Chapter IV

Remedies Available for Tortious Liability of State in India

People seek the aid of tort in order to achieve remedies for the wrongs they believe that they have suffered at the hands of others. If the claimant is successful the law of tort provides one or more of a range of remedies and the most usual remedy in tort is that of an award of money by way of compensation known as 'damages'. The basic principle is that damages should be calculated with the aim of putting the claimant into the same position as he or she would have been if the tort had never been committed. The liability of the State in India and its jurisprudential basis for the award of compensation seems to be two fold under the Constitution. Firstly, the State has a legal duty to protect the guaranteed rights, and it must compensate the victim if it acts contrary to it[115]. Secondly, the writ powers are available to the superior courts to ensure that the State does protect these rights and these powers are not to be used in a hyper technical fashion[116]. In our society where the law has been conceived to be an instrument for bringing about the social change, the people naturally develop the habit of looking towards the state for every social political or ethical conflict. This leads to the state interference at every step of human relations and therefore numerous instances of suppression and abuse of Human Rights. But this also provides a fertile ground of experimentation in

[115] P.Leelakrishnan, "Compensation for Government Lawlessness", 27 Cochin University Law Review (1992) p 56.
[116] Vikram Raghavan, "The Compensating Victims of Constitutional Torts ; Learning from the Irish Experience," AIR 1998 Journal 105.

evolving means for combating Human Rights violation and oppressions and development of Human Rights Jurisprudence. Therefore, Indian system from the very beginning has attempts towards establishing peace and harmony all over the world ensuring basic Human Rights to all members of Human society[117].

While dealing with State liability, it is necessary to understand the remedy available under Article 32 and 226 of the Constitution in writ petition to the aggrieved in cases of human rights violation by the State agencies. When the fundamental rights are violated by the State, the aggrieved can approach the writ court under Article 32 and 226 of the Constitution by filing writ petition before the Supreme Court and the High Court. Writ is an order of the court to a person or authority to do some act or forbear from doing some act. Writs are expeditious and are an effective judicial tool to hold the government and its functionaries to the performance of their duties in the right spirit[118].

The power of judicial review guaranteed under Article 32 and 226 of the Indian Constitution has been inherited from British. Traditionally this Article was used only by persons whose fundamental rights were infringed. Before the commencement of the Constitution, the High Courts other than those of Madras, Bombay and Calcutta had the power to issue prerogative writs in the nature of writ of Habeas Corpus under Section 491 of the

[117] A. P. Singh, "Human Rights: The Indian Context", AIR 2000 Journal 8.
[118] V. M. Shukla, "Legal Remedies as available under various Enactments in India", Eastern Book Company, Lucknow (1991) p.6.

Criminal Procedure Code 1898. Later this position was altered with ample power of issuing writ to the High Courts under Article 226[119]. After the commencement of Constitution, the High Courts and the Supreme Court were empowered to protect the precious rights of the citizen under Article 226 and Article 32 of the Constitution to give immediate remedy or relief to victim when a citizen's fundamental rights or legal rights are infringed. Writs mentioned under Article 226 were known as prerogative writs. The rights obtained under Article 32[120] and 226 as constitutional remedy for enforcing fundamental rights are considered as the crowning sections of fundamental rights[121].

Today the courts can be moved by filing application/ complaint/ plaints/ counter claims etc. The constitutional courts, namely the High Courts and Supreme Courts, have evolved a formula to entertain grievances of the citizens in relation to violation of more sacred fundamental rights embedded in Article 14, 21 and 22 etc. of the Constitution of India even by entertaining a telegram, post-card, letter or through other modes[122]. The restriction has been considerably relaxed by the Supreme Court. Now the court has widened the scope of public interest litigation or social interest litigations. So that the public spirited persons can approach the court for the welfare of the poor, socially and economically disadvantaged and weaker

[119] G.C. Venkata Subb Rao, " Prerogative Writs and Fundamental Rights", Madras Law Journal office, Madras (1953) p 20.
[120] Dr. B .R. Ambedkar said in Constitutional Assembly Debates that Article 32 is the most important Article in the Constitution and it is the very soul and heart of the Constitution.
[121] P. Ishwara Bhat, "Fundamental Rights", Eastern Law House, New Delhi, (2004) p. 87.
[122] Justice Binod Kumar Roy, 'Role of Judiciary in the Present Day Context', AIR 1998 Journal 17.

sections of the society, who are unable to approach the court for relief when there is infringement of constitutional and legal rights. The court laid down the guidelines that even a letter written to the Supreme Court by the poor in India can be treated as petition to enforce their fundamental rights and the court is empowered to grant remedial relief in appropriate cases. In the same way ignorance and illiteracy cannot be an impediment in the way of obtaining justice from the court.

Today courts cannot, and do not any longer remain passive with the negative attitude and it is no longer in doubt that judgment of today govern the lives of citizens and regulate functions of the state. The law must be respond, and be responsive and there should be endeavour of the legislature as well as the courts to close or considerably narrow the gap between law and morality[123].

4.1. Origin, and sources of the Writ in India

The Writ was developed in the sixteenth century in the English law which clung to the principle that "King can do no wrong" by which the king was subject to law and could not break the law. According to English law, writ was an order of the king, it was issued to the defendant to appear before the court and to show cause against the plaintiff's claim. In the beginning, the writ was the monopoly of the crown's concern. This was used by the king as his prerogative to superintend over his officers and

[123] Justice Binod Kumar Roy, 'Role of Judiciary in the Present Day Context', AIR 1998 Journal 20.

subordinate courts to protect or safeguard the liberty of the citizen. In short, the purpose of a writ was to see that the crown's machinery of public administration works properly as well as to see justice is done to the individuals.

There was no human agency to enforce law against the king. The courts were the king's courts like other feudal lords, the king could not be sued in his own court, he could be a plaintiff but he could not be a defendant. In the prerogative remedies available to the aggrieved, the crown was the nominal plaintiff. No form of writ or execution would be issued against the Crown. The defendant might have infringed the legal right vested in the plaintiff. This writ was issued to the defendant only if the claim made by the plaintiff came within the recognized form of action. If the plaintiff failed to get the writ and if his claim would not fall within any one of the categories of recognized forms of right, he will go without remedy. No one could bring an action without obtaining writ from the officer of the king.

4.2. Different types of writs

There were different kinds of writs known in the family of prerogative remedies like Habeas corpus, Certiorari, Mandamus, Prohibition and Quo Warranto. The five writs specifically mentioned in Article 32 and 226 of the Constitution are known in English law as prerogative writs, they had originated in the king's prerogative power of superintendence over the due observance of law by his officers and tribunals. The prerogative writs are

extra-ordinary remedies intended to be applied in exceptional cases in which ordinary legal remedies are not adequate.

The writ of *habeas corpus* means that they have the body to submit or answer. It is a prerogative writ for securing the liberty or subject from the wrongful deprivation of liberty of the subject or unlawful detention of the subject against his will[124]. The main object of the writ of Habeas Corpus is to give quick and immediate remedy to the person who is unlawfully detained by another. If the court is satisfied that such a detention is illegal or improper, it can direct the person to be set at liberty. And they are under legal obligation towards such subjects and the writ of habeas corpus will lie for the enforcement of duties.

The writ of *Mandamus* is the order of the superior court commanding a person or public authority to do or forbear from doing something in the nature of public duty or statutory duty.

The writ of *certiorari* is an order, quashing the decision of the inferior courts, if it is issued due to the excess of jurisdiction, or disregarding the principles of natural justice. The purpose of issuing this order is to cure the defects or, for correcting the error apparent on the face of record, or to comply with the principles of natural justice.

