

# Protection of Human Rights by Invoking Compensatory Jurisdiction by Courts

M. S. Deshpande<sup>1</sup>

## I. Introduction:

Generally, human rights are those rights which are inherent in every human being. In absence thereof human beings are not in position to live as human beings. They are entitled for their enjoyment, protection and enforcement. Human Rights are universal equally and also inalienable. We find the human rights always dishonoured by the barbarous acts at the hands of individuals, groups or the sovereign powers. It is the need of the day to recognize and respect human rights in social, cultural, economic and political spheres. By nature, the human rights are indivisible, inter-related and inter-dependent. They are natural rights come by birth as human beings. Separate efforts are not required to get them. However, their protection requires efforts and their violation requires to be compensated.

## II. Human Rights:

Section 2 (d) of the Protection of Human Rights Act, 1993 defines human rights as follows:

*“Human rights, means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the Internal Covenants and enforceable by courts in India.”*

The Universal Declaration of Human Rights, 1948, declares, *“all human beings are born free and equal in rights and dignity”*. Human rights can be considered from two angles. Firstly, the rights necessary for dignified human existence, like basic human needs of food, clothing, shelter and medical care. Secondly, the rights which are necessary for adequate development of human personality such as right to education, freedom of culture, speech and expression, free movement, satisfaction of undeserved wants etc.

Human rights are evolved through a long process right from Vedic period to recent past. They are again classified into liberty-oriented, security-oriented and internationally agreed. Liberty oriented human rights are mainly

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<sup>1</sup> The author is a judicial officer and posted as the President, Maharashtra Slum Areas (I.C. & R.) Tribunal, Mumbai, and a research student of Shivaji University, Kolhapur.

connected with civil and political rights Whereas, rights related to social, economic and cultural security are termed as security oriented rights. The rights which are related to group of people concerning environmental, cultural and developmental aspects and which come into existence through international agreements consist in the third category. Unless, equilibrium of political and civil rights with economic, social and cultural rights is properly evolved, a sizeable section of the society will be deprived of such rights. Efforts are being made by the Courts to achieve that equilibrium.

### **III. The Constitution of India and Human Rights:**

We have accepted and recognized the principles of Universal Declaration of Human Rights as an integral part of constitutional obligations. They speak for civil, political, economic and social rights. The traditional civil and political rights form part of fundamental rights, whereas, social and economic rights are set forth as directive principles. Though the directive principles are not so enforceable by Courts, they are none the less fundamental in governance of the State. Thus, the State has enacted appropriate laws including the Protection of Human Rights Act, 1993, for respecting and promoting human rights. In absence of specific provisions of law, the Supreme Court invokes its original jurisdiction for protecting human rights and by compensating for their disregard.

Victims of crime, either direct or indirect, are human beings. They have every right to get compensated. In recent years, compensation to victims of crime has been introduced in several countries, which has its roots in the concept of protection of human rights. The compensation may be awarded against wrongs committed by individuals, groups or agencies of the State. The idea is not alien to Indian social and legal context. Article 41 of the Constitution provides that, "the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and any other cases of undeserved want." No doubt, the victims of crime in number of cases are exposed to disablement, undeserved want and even privation.

To bring reformation in criminals is an object of modern law. However, victims, their problems and violation of their human rights are not so much looked into. The courts are much slow, rather restrained by inadequate provisions of law to grant compensation to the victims. A Law Commission led by Justice Mallimath has made various recommendations to overcome the problem. Accordingly, the provisions of section 357-A of the Code of Criminal Procedure are introduced. However, those provisions are not full-fledged to cope with all needs of victims and to cover all kinds of victims, direct and indirect. The definition of victim given in section 2 (wa)

of the Code of Criminal Procedure is not exhaustive. To become entitled for compensation under section 357-A, is dependent upon the recommendation made by the trial Court to the Legal Service Authority. Moreover, except few States like Tamilnadu, other States have not prepared schemes and sanctioned requisite funds for the compensation of victims. Thus, the provisions of section 357-A are either inadequate or rendered inoperative by the passive attitude of the State. Moreover, the provisions of section 372 of the Criminal Procedure Code are silent on the point when the compensation is not at all granted by the trial court, as there is no provision for appeal when compensation is denied or recommendation is not made to the Legal Service Authority.

