stores v. State of J&K*, A.L.R. 1992 J&K 11

financial strain on the state's resources. More recently, the Rajasthan²⁷ High Court has rejected similar petitions.

(c) Negligence and Miscellaneous Petitions

With the expanding scope of writ jurisdiction, High Courts have granted compensation in various cases of negligence, such as poor treatment in government hospitals, wrongful seizures, trespassing by police at religious sites, and injuries sustained while working for the police. However, this broadening of writ jurisdiction should be approached cautiously, ensuring that only genuine cases are entertained, to avoid overwhelming the courts with frivolous claims.

10. Common Law Remedy for Compensation Through Writs

In a significant ruling, the Supreme Court²⁸ established that the claim for compensation in cases of custodial deaths is distinct from tort claims in private law. This decision has introduced a new remedy for violations of fundamental rights, forming part of the constitutional common law. It remains to be seen whether this right will eventually be recognized as a fundamental right.

11. Compensation: A Temporary Solution or True Damages?

The issue of how to calculate the monetary relief that a petitioner is entitled to is crucial. In many cases, compensation is awarded as a temporary or exemplary measure, and courts often make it clear that receiving compensation through a writ does not preclude further claims for damages in civil court. Some argue that this form of palliative compensation has been eliminated following the Supreme Court's decision in *Bhim Singh's Case*. However, the reference to civil court remedies aims to prevent the writ courts from becoming overwhelmed with cases and to avoid the lengthy process of evaluating evidence to determine damages.

In the past, the concept of 'shocking the conscience' was used to justify compensation, but this arbitrary standard has been largely dismissed in recent rulings like *Behra's Case*. Now, it is implied that the new remedy must be available to everyone. Yet, the rationale behind awarding compensation remains unclear, as there are no clear guidelines or legislation to govern how compensation should be

²⁷ *Nathulal v. state of Rajasthan*. A.I.R. 1993 Raj. 149.

²⁸ *Nilabati Behra v. State of Orissa*, A.I.R 1993 SC 1960.

determined.²⁹ As a result, judges often rely on their own discretion, and compensation amounts can vary significantly. In *Kalavati v. state of Himachal Pradesh*,³⁰ courts have used the framework of the Motor Vehicle Act as a model to help guide compensation decisions.

12. Personal Liability

One concern with the growing use of compensation claims is that it might create the impression that the state can continue to violate citizens constitutional rights, provided it compensates the victims. After the *Rudul Shah* case, there were concerns³¹ about the financial strain on the state's budget. It's important to address the personal liability of those responsible for these violations. While the state has often been the one to bear the cost of compensation, there is growing recognition that individual officers should be held personally accountable for their actions. This is a concept that courts must pay more attention to in the future.³²

13. Conclusion

The Supreme Court's initiative to award compensation through writ petitions deserves praise, especially given the widespread human rights violations, particularly those committed by the state. As Upendra Baxi rightly notes, "what is truly striking about India is the lack of respect for the rule of law not just by the people but also by those who make and enforce it."

However, a concern today is that, in its effort to address state-imposed wrongs, the judiciary has sometimes awarded compensation where it may not have been warranted. Furthermore, the courts have yet to establish clear guidelines or consistency in determining compensation, both in terms of its nature and amount. The development of guidelines to standardize compensation awards is necessary to ensure fairness. Until such guidelines are in place, the judiciary should follow the *Rudul Shah* principle, meaning compensation should only be granted in cases where the violation 'shocks the conscience of the Court.' It is important to note that

²⁹ S.N. Jain, Monetary Compensation for Administrative Wrongs through Article 32.

³⁰ A.1.R. 1989 H.P. Note I at 121.

³¹ R. Ramachandran, 'Constitutional Tort' Lawyer's Collective.

³² P.K. Tripathi. 'Article 32 and Compensation Conundrum'(1984) 11 SCC 51.

compensation should not be awarded based on strict liability. Officers of the state should only be held personally responsible if their actions were intentional.

In a modern society, individual dignity and democracy are fundamental. It is crucial that the state does not misuse its considerable powers to oppress its citizens. When the state violates human rights, democracy itself becomes meaningless. In this context, the issue of writ compensation is likely to gain increasing importance in the twenty-first century, as it plays a vital role in balancing individual rights against the power of the state.