The writ of *prohibition* is an order issued to prevent an inferior court or tribunal from exceeding its jurisdiction, preventing the inferior courts

[124] G.C. Venkata Subba Rao, "Prerogative Writs and Fundamental Rights", Madras Law Journal office, Madras (1953) p 53.

from usurping the jurisdiction. It is designed to keep the inferior courts within their appropriate jurisdiction.

The writ of *Quo Warranto* is issued calling upon a person or authority to show what is the authority of such person is to hold the office. By this writ, a holder of a public office is called upon to show the court, under what authority he holds the office and to prevent a person from holding office without authority or to prevent him from continuing to hold which is not legally entitled to.

Writ gives immediate remedy to the victim and takes measures to prevent the ongoing human rights violation. The violation of right by the State agencies can occur in different ways and are due to breach of duty, inaction, negligence or excesses of power or abuse of power. These gross human rights violation like encounter deaths, custodial deaths and rape, custodial torture, arrest and illegal detention occurs in the course of exercising their duty like maintenance of law and order, prevention or riot and controlling terrorism etc. Then the question of vicarious liability of the State arises.

In a welfare State its functions are multifarious so there may be chance of interference of fundamental rights of the citizen by the State, and the States are justified in using a reasonable force for protecting the person and the property and at the same time the fundamental rights of the citizens are guaranteed by the State through the Constitution. If these rights

are violated, the victim is entitled to approach the court for getting a remedy. In such a situation, the question is what the remedy available from writ court is and whether the present legal system is sufficient to determine the liability of the State.

4.3. The Private law Remedy to Compensation for breach of duty

In private law, generally the wrongdoer alone will be liable for the act but in certain circumstances a person will be liable for the wrong of another, termed as vicarious liability.

At present if a wrong is committed by the State, the aggrieved party can institute suit against the State in the civil court. Similarly civil suit may be resorted to in case of violation of fundamental rights. This trial starts in the lowest courts so the aggrieved can approach the court without spending much money, it is not expensive. Elaborate trial is conducted to find out the truth. After taking evidence if the damage or wrong is established money compensation for the damage suffered by the plaintiff is ordered. The compensation will be equivalent to the harm suffered by the injured party. It will be decided by the court and is left to the discretion of the court. This procedure is followed in the private remedy under the law of torts.

4.4. The Public law Remedy to Compensation for breach of duty

The purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system which aims to

protect their interests and preserve their rights[125]. The State is also liable for breach of duty. The State being an artificial person, can act only through its agents and servants. Question may arise as to whether the act of the servant or agent should be treated as that of the State, for the purpose of liability.

Liability of the State, arising out of the wrong of its agents and servants is a type of vicarious liability, in which one person can be held liable for the recognized tort committed by another[126]. In a welfare State, the function of the State is multifarious and it enters into several activities and so it is difficult to define its duties. State may not be fully aware about the nature of the act and the State may not benefit from the act committed by the agencies of the State. Procedure followed in the private law remedy as has been noted earlier, is followed in the case of human rights violation committed by the agencies of the State. If the wrong is committed by the officers of the State, the aggrieved can file a suit against the wrong doer for getting compensation from him.

Therefore, when the court moulds the relief by granting compensation in proceeding under Articles 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights[127], it does so under the

[125] Dr. Prakash Chandra Mishra, "Victim Compensation Scheme: An aspect of Modern Criminology", 2014 Cri. L. J p 138.
[126] Salmond & Heuston; Law of Torts, Universal Law Publishing Co. Pvt. Ltd. London, 1998 p. 444.
[127] Articles 32 or 226 of Indian Constitution, which grant wide power to higher courts to protect the fundamental rights. The public law proceeding serves a different purpose than a private law proceedings. The relief of monetary compensation as exemplary damage, in proceeding under Article 32 by Supreme Court or under Article 226 by the High Court, for establishing infringement of the indefeasible right guaranteed under Article 21, of the Constitution is a remedy available in public.

public law by way of penalizing 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 citizens. In case of violation of fundamental right by the State the aggrieved parties can approach the Supreme Court and High Court under Articles 32 and 226 of the Constitution. The difference between public law remedy and private law remedy is that in the case of public law remedy sovereign immunity is a defence whereas in the case of private law remedy sovereign immunity is not a defence. 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. The wrong commited by the State it would become vicariously liable for the act on the basis of strict liability.

The public law proceedings serve a different purpose than the private law proceedings. The primary source of the public law proceedings stems from the prerogative writs and the order for monetary relief is therefore to be read into the powers of the Supreme Court under Article 32 and of the High Courts under Article 226 of the Constitution. The grants of compensation for violation of Article 21 is an exercise of the courts under the public law. It is for penalizing the wrongdoer and fixing the liability for the public wrong on the state which failed in the discharge or its public duty to protect fundamental human rights of the citizens[128]. Though there is no express constitutional provision for grant of compensation when right to life

[128] Dr. A. Raghunadha Reddy, "Liability of the government hospitals and breach of right to life" AIR 1998 Journal 154.

is violated, the Supreme Court has judicially evolved the constitutional remedy by way of compulsion of judicial conscience. It is the only practical mode of enforcement of the fundamental rights with a view to preserve and protect the rule of law.

4.5. Remedies available under Articles 32 and 226 of the Constitution

Under the Constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts both are courts of record. The High Court is not a court subordinate to the Supreme Court. In a way the canvas of judicial power vesting in the High Courts is wider in as much as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution for the enforcement of any of the rights conferred by part III of the Constitution and for any other purpose while the original jurisdiction of Supreme court to issue prerogative writs remains confined to the enforcements of fundamental rights[129]. So far as the appellate jurisdiction is concerned in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal. It is the final interpretation of the law. Under Article 139-A, the Supreme Court may transfer any cases pending before one High Court to another High Court or may withdraw the case to itself. Under Article 141, the law declared by the Supreme Court shall be binding on all Courts, including High Courts within the territory of India. Under Article 144 all authorities, civil and judicial in the territory of India and

[129] Justice Palok Basu "Law Relating to protection of Human Rights", Second edition, Modern Law Publication, New Delhi,p 906.

that would include High Courts as well shall act in aid of the Supreme Court[130].

4.5.1. Illegal arrest and detention

There are number of cases which deals with remedy granted for illegal detention of enforcement agencies, out of which *Rudul Shah v State of Bihar*[131] in this case the petitioner brought the writ petition before the bench consisting of Y.V. Chandrachud C.J, Amarendra Nath Sen and Ranganath Misra, J.J, stated that he had already completed his sentence of imprisonment and the prison officials did not take care to release him. He was kept in illegal incarceration for many years. When the petitioner approached the court the State contended that even though he was acquitted by Session Court, he was illegally detained in jail for a period of fourteen years on the ground of insanity. But the jailor could not produce evidence before the court to show that he was insane at the time of detention. When the petition came before the court he was already released and the writ petition became not fruitful even then the court interfered to show the reason for his illegal detention and why he was not given compensation for the infringement of his fundamental right to freedom.

The jailor could not give any sufficient reason for his detention and so his detention in jail was wholly unjustified. After going through the injustice

[130] Tirupati Balaji Developers Pvt. Ltd. v State of Bihar AIR 2004 SC 2351.
[131] AIR 1983 SC 1086.

shown by the jail authorities the court wanted to rectify it by exercising the power under Article 32 of the Constitution. According to the version of writ court money claim could be instituted in a lowest competent court. But here in this case the petitioner had been detained in the prison for a period of fourteen years after his acquittal. He contended for getting compensation for the illegal detention. Otherwise it would be denial of the guaranteed right provided in Article 21. Taking into consideration of all these things the court evolved a new remedy of providing compensation to the victim of tortuous acts done by the government during sovereign functions and issued a direction to the State of Bihar to award appropriate compensation and denial of justice. So the State was directed to pay Rs. 30,000/- in addition to Rs. 5,000/- and also clarified that this order would not preclude the petitioner from claiming compensation from the civil court. In this case Chandra Chud C.J, Clearly expressed that even though our precious rights guaranteed under Article 21 have been violated by the instrumentalities of the State, due to their unlawful act in the name of public interest, the only method available to the court is to apply compensatory justice to the victim. In this landmark case, the court without referring the sovereign immunity, explained the need of respecting the fundamental right in a democratic country.