#### **IV. Role of Courts in Protection of Human Rights:**

The Supreme Court and various High Courts have taken lead to overcome these problems. The Judiciary has taken a lead role in protection of human rights of victims, especially by granting compensation and also by laying down various guiding principles for subordinate judiciary for dealing with such cases. The judicial attitude is changing on this point in good direction and becoming more favourable for granting compensation to victims. Even in few cases an interim compensation is also granted. Provisions of Articles 14, 21, 32 and 226 are considered by the Supreme Court for invoking its compensatory jurisdiction for translating the Declaration of Human Rights into reality. In post independence era the judiciary, being custodian of rights of people, has shown deep concern about protection of human rights of victims.

Article 9 (5) of the International Covenant on Civil and Political Rights, 1966, indicates that an enforceable right to compensation is not alien to the concept of guaranteed rights, as it provides for award of compensation to the victims who have been unlawfully arrested or detained and to get such compensation is their enforceable right. Probably, on that basis the Supreme Court and High Courts in India are leading to recognize and protect the victims by awarding compensation.

Prior to introduction of section 545 of the Code of Criminal Procedure, 1898 (corresponding section 357 of the Code of Criminal Procedure, 1973) the dependents of victims might institute suit for damages under the Fatal Accidents Act, 1855. A decree for compensation Rs. 1500/- granted in such suit was set aside by the first appellate court. However, by restoring the decree of High Court of Lahore, in *Sardara Singh vs. Charan Singh*<sup>2</sup> has observed that it is sufficient under the Fatal Accident Act, if a person by his wrongful act, neglect or default shall have caused the death of

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<sup>2</sup> AIR 1933 Lahore 770

another person. Under similar circumstances, the High Court of Allahabad in *Jagannath Singh vs. Pragi Kunwar*<sup>3</sup> has held that a suit for compensation under the Fatal Accident Act, 1855 was maintainable. It awarded compensation Rs.2000/-. A person could sue for damages in a civil court, if crime is at the same time a tort. However, the Fatal Accident Act, 1855 was leading to multiplicity of proceedings and expenses to the victims, as they had to approach criminal as well as civil courts for redress of their grievance. Thus, concept of compensation to victims introduced in the Code of Criminal Procedure.

The general principle behind payment of compensation in criminal case is a simple and cheap way of giving a victim a civil remedy to which the victim is already entitled. It is not a punishment or an additional punishment to an offender. By principle, an excessive fine or compensation should not accompany with a substantial sentence. The High Court of Bombay, in *State vs. Pandurang Shinde*<sup>4</sup> has observed that when the accused was sentenced to life for an offence of murder, a sentence of fine could not be imposed, as it was wholly opposite. Thus, the order of payment of fine Rs. 500/- was set aside.

The Supreme Court also expressed similar view in *Palaniappa Gounder vs. The State of Tamilnadu*<sup>5</sup>. The accused was convicted for murder and sentenced to death. The High Court of Madras upheld the conviction, but reduced the sentence to imprisonment for life, by imposing fine Rs. 20,000/- and directing to pay compensation Rs. 15,000/- out of fine. The Supreme Court held the fine to be unduly excessive and reduced it to Rs. 3000/- and directed to pay it to the dependants of victim. In both the cases, it was the view that when there is a statutory provision for granting compensation, there is no scope for invoking inherent powers under section 482 of the Code of Criminal Procedure. The Supreme Court expressed need to consider the propriety and adequacy of fine on the basis of the facts of the case.

During that era the Supreme Court started recognizing the rights of prisoners to ask for observance of human rights and penological innovations. That can be seen from the cases of *Prabhakar Pandurang Sanzgiri*<sup>6</sup>, *Charles Shobraj*<sup>7</sup>, *Sunil Batra*<sup>8</sup> and *Krishanlal*<sup>9</sup>.