The writ court has made an innovatory step to promote human rights jurisprudence. It is not fair on the part of the writ court, to tell the petitioner to approach the civil court for getting damages for the injury suffered by

him. Here the writ court expressed that this order did not preclude him from claiming compensation from civil court. This happens because of the uncertainty or lack of law in this line. The writ court can serve its purpose only if it takes immediate action in case of emergency to prevent human rights violation. This must be avoided by finding out alternative remedy to the victim of human rights violation by the State. The main purpose of the writ court must be to protect the life of a person in danger and only urgent cases must be dealt with in the writ court then only the writ court can serve the purpose of giving immediate remedy to the victim.

In *Bhim Singh v State of J&K and others*[132] a member of legislative Assembly of Jammu and Kashmir was arrested and not produced before the magistrate within the requisition time and was prevented from attending the session of the legislative Assembly. The writ petition by his wife was declare his detention was illegal. He was released on bail on 16th September 1985 by the Session Judge. Then he filed an affidavit that he was unlawfully detained in the lock-up from 10th September to 14th September 1985. It was made clear from the evidence that even before receiving information about the case registered against him the officer in charge of the police station had instructed to arrest him. Without producing him before the magistrate the police got remand order from the Magistrate and the Sub judge. Further submission of remand for two days was on the ground of illness of the accused. Bhim Singh denied the fact that he was examined by a doctor. In a

[132] AIR 1986 SC 494.

case relating to illegal detention and arrest, the affidavit of the officer who arrested, officer in charge of the police station, is essential and inevitable but this was not produced before the court. Bhim Singh was not produced before the magistrate and sub judge and the application was brought before them after the office hours at their residence. Officers who granted remand was not bothered whether the person whom they were remanding to custody had been produced before them. The police officers, acted deliberately, maliciously and the Magistrate and the Sub-Judge aided them. The police were alerted to arrest him and to prevent him from proceeding to attend the Session of the Legislative Assembly. All these incidents reveal the high handedness of the police in the citizens guaranteed rights. The Supreme Court was shocked when it learned that a member of legislative assembly of Jammu and Kashmir was wrongfully arrested with the sole object of stopping him from attending the Session.

Shri Pranab Jyothi Gogi v State of Assam[133] the writ of Habeas corpus petition dated 18-03-1991 was filed by Dhruba Jyothei Petitioner, for the illegal arrest and detention of his brother by an army personnel on 17-03-1991. This petition became infractuous as he died in the custody of the army authority on 19-03-1991, before delivering the court order on 20-03-1991. The purpose of the writ itself was defeated due to the delay, in deciding the case. This could have been avoided if immediate steps were taken by the writ court.

[133] 1992 Cri. L.J. 154.

Inder Singh v State of Punjab and others[134] this was a habeas corpus petition to secure the release of the seven persons abducted by the senior police officer and other police men by using the official machinery. In this case the police officers admitted that crime was committed by the Deputy Superintendent and his accomplice. In this case also if the official had taken immediate step to release the persons taken into custody the crime would have been prevented.

In *Aryendra Nath Gupta v State of Meghalaya and others*[135] this writ petition had made a prayer for declaring the arrest and detention for the period from 20th to 29th January 1997 as illegal and praying for the direction on the respondents to grant Rs 2lakhs and Rs 1lakh for the suffering of the members of his family. However he was released on bail on 29th January 1997 in view of the registration of the case against the petitioner, the central government class 1 employee was suspended from service as he could not come out on bail within 48 hours and he suffered both financial and otherwise during his custody period. Though the charge sheet filed against him was dropped, the petitioner was tried for the rest of the offence and later on he was acquitted. The petitioner filed a writ petition for malicious prosecution. When sued it was resisted on the ground that it was not maintainable as there was alternative remedy available in criminal procedure code for taking action for Section 250 which deals with provision for accusation without reasonable cause and section 211 of the IPC also

[134] AIR 1995 SC 312.
[135] 2003 Cri. L.J 1058.

provided to institute any proceeding against the person who took action of false charge was made. As there was an alternative remedy for it, writ court could not entertain while exercising its jurisdiction under Article 226 of the Constitution and so the writ petition was dismissed.

4.5.2. Medical Negligence

Negligence is both a civil and criminal wrong and punishable either by compensation or with imprisonment. As a civil wrong or tort it has been defined 'as a breach of legal duty to take care, which results in damages, undesirable by the defendants to the plaintiff[136]. Under the Indian Penal Code 1860, section 304A provides that if any death is caused of a person by the rash and negligence act of another person, the latter shall be punishable with imprisonment upto two years, or fine or both. The principles underlying negligence have been clarified in numerous cases.

In *Achutrao Haribhau Khodwa v State of Maharashtra and others*[137], bench consisting of S. P. Bharucha and B. N. Kirpal, JJ., Chandrikabai was admitted to the government hospital where she delivered a child on 10th July, 1963. She had a sterilization operation on 13th July, 1963. This operation is not known to be serious in nature and in fact was performed under local anaethesia. Complications arose thereafter which resulted in a second operation being performed on her on 9th July, 1963. She did not survive for long and died on 24th July, 1963. Both Dr. Divan and Dr.

[136] Mahesh C. Bijawat, "Hospital and Doctors Negligence", JILI 1992,P 255.
[137] AIR 1996 SC 2377.

Purandare have stated that the cause of death was peritonitis. In case like this the doctrine of *res ipsa loquitur* clearly applies. Chandrikabai had a minor operation on 13th July, 1963 and due to the negligence of respondent a mop (towel) was left inside her peritoneal cavity. But it also happens that complications can arise when the doctor acts without due care and caution and leave a foreign body inside the patient after performing an operation. There was no doubt that the mop left in the abdomen caused it, and it was the pus formation that caused all the subsequent difficulties. There is no escape from the conclusion that the negligence in leaving the mop in Chandrikabai's abdomen during the first operation led, ultimately to her death.

Two questions which arise for consideration in this appeal was: Whether the state of Maharashtra can be held liable for any negligence of its employees and secondly whether the respondents or any one of them acted negligently in the discharge of their duties. The court referred the number of previously decided cases in Nagendra Rao case, the demarcating line between sovereign and non sovereign powers for which no rational basis survives has largely disappeared. The determination of vicarious liability of the state being linked with negligence of its officer, but the crown was held immune on doctrine of sovereign immunity has become outdated and sovereignty now vests in the people, the state cannot claim any immunity and if a suit is maintainable against the officer personally, then there is no reason to hold that it would not be maintainable against the state.

The State must be held to be vicariously liable to the negligent acts of its employees working in the said hospital. Once death by negligence in the hospital is established, the state would be liable to pay the damages.

In P*. N. Rao v G. Jayaprakasu*[138] In this case P. N. Rao was an E.N.T surgeon ans S. Sharkar Rao was the Chief Anaesthetist at the General Hospital, Guntur. The plaintiff G. Jayaprakasu was a brilliant young man of 17 years in age 1966. He was a government scholarship holder a d offered a seat in B. E. degree course in four engineering colleges. He suffered from a minor ailment chronic nasal discharge for which his mother took him to P. N. Rao for consultation, who diagnosed the disease as nasal allergy and suggested an operation for the removal of tonsils. The plaintiff was admitted on 6/07/1966 and the operation was performed on 7/7/1966. His father who was the government servant and other relatives were present in the hospital at the time of operation, none of them were allowed to be present when the operation took place. The plaintiff was brought out from the operation theatre in an unconscious stage about one and half hours after he was taken there. The doctor informed the patient's father that the patient would regain consciousness after three to four hours. He was kept in the E. N. T ward where he did not regain consciousness for the next three days and thereafter for another fifteen days he could not speak coherently. He was discharged on 28/08/1966 and at that time he could barely recognize the person around and utter a few words. He could not even read or write numerical. He had lost all the knowledge he had acquired.

His father alarmed at his condition took him to Vellore where he was examined by the K. V. Mathai Neuro-Surgery, Christian Madical College. After examining the patient, Mathai in his written opinion stated that the plaintiff had cerebral damage and his intellectual ability was that of a boy of five years. The boy was then taken to Bangalore where he was examined by S. A. Ansari,

[138] AIR 1990 A.P. 207.

Assistant Professor of Psychiatry, at the Indian Institute of Medical Health. Ansari was of the opinion that there was organic damage which was due to cerebral anoxia and the damage to nerve cells was total and irreversible. The prolonged unconsciousness of the plaintiff was due to cerebral anoxia suffered during the operation.

In this case a suit was filed against the doctors and the government and claim for Rs. 50,000/- for the permanent damage suffered by the brilliant boy, due to the negligence of the doctors. The judge after considering the evidence on record concluded that during the operation the respiratory arrest occurred due to Sharkar Rao, the anaesthetist, who removed the tube from the mouth of the plaintiff without giving fresh breaths of oxygen and then there was delay in noticing the respiratory arrest and inserting the tube for the second time. The respiratory arrest led to cardiac arrest which made chest compression to assist circulation of blood. The judge also held that the symptoms of the plaintiff on the operation table would have led any prudent doctor to easily suspect cerebral anoxia, but Sharkar Rao did not care to ascertain the reason for the pulse abnormality of the patient nor did he record the levels of blood pressure after the respiratory arrest and resuscitation or inform the surgeon about this.

Thus Sharkar Rao was clearly negligent in discharging his duty towards the patient. P. N. Rao the surgeon was also held to be negligent because he was aware of the respiratory failure still he carried on the operation merely because the anaesthetist informed him that the patient was fit for it. The state government was vicariously liable since both doctors were employees of the government hospital. The judge awarded only Rs. 22,000/- as damages, though

the sum asked for was Rs. 50,000/-. An appeal was filed against the judgment by the state government. The anaesthetist, Sharkar Rao died after his evidence was recorded. The High Court was truly shocked by the case. The court found the surgeon guilty of negligence.

Regarding the vicarious liability of the government, the court was of the opinion that it cannot escape from the responsibility in such cases, this principle has already been established in many cases. The government was thus held vicariously liable for negligence by the court. With regard to the quantum of damages awarded by the lower court, the High Court was totally dissatisfied by the amount given. It felt that for a grave injury of the nature sustained by the plaintiff no amount of money would be 'a perfect compensation'. He was entitled to substantial damage which was estimated to be Rs. 2 lakhs. But the plaintiff had asked for only Rs. 50,000/-, it had no option to increase it and so this amount was awarded along with interest at 12% from the date till realization.

The Joint Director of Health Services, Sivagangai v Sonal[139], Mrs. Panchavarnam gave birth to her third child on 4/12/1989. A motivator of family planning encouraged her to undergo a sterilization operation. The patient was admitted to Paganeri Government Hospital. On 14/12/1989 Mrs. Panchavatnam was operated upon by the medical officer who on the same day performed five more operations. She was discharged on 15/12/1989 from hospital and thereafter kept in the Health Sub-Center at Melappasalai for two days and sent home after discharge. The stitches were removed by the motivator at the residence of the patient. The motivator was not a qualified person. After discharge from the

[139] AIR 2000 Mad 305.

Paganeri Government Hospital and during her stay in the Health Sub-Center at Melappasalai the patient complained of abdominal pain and continued doing so at home. The patient expired on 0/01/1990 after being taken to Madurai District Hospital on 22/12/1989.

The trial court relied upon the evidence of a medical practitioner who opined that correct post-operative care was not given to Mrs. Panchavarnam as was expected from medical practitioner. The patient was not given any advice on her discharge from hospital. Further, it was shown at the trial that the motivator, who was not a qualified person, had removed the stitches at the home of the patient. Both the trial court and the Lower Appellate Court, held that the first two defendants (the medical practitioner employed by the Government Hospital and the motivator) were guilty of negligence while the third and fourth defendant (Director of Medical Services and State of Tamil Nadu) were vicariously liable to pay compensation to the plaintiffs (husband of deceased and three children). The state of Tamil Nadu preferred a second appeal to the Madras High Court.

Two substantial questions of law were raised in the appeal before the Madras High Court by defendant numbers 3 and 4 in the memorandum viz, whether the courts below were correct in holding that death occurred due to negligence in carrying out an operation and whether the plaintiffs are entitled for relief claimed in the suit. The Madras High Court held that vicarious liability is based on the legal principle that 'masters' (employers) are held liable for the torts (wrongs) committed by their 'servants' (employees), even though the tort is one which is not ordered or authorized, if the wrong committed by the servant, is within the course of his employment. The common sense rule behind the legal

principle is that employees are usually people of slender means and it is fair that an injured person should be entitled to seek compensation from those who control and profit by the organization in which he is employed. The proof required in a suit by an injured plaintiff is that the defendant who has committed the tort must be a 'servant' and the injury complained must have been committed by the servant acting during the course of his employment.

The definition of a 'servant' is any person who works for another upon the terms that he is to be subject to the control of that other as to the manner in which he shall do his work. Drivers, casual labourers and apprentices are clearly servants. Thus a servant is said to be employed under a contract 'of service' while an independent contractor is said to work under a contract 'for service'. From this basic premise law has widened the meaning of a servant to include those skilled workers who are employed – thus hospital authorities have been held vicariously liable for the negligence of nurses, radiographers and even of whole-time medical officers.

Though a master is held liable for acts of his servant he cannot be held liable for every wrongful act his servant commits, but only for acts committed by his servant when going about his master's business. Whether any particular act does thus fall within the scope of the servants employment must be largely in each case be a question of fact. In the instant case, the second defendant was a motivator of family planning and had got the deceased admitted in the Paganeri Government Hospital where the first defendant had operated upon her. The second defendant had visited the house of the patient and had removed the stitches though she was not even a qualified nurse. Hospital authorities could not

have permitted the act of the second defendant and may even have impliedly prohibited it but was still held vicariously liable.

Overruling the decision of the High Court that the Government was exercising sovereign functions in the Supreme Court observed, “We do not think that this conclusion is correct. Running hospital is a welfare activity undertaken by Government but it is not an exclusive function or activity of the Government so as to be classified as one which could be regarded as being in exercise of its sovereign power. Just as running of passenger buses for the benefit of general public is not a sovereign function, similarly the running of a hospital, where members of the general public can come for treatment, cannot be regarded as being an activity having a sovereign character. This being so the state would be vicariously liable for damages which may become payable on account of its doctors or other employees”.

On the principle declared by the Honorable Supreme Court, it has to be held that the state is also liable for damages caused by the death of the late Panchavarnam. Thus, while Government hospitals/ health centers/ dispensaries would not be liable to be sued under the Consumer Protection Act, 1986 for damages for causing injury by a negligent act by one of its employees an injured patient could claim right of damages from the state under the general law of the land.