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<sup>3</sup> AIR 1949 Allahabad 448

<sup>4</sup> AIR 1956 Bombay 711

<sup>5</sup> AIR 1977 SC 1323

<sup>6</sup> AIR 1966 SC 424

<sup>7</sup> AIR 1978 SC 1514

<sup>8</sup> AIR 1978 SC 1675 & AIR 1980 SC 1579

<sup>9</sup> AIR 1976 SC 1139

The Supreme Court also showed serious concern for speedy trials in case of Rammurthy<sup>10</sup> and prohibiting the putting of undertrial prisoners in leg irons in case of Prem Shankar.<sup>11</sup>

In furtherance of introducing more and more principles for protection of human rights, the Supreme Court in Guruswami vs. the State of Tamilnadu<sup>12</sup> expressed need to provide proper compensation for dependants of victims in cases of murder. In case of murder of father and brother the sentence of death was confirmed by the High Court of Madras. The Supreme Court while reducing the sentence to life imposed fine Rs. 10,000/-. Thus, a new principle was introduced for protection of human rights of victims that whenever there is reduction in substantive sentence, the amount of fine or compensation should be increased. Similar view was taken in Nand Ballabh Pant vs. Union Territory of Delhi<sup>13</sup> while reducing the sentence from two months to one month for conviction under section 304-A of Indian Penal Code, the sentence of fine was enhanced from Rs. 500/- to Rs. 1000/- with a direction to pay the same for compensation to the wife of victim.

In Prabhu Prasad Shah vs. the State of Bihar<sup>14</sup> the accused was sentenced to life for murder. The High Court convicted the accused under section 304 (Part I) and imposed rigorous imprisonment for ten years. However, compensation was not granted to the victim. The Supreme Court by confirming conviction reduced the sentence to the period of two years period which was already undergone and imposed fine Rs. 3000/- with a direction to pay the same to the dependents of victim by observing that the requirement of social justice demand that a heavy fine should be imposed, in lieu of reduction of sentence so that children of deceased may be compensated.

In Rudul Shah vs. State of Bihar<sup>15</sup> the Supreme Court, for patent violation of rights to life, liberty and other basic human rights of the victim incorporated idea of imposition of exemplary costs as remedial measure in addition to the victims entitlement to claim damages.

In case of abetment of suicide the accused husband was sentenced for rigorous imprisonment for four years and a fine Rs. 500/-. The High Court acquitted the accused for want of evidence. The Supreme Court restored the conviction in Brijlal vs. Premchand<sup>16</sup> by observing that the ends of justice will be met if the sentence awarded to accused is substituted with

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<sup>10</sup> AIR 1997 SC 1739

<sup>11</sup> AIR 1980 SC 1535

<sup>12</sup> AIR 1979 SC 1177

<sup>13</sup> AIR 1977 SC 892

<sup>14</sup> AIR 1977 SC 704

<sup>15</sup> AIR 1983 SC 1086

<sup>16</sup> AIR 1989 SC 1661

the period of imprisonment already undergone by him. The Supreme Court enhanced the sentence of fine from Rs. 500/- to Rs. 20000/- with a direction to pay compensation Rs. 18000/- out of fine to the father of deceased for bringing up her minor son.

In *Nilabati Behera vs. State of Orissa*<sup>17</sup> the Supreme Court held that for contravention of human rights and fundamental rights by the State and its agencies, the Court must award compulsory compensation. It rejected the defence of sovereign immunity. It was held that custodial death amounts to violation of fundamental right to life.

In *Venkatesh vs. State of Tamilnadu*<sup>18</sup> the accused was sentenced to life imprisonment for murder. The High Court altered the conviction and convicted the accused under section 304 (Part-II) of Indian Penal Code and inflicted rigorous imprisonment for five years and imposed fine Rs. 3000/- with a direction to pay the same to dependants of victim for compensation. The Supreme Court observed that if a steep sentence of fine is imposed and fine is made payable to widow and unmarried daughter of deceased, it will serve ends of justice. It reduced the sentence of imprisonment to one already undergone and enhanced fine to Rs. 1,00,000/- with a direction to pay compensation Rs. 75,000/- to widow and Rs. 25,000/- to unmarried daughter. Thus, it was laid down that in sentencing process, compensation is one of mitigating factors for reducing the substantive sentence.