4.5.3. Custodial Rape

Custodial violence by the police against women are on the increase. Whether the state would be liable if the custodial violence is committed by the officials of the state in the course of employment, or the court in India is sufficient to prevent remedy with the existing legal system.

In *P. Rathina v Union of India and others*[140], the writ petition before the bench consisting of Ranganath Misra and M. N. Venkatachalian, JJ, filed that four of the police officers of different grades involved in the incident of rape had been suspended and taken into custody and are being proceeded against. Their bail was cancelled by the High Court and the court directed the state government to pay an interim compensation of Rs 20,000/- to the victim Kalpana Sumathias. She had to face physical and mental suffering due to custodial rape. This humanitarian decision of the court is commendable as it had taken into consideration the suffering of the victim while imposing punishment to the accused.

In this case Kalpana Sumathi was taken into custody in connection with the kidnapping of a relative, she was stripped naked by the police before the crowd and subsequently was raped by several persons in the cabin of a truck when it was rerouted to the local police station.

In Arivander Singh Bagga v State of U.P and others[141], In this case the petitioner was pressurized by the police officers to write a letter which was dictated by the police officers and their intention was to abandon her marriage. She was continuously tortured by the police several days by using physical force

[140] 1989 supp(2) SCC 716.
[141] AIR 1995 SC 117.

like abusing, threatening, assaulting on her leg with Danda, and hitting on her head. Ultimately they succeeded in making her write the letter as dictated by them.

The petition filed by Nidhi for illegal detention and harassment of the petitioner by the police officers. She was tortured to abandon her marriage with Charanjit Singh Bagga which had been duly performed in Arya Samaj Bhoor and had been duly registered in the office of the Registrar of Hindu Marriages under the U.P Hindu Marriage Registration Rules, 1973 framed by the Governor in exercise of the powers conferred by Section 8 of the Hindu Marriage Act, 1955. After conducting a lawful marriage the police officers interfered in their right to privacy.

While determining liability of the state, the court would have determined the liability of the individual erring officials also. The court held in this case of atrocities against women, if there is clear proof there is no need of waiting to get sanction from the department to take action against the officials. The court expressed that in the case of Constitutional torts compensation must be according to the responsibility for the damage committed by each person. The court directed the state to pay compensation of Rs 10,000/- to Nidhi Rs 10,000/- to Charanjit Singh Bagga and Rs 5,000/- to each other person who were illegally detained and humiliated. The court also directed to recover the amount of compensation from the concerned police officers.

In *Vishaka and others v State of Rajasthan*[142], this case was brought before the Supreme Court bench consisting of J.S Verma C.J, Mrs Sujata V. Manohar and

[142] AIR 1997 SC 3011.

B.N. Kirpal JJ, to focus the attention towards the sexual harassment of working women. A writ petition has been filed to enforce the fundamental rights of working women under Article 14, 19 and 21 of the Constitution, to prevent sexual harassment in all working places and to make necessary legislation for the protection of women. The main reason for filing this petition was due to the alleged brutal gang rape of a social worker in the village of Rajasthan. In this case, the petitioner wanted to lay down some guidelines for the protection of working women and to eradicate this social evil.

The action was also brought by social activists and N.G.O'S focusing all attention to prevent sexual harassment. Immediate cause for filing this petition was an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. This was to invite the urgency for an alternative mechanism in the absence of legislative mechanism. So this case reveals the lack of alternative mechanism. In the absence of domestic law to check the social evil of sexual harassment of working women at the place and to take effective measures, an international convention consistent with fundamental rights and in harmony with the spirit must be read into the provision to enlarge the meaning and content of the Constitutional guarantee. It is necessary to formulate law in the light of international conventions and norms can be used for the guarantee of gender equality, right to work with human dignity under Article 14, 15, 19 (i) (g), and 21 of the Constitution and the safeguards against sexual harassment which is implicit in Article 51(c) and this enabling power of the Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with entry 14 of Union list in the seventh Schedule of Constitution. So the

International Conventions and norms have a great significance in the formulation of guidelines to achieve this purpose.

1) It shall be the duty of the employer to prevent sexual harassment

2) deals with definition

3) to take preventive measures

4) criminal proceeding

5) disciplinary action

6) complaint mechanism

7) complaint committee

8) working mechanism

9) awareness

10) third party harassment

11) the central and the state government are required to take suitable measures including legislation

12) these guidelines will not prejudice human rights protection Act, 1993.

The Supreme Court directed that guidelines and norms would be strictly observed in all workplace for the prevention of their rights and to enforce guarantee of equality.

The court also laid down certain guidelines and norms to be followed by the employer in the work place. A suitable legislation is required to protect the right

of the women to live with dignity and to compensate the victim by taking steps, to strengthen and ensure the fundamental right to life and liberty to women. The court had given directions to the central government and the state government to follow certain guidelines and norms to be observed in all work place to protect the right of working women.

In Chairman Railway Board v Mrs. Chandrima Das and others[143] this was the case brought before the bench consisting of S. Saghir Ahmad and R. P.Sethi, JJ, Mrs. Chandrima Das a practicing advocate filed this petition under Article 226 of the Constitution against the Chairman, Railway Board and others claiming ceveral relief's including direction to the respondent to eradicate anti-social and criminal activities at Hawrah Railway Station and claiming compensation from the central government to Smt. Hanuffa Khatoon a Bangladeshi National who was gang raped by thje employer in the building of Railways.

The fact of the case has been Smt. Hanuffa Khaatoon an elected representative of the Union board arrived at Howrah Station on 26th Feb 1998 at about 14 hours to avail express. As she had only a wait listed ticket, the train ticket examiner asked her to wait in the ladies waiting room. On being, certified by the lady attendants engaged on duty at the ladies waiting room. She accompanied railway staff to Yathri Niwas and then to the rented room where she raped by these employees. On the basis of the above facts the High Court awarded a sum of Rs 10 lakhs as compensation to Hanufa Khatoon as the rape was at the building of Yathri Niwas belonging to the Railways and was perpetrated by the railway employees.

[143] AIR 2000 SC 988.

4.5.4. Custodial Deaths

In *Sebastian M. Hongray v Union of India*[144], the petitioner a student of political science in Jawaharlal Nehru University and a member of Naga community from Manipur, filed a writ petition as to know the whereabouts of the two respectable persons of his village C.Daniel and C.Paul who according to him were detained by the army personnels on March 10, 1982. It was argued that these two persons after being taken into the army camp under arrest never left the camp and was anxious to know what had happened to them.

The petitioner said that the Sikh regiment set up a camp at Phungrei, and they had certain persons into custody, most of them were released on March 6, 1982. Later the jawans ill treated the women of that locality. Subsequently there was a disturbance of peace and order. The jawans resorted to firing which resulted in the death of one Luinam. On March 7, 1982, Magistrate visited the plakhe to enquire into the incident. The jawans who were present in the village produced before the officers, certification of villagers exonerating them from the allegation of ill treatment and the conduct of jawans under duress from local residents. On March 7, 1982 Paul and Deniel were on Sunday service, they were disturbed by the jawans and these jawans proceeded to get signature from the villagers. The certificate was obtained to show that the army officers had not treated the villagers with force and cruelty. They tried to get signature on blank papers from the villagers. On March 10 these two persons were arrested by the army jawans and were taken away from the village. As they did not return to the village till March 15, 1982 their wives went to the camp in search of them and

[144] AIR 1984 SC 1026.

they saw that they were being led away by army jawans to the west. They filed a complaint to the Deputy commissioner on March 10 and telegraphic messages were sent to the Superintend of police on March 15, 1982 requesting them to enquire about them. After having filed complaints they filed a habeas corpus petition before the Supreme Court (Bench consisting of D. A. Desai and O. Chinnappa Reddy J.J) on February 1983, as the detention was illegal invalid and contrary to Article 21 considering the seriousness of the offence, the court directed to serve notice on February 9, 1983. In the counter statement they stated that they were not arrested but they had called for attending the identification parade to find out the suspects involved in the allegation and they had been allowed to go on March 11, 1982, and since then security force had no knowledge about them.

When the court called for the report of the superintendent of police about the action taken against the complaint by the petitioners, the Government of Manipur claimed privilege on the ground of public interest. Counsel appearing for the State failed to give any information regarding the disappearance of those persons. From the evidence it was found that these two persons were last seen in Phugrei camp on March 11, 1982. Widows of these persons had last seen them on March 15, 1982 while they were being taken by the 4th respondent again under the custody of jawans. Even in case of ex-parte the court issued an order by considering the seriousness of the incident and called for the report. After the perusal, it was found that it would not give any help. The court allowed the petition and issued a writ of Habeas corpus to the Union of India and other concerned officials, commanding them to produce C.Deniel, retired Naik subedar of Manipur Riffles and Head Master of the junior high school of Huining village

and C. Paul, Assistant Pastor of Huining Baptist Church who were taken into custody by military jawans. On November 24, 1983 the court by its judgment and order directed to produce Deniel and Paul before the court on December 12, 1983. The Director stated his inability to produce them even after their best efforts. The Government also failed to locate them. The C.B.I submitted its report of not locating these two persons. They had a legal obligation to produce those person who were taken into custody illegally. There was willful disobedience on the part of State in not responding to the writ of habeas corpus and misleading the court that they had left the camp. So it amounted to civil contempt.

Hence rejecting the submission the court consisting of D.A. Desai and Chinnappa Reddy J.J said that the civil contempt was punishable with imprisonment as well as fine and directed the Union of India to award exemplary costs of Rs 1 lakh to each of the woman and also issued a writ of Mandamus to the Superintendent of police to commence investigation under Cr. P. C. The court said that Union of India cannot disown responsibility and to commence investigation as prescribed by the relevant provision of the code of criminal procedure. From the facts and circumstances of the case, the court came to the conclusion that they might have met with unnatural death. By considering the mental suffering of these two widows, the court held that the government was liable for civil contempt. In this case the State neither complied with the duty of protecting and securing the life of citizen, but also it committed torture, agony and mental oppression to the wives of the victims. This judgment was one of the excellent verdicts given by the court without referring to sovereign immunity. Here in this case after through enquiry was made bt the investigating officers, the court expressed doubts that they might have met with an unnatural death. If we

had a special court to deal with human rights, involvement of officials in this offence could have been decided and the liability determined for each persons at the trial.

In *People's Union for democratic Rights v State of Bihar*[145] this was a writ petition under Article 32 of the Constitution (before the bench consisting of Ranganath Misra and M.M.Datt J.J) to issue writ or order in the subject of payment of compensation to the victims, relating to dead or wounded by police firing, to withdraw the police case, to direct the State of Bihar to resolve the land dispute with poor families and to institute judicial enquiry into the incident. Facts of the case is that the police opened fire on 19-04-1986 at a peaceful meeting of 600 – 700 persons, a group of landless person belonging to the backward class at Gandhi library in Arwal. Most of the people were from the Gaya district Bihar. The firing started without previous warning or without any provocation. The police surrounded the gathering and opened fire. Twenty one persons died and some were injured. The government granted interim relief of Rs. 10,000/- it also directed Sri Vinod Kumar, member of Board of Revenue Bihar, to conduct an inquiry into the incident. The Report was produced before the court with a claim of privilege against disclosure. After visiting the locality Shri B.D.Sharma Asst. Commissioner of S.C. & S.T. also submitted a report before the Supreme Court with a privileged claim by the Union government. Meanwhile the petitioner requested to transfer the petition pending before the High Court of Patna, to the Supreme Court. The Supreme Court took a decision that it would be convenient to transfer the matter to the High Court, So that the court would have to go into the details of whether the disclosure of committee report would affect public interest

[145] AIR 1987 SC 355.

or not and the parties could produce materials before High Court. The Supreme Court directed the State to pay compensation of Rs.20,000/- to the legal heirs of the deceased, and Rs. 5,000/- to the injured. The enquiry report submitted by the member of the board of revenue and the Asst. Commissioner of SC & ST were essential, to know whether there were excesses by the agencies of State or not. In the case of human rights violation, immunity is not a defence and strict liability is the rule and so the court fixed the liability of the State without considering the fault of the employees. The main defect in the above case was that the same cause of action had been pending in two writ courts. It would result in inconvenience and be expensive to the parties. The Supreme Court directed the high court to decide the issue regarding the disclosure of the investigation report and the very same court could have determined the compensation also. It was essential to see whether the agencies complied with the rules of procedure while firing. Or whether there were excesses by the agency, here the Supreme Court directed the State government to enhance the compensation given by it. While granting compensation by the State government they deviated from the ordinary principle of giving Rs. 20,000/- in the case of death and granted only Rs. 10,000/-. This reveals that there must be a specific law to fix the amount of compensation in case of death.

This raises a question whether there should not a law to lay down a standard regarding the quantum of compensation. The other important question is whether the disclosure of documents can be allowed. In this case it was proved that people of that locality were attending a peaceful meeting and there was a sudden attack on them. This is a gross human rights violation committed by the officials in the name of public interest. Then what is the use of allowing disclosure

of documents in such a case. It is not justifiable to allow such a privilege of claim to the State in case of human rights violation. Use of force can be justified only in the circumstances when in case of failure to use force would affect danger to the life of person or property then the burden must also be on the officials to prove that such a situation existed in that particular time. Otherwise if the use of force is justified, in the name of maintenance of peace and order by the writ court, it cannot guard the rights of the citizen. The claim of privilege of documents must be restricted if the act of the agencies of the State amounted to State terrorism and affected the human rights of the citizens.

The State liability came up for consideration in *Saheli v Commissioner of police*[146], before the Bench consisting of (B.C Ray and S.Ratnvel Pandian J.J.) the writ petition was filed under Article 32 of the Constitution by a women's association through Nalini Bhanot and others claiming compensation for police atrocities. Kamaleshkumari was a tenant in a rented house. Even after the land owner evicted all persons: Kamaleshkumari succeeded in getting a stay order from the court. But the landowner attacked her several times with help of Station House Officer. They trespassed into her house and tore her cloths, molested her. She was dragged away and hit with a brick on the back and head. Then her nine year old son came to her rescue and he was also beaten and this son who clung to her leg also beaten and thrown on the floor and suffered serious injuries and later succumbed to his injuries.

The police was reluctant to register a case against the accused even after a complaint filed by Kamaleshkumari about torture and harassment of the accused.

[146] AIR 1990 SC 513

After the death of Naresh, the post mortem report revealed that the injuries caused with blunt force and the injuries received were not sufficient to cause death and death was due to pneumonia as diagnosed. There was high level pressure on the doctor. When the petitioner had been brought, the court directed Medical superintendent to keep record relating to the death of Naresh. Puran Sing, Inspector, Crime Branch, Delhi opposed the bail on the ground that there was a high level conspiracy in getting the rooms of tenants vacated by the landlord. If the accused was bailed out; it would be difficult to find out the truth. DD entries revealed the involvement of local police in the entire episode and the conspiracy or connivance of the local police with the accused.