In *Madhukar Chandar vs. the State of Maharashtra*<sup>19</sup> the accused a young farmer murdered his brother in law. The sentence of life imprisonment was reduced to rigorous imprisonment for seven years by the High Court of Bombay by holding that true justice will be achieved if the old mother and three children will receive some sustenance which the deceased would have otherwise provided. The High Court put an option before the accused to pay a fine Rs. 40,000/- and in default to undergo rigorous imprisonment for seven years. It was also directed that if fine is paid within twelve weeks the jail sentence shall stand reduced to three years. The amount of fine Rs. 40,000/- was directed to be paid to the dependants of victim. Here the Court equated the substantive sentence with compensation.

In *Bodhistwa Gautam vs. Subhra Chakraborty*<sup>20</sup> the Supreme Court has held that rape is a crime against the basic human right. It violates right to life enshrined in Article 21 of the Constitution. The Supreme Court provided certain guidelines for awarding compensation to the prosecutrix in such a case. It has also given various guide lines for protection of basic

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<sup>17</sup> AIR 1993 SC 1960

<sup>18</sup> 1993 Cri. L.J. 61

<sup>19</sup> 1993 Cri.L.J. 3281

<sup>20</sup> AIR 1996 SC 922

human rights and compensation of women in Delhi Domestic Working Women's Forum vs. Union of India<sup>21</sup>. The State has been directed to constitute Criminal Injuries Compensation Board for payment of compensation to rape victims and protecting their basic human rights. However, the State has not fulfilled its obligation in all respects even after lapse of about eighteen years. Earlier, in case of P. Rathinan vs. the State of Gujrat<sup>22</sup> a victim of custodial rape, who was a tribal woman, was also awarded interim compensation Rs. 50000/-.

Thus, the Courts in India are promoting human rights by protecting them. In cases of violation of rights of masses by State agencies the Supreme Court has shown deep concern by giving various reliefs. Recently, the Supreme Court has stressed upon the role of trial courts to be played for protection of human rights by granting compensation. It is observed in case of Manish Jalan vs. the State of Karnataka<sup>23</sup> that the victims need to be compensated sufficiently by using provisions of sections 357 and 357A of the Code of Criminal Procedure. The Supreme Court has gone to the extent by holding that power of courts to grant compensation is coupled with duty. It is held in the case of Ankush Shiwaji Gaikwad vs. the State of Maharashtra<sup>24</sup> that the Courts are bound to consider issue of award of compensation by recording reasons for awarding or refusing compensation. Court can hold enquiry as to capacity of accused to pay. According to the Supreme Court the word "may" used in section 357 of the Code of Criminal Procedure should be read as "shall". Thus, the Courts are put under an obligation to decide question of compensation at the trial level. Thus, the Apex Court is harping much on protection of human rights by granting compensation.

## **V. Conclusion:**

Human Rights need to be respected, protected and in case of violation they are required to be compensated. To reduce violation of human rights, element of humanization must be present everywhere. The Legislature and Judiciary in India have shown deep concern for promotion and protection of human rights. However, execution part lapse in that aspect. Considering the aforesaid judicial trend, it can be concluded that the superior courts in India, especially the Supreme Court, in appropriate cases have reduced the substantive sentence and granted / enhanced the compensation to the victims. The Supreme Court has also made the State and its agencies liable for violation of human rights and required them to pay compensation

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<sup>21</sup> (1995 )1 SCC 14

<sup>22</sup> (1994) SCC (Cri.) 1163

<sup>23</sup> AIR 2008 SC 3074

<sup>24</sup> AIR 2013 SC 2454

to the victims of illegal detention, custodial death, rape, mass disasters. The Courts are committed to protect human rights of victims by granting compensation and creating obligation on their part to consider issue of compensation at trial level only.