It was apparent from the report dated 5/12/1987 of the inspector of crime branch, Delhi as well as the counter affidavit of the Deputy Commissioner of police, Delhi and also from the fact that the prosecution has been launched in connection with the death of Naresh showing that Naresh was done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the power. The mother of the child, Kamlesh Kumari, was entitled to get compensation for the death of her son from the respondent, Delhi Administration. An action for damages was for harm which included battery, assault, false imprisonment, physical injuries which resulted in the death of her son and represent a solarium for the mental pain, distress, indignity, loss of liberty and death. Here the Court applied well settled principle of vicarious liability of the State.

The court relied on the *Peoples Union for Democratic Rights v Police Commissioner Delhi*[147] where State was held liable to pay compensation. The court also considered the principle involved in Vidhyawati[148] that the common law immunity never operated in India, it had also emphasized the inapplicability of the case Kasturilal Ralia Ram Jain v State of Uttar Pradesh[149], it was related to the value of goods seized due to the fault of the employee where in the sovereign immunity was upheld to determine the vicarious liability of the State, which was distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application. It followed 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 light of these cases, the court directed the State to pay Rs.75,000/- as compensation to the mother of the victim and to take appropriate steps by Delhi administration to recover the amount from those who were responsible for it. This is a clear case of excess by the police. It also proved that how human rights violation of the citizen can be committed by the officials indirectly. In this case the landlord could influence the police officials and doctors etc could manipulate the

[147] AIR 1990 SC 513. In this case one of the labourers when demanded wages for the work done by him the police tortured him to death. The court directed to pay Rs 75000/- as compensation to the legal heirs of the victim.
[148] AIR 1962 SC 933.
[149] AIR 1962 SC 933.

Post mortem report and station diary because the local police was involved in this case. The police being the guardian to protect the fundamental rights and if they act contrary to this principle, the citizens can expect protection only from the court. The court referred to the preceding cases while determining State liability and clarified that there is no need of distinguishing the function as sovereign and non-sovereign, this is because of the lakh of firmness in law. The court must have power to take action against the police officials who failed to register the case, when the complainant approached them. It is the duty of the writ court to take into consideration the injustice suffered by the victim, to take action against the officials and to compensate the petitioner for his/her suffering. Here the writ court succeeded in granting compensation still it failed to take precautionary measures against the officials.

Shri Pranab Jyothi Gogi v State of Assam[150] this writ of Habeas corpus petition dated 18/03/1991 before the bench consisting of Manisana and Smti. M. Sarma .J.J, for the illegal arrest and detention became infractuous due to delay in providing immediate remedy. Later after the death of the victim, the court issued direction to produce the post mortem report to see whether it was custodial death or not. In this case, the counsel appearing for the legal heirs, of the deceased victim argued that the people felt insecure and had lost confidence in the civil administration. They were not in a position to collect and produce the relevant materials and necessary particulars before the court in support of the case and requested to appoint a counsel to inquire into the matter relating to the custodial death of the victim.

[150] 1992 Cri. L .J. 154.

In this case, the army authority filed a counter that they got information about the presence of militants in the village of Neharani. This area was cordoned off. While they were searching in that area one person suddenly turned back on being chased, he entered into a bamboo grove and attempted to hide. On being surrounded from all sides, the person attempted to throw a grenade and to use weapon on the party. During that encounter Dhruba Jyothi was hit on his head with rifle and ultimately he was overpowered.

On perusal of the case diary, the court found that the Deputy Commissioner had ordered for a magisterial enquiry. It was conducted by SDO, in which it was stated that the death would not be found out through such an enquiry. Initially a case was registered, thereafter regular case had been registered against the army personnel under section 302, on the basis of FIR dated 22-3-1991, by the Investigating officer who examined the petition on 27-3-1991 and thereafter no further investigation was done by the investigating officer. The same thing happens in every incident of custodial death. In this case, the Gauhati High Court said that Dhabri Jyothi suffered injuries and he must have suffered continuous pain. At the time of his death he was a student of degree course aged 22. Both parents of the deceased have been suffering from mental agony thus considering the mental strain and agony of the petitioner's wife and children, the court stated that in the case of death resurrection is not possible and money will not compensate it, the only possible way is by applying compensatory jurisprudence. So the court directed the Union of India to pay Rs 2,00,000/- to the victim's legal heirs.

In each case the court has to see what measures have to be taken to prevent similar crime in future. Here the death could have been avoided if the writ court had worked immediately as expected by the citizen. Delay in deciding case would be denial of justice to the parties. When the petition was brought before the court, it failed to note that the officers failed to comply with Article 22(2). After taking him into custody, the Army did not hand him over to the police and did not even produce him before the magistrate but kept him under their custody. In the case of custodial death, it is difficult to produce evidence before the court of law because this is committed within the four walls of lock-up cells. Most of the witnesses may be from the same department, belong to the same group of the accused. If a person is taken into custody, burden lies on the authority to prove that they had been released without causing human rights violation. Departmental enquiry will be always in favour of their department. Especially in case of custodial torture death and rape nothing can be proved by departmental enquiry. This is done only to let the public to see that the government had taken all measures to expose the case. As usual the departmental authority may suspend the alleged officers from service and in the course of time they may be reinstated into the same department with promotion. So in the case of human rights violation strict action is necessary against the officials who are involved in the alleged crimes. It is better to appoint a CBI enquiry.

In a case of *Golak Chandra Jena v Director General of Police*[151], the petitioner's son was taken into custody for the alleged crime and nothing was heard about him thereafter. The story of the police was that he committed

[151] 1992 Cri .L .J. 2901.

suicide while in custody. The suspicion that the police had finished him was aggravated by the fact that the dead body was not handed over to his relative and the dead body was cremated by the police. An enquiry conducted after the alleged suicide, it was recorded that there was no external injuries on his body. A Magisterial inquiry was conducted by the sub-Divisional Magistrate Jaipur, who also reported that the death of Pramode was due to the suicidal hanging.

In the court, (the bench consisting of B.L. Hansaria C.J, and K.C.Jagadeb Roy. J) did not accept the story of suicide and held the authority as guilty of taking away the life. It should have been done in accordance with the law. The compensation of Rs 30,000/- was awarded out of which Rs. 10,000/- to be given to the petitioner and Rs. 20,000/- to the widow of the deceased. This case also illustrates the difficulty of relying on the reports prepared by authorities allegedly responsible for the custodial death. Our Constitution guarantees fundamental right to life to all people even though he or she is veteran dacoit, criminal or prisoner nobody can take away one's life by torturing and this can be done only in accordance with law. It is the duty of the court and not the police to decide whether the person has committed the wrong or not.

Nilabati Behara alias Lalita Behera v State of Orissa and others[152], in this case, Nilabati's son was taken into custody for questioning in connection with a theft case, and thereafter hid dead body found on a railway track. Nilabati claimed compensation alleging custodial killing. The version of the police was that he escaped from custody and was run over by train. Failure of the police to register a case regarding the escape from custody threw doubts on the police

[152] AIR 1993 SC 1960.

version, it was also clear that the police did not immediately go to the railway track to take over the dead body on receipt of the information regarding the death.

There was no dispute regarding the point that he was taken into custody and was detained there for interrogation in connection with a theft case. When his mother and grandmother visited him in jail, he was hand cuffed with another accused and tied together. Next day he was found on the railway track with multiple injuries without being released from custody. The burden was, therefore, clearly on the respondents to explain how he sustained those injuries which caused his death. Allegation of custodial death was denied and then it was the responsibility of the respondents to reveal about the unnatural death, without the victim being released from custody. The court considered the deposition of the doctor that there was handcuff on the hands of the deceased when his body was found on the railway track and the report of the forensic department that the two cut ends of the rope, do not match with each other. This negatives the suggestion that he managed to escape from police custody by chewing off the rope. Now the question was regarding the liability of the State, for Suman Behera's custodial death. The learned Additional Solicitor General had no dispute regarding the liability of the State for payment of compensation for violation of Article 21.

The writ court clarified that Article 32 could not be used as a substitute for the enforcement of rights or obligations which could be enforced through the ordinary processes of courts, civil and criminal. A money claim had to be adjudicated in a suit instituted in a court of the lowest grade competent to try it.

When the petitioner filed a suit for compensation and if the facts were controversial in nature a civil court might or might not uphold the claim. But if the petitioner filed a suit to recover damages for his illegal detention a decree for damages would have to be passed in the suit but in the absence of evidence it was not possible to predict whether the decision would be in his favour or not. It is said that Article 226 and 32 can be used to protect the fundamental rights of the citizen In the case of custodial death by agencies of the State. When the legal heirs of the victim approach the writ court, it says that proper forum to claim compensation is the civil court and session's court, the lowest court competent to try it. So for the same cause of action the petitioner has to approach different courts. After conducting a trial, in this case it is not justifiable to tell the petitioner to approach other courts for getting justice.

The important question for consideration was whether writ court was empowered to exercise jurisdiction under Article 32 to pass an award of compensation for the deprivation of fundamental right. In this case the state failed to prove their innocence, the death was presumed to have been caused by the State employees. In these circumstances, it is the duty of the court to compensate the petitioner for the violation of their guaranteed rights. The refusal of the Court to pass an order of compensation in favour of the petitioner would be like mere lip-service about fundamental right to liberty. In this situation, if the court passes an order merely to release an illegally detained person would amount to denuding the significance of Article 21 which guarantees the right to life and liberty. The right to compensation would be some palliative for the unlawful acts of State instrumentalities. The true foundation of democracy rests on the principle of respecting the rights of every individual. If it is so, when the

aggrieved approach the court seeking the order of writ to release a person from custody, meanwhile the person detained, already met with death due to the act of the agencies of the State, writ court being the guardian of fundamental right, it is necessary to compensate the loss for protecting the fundamental rights of the citizens.

The court (the bench consisting of J.S.Verma, Dr.A.S.Anand and Venkata Chala J.J.) referred Radul Sah to show that if a person taken into custody dies the burden lie on the State to show that the person detained was seen alive by the detaining authority. The court also considered the similar cases like Bhim Singh, Saheli where the State was held liable to pay compensation. The court began to move away from the defence of sovereign immunity. When the State officials extinguished the human lives the remedy must be readily available in the case of have-nots. According to Justice Anand the Public law remedy must ensure the rule of law and civilize the public power, and protect and preserve the rights of the citizen, and sovereign immunity cannot defeat the claim for the enforcement of fundamental right. In the case of private law action based on tort, the sovereign immunity is a defence. 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. The defence of sovereign immunity should not be applicable against violation of fundamental right like right to life, liberty and dignity; these basic rights are inherent in nature. Arrest and detention without legal justification or if it is done without just cause and excuse limits the personal liberty guaranteed under the Constitution. The wrongdoer and the State must be responsible and accountable if the person taken into custody of police has been deprived of his life without due process of

law. The remedy under public law is by way of penalizing the wrongdoer and fixing the liability of the State for the public wrong when it fails in its public duty to protect the fundamental rights of the citizen. It is this principle which justifies in awarding 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.

Misra C.J discussed in *Union Carbide Corporation v. Union of India*[153], the need of developing law to construct a new principle of liability to deal with an unusual situation. Venkatachaliah, J. in Bhopal gas case, stated the power of the court to grant relief in the light of Article 9(5) of I.C.C.P.R. 1966[154], and also clarified that this enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. This being the clear case for awarding compensation to the petitioner for the custodial death of her son, the court considered the age of deceased Suman Behera and his monthly income etc and the total amount of compensation was calculated as Rs 1,50,000/-. State of Orissa was directed 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,

[153] AIR 1992 SC 248.
[154] Article 9(5) provides "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

the principal amount being payable to her on expiry of the term. The Collector of the District will take the necessary steps on this behalf, and report compliance to the Registrar of this court within three months.

Article 21 of the Constitution guarantees right to life, these precious rights are available to all irrespective of convicts and under trial prisoners. This can be curtailed only according to the procedure established by law. So the great responsibility of protecting these rights lies on the State. If this is violated by the State they can approach the ordinary civil court for claiming compensation. Liability being strict, State is accountable for it. In case of violation of fundamental rights by the State, the aggrieved parties can approach the Supreme Court and High Court under Articles 32 and 226 of the Constitution. The difference between public law remedy and private law remedy is that in the case of public law remedy sovereign immunity is a defence where as in the case of private law remedy sovereign immunity is not a defence. 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.

Though the court expressed the difficulty of operating compensation by the writ court in assessing the compensation, directing them to approach civil court, the problem of claim being defeated on the ground of sovereign immunity might arise, this points to the need for making a law and abrogating any claim for sovereign immunity. As we have seen earlier, the same result can also b achieved through judicial activism to negative the principle of sovereign immunity. In any case it is clear that when the superior courts direct that the claim must be

persuaded in the lowest courts, Sovereign immunity should not be allowed to stand as a hurdle in the path of justice and it is also worth maintaining.

In the case of human rights violation by the State the public law and private law comes and the remedies are entirely different so it is necessary to have a specialized court to deal with such cases. The compensation must be according to the responsibility for the damage committed by each person. Without going into the question of wrong committed by the State it would become vicariously liable for the act on the basis of strict liability. Here the court evolved a principle to determine the liability of the State by applying strict rule. This decision reminds us of the French systems of law, which considers the responsibility of the State while dealing with cases of State atrocities here lies the difficulty, it is left to the discretion of the court and the people do not feel faith in the legal system. Now it is high time to modify, the law of fixing the liability of the State in case of State atrocities.

Even though the higher courts are aware, of the action for damages brought before the civil court it may be debarred by the defence of sovereign immunity, in such cases it is not justifiable to direct the victim to approach the lowest competent civil court for compensation. If the writ court grants merely issuing the order for release of prisoner from custody without compensating the violation of right it would be a denial of guaranteed rights. According to the present system, for the same cause of action the suits are pending in different courts, civil court, session court and writ court. If this system was modified into one system to deal with cases of human rights violation by State it would have

saved the time of the court, it would be convenient to the State and the aggrieved victim, and could have given speedier remedy.

In the case of death of Sawinder Singh Grover R.E[155] the court concluded on October 21,1992 in the light of the facts and circumstances of the case there was a prima facie case for investigation and for prosecution and directed the CBI to register the FIR and to prosecute all the accused for appropriate offences under the law. A healthier trend in the matter of compensation in case of custodial death is seen in Sawinder Singh Grover R.E. In this case the victim was a South Delhi businessman, Sawinder Singh who had been tortured and murdered under suspicious circumstances while being questioned by the enforcement directorate. According to the District Judge the fabricated story given by the police regarding the circumstances of suicidal jump which led to the victim's death was not reliable. So the court directed the enforcement directorate to grant an ex-gratia payment of Rs 2,00,000/- to the widow of the deceased Sawinder Singh. The observation made in the order would not affect the investigation, prosecution and the trial disposed of accordingly. This decision helped to avoid delay in granting compensation to the victim.

In all these cases, it was proved beyond doubt that death occurred due to torture by the enforcement agencies. Even though the court felt difficulty in fixing the State liability with the present legal system, the court considered the need for protecting the human rights of the citizens in case of State atrocities. In case of death, resurrection is not possible the court was reluctant to allow the claim sovereign immunity. But the defect seen in it was in most of the cases the court

[155] 1994 SCC (Cri) 464.

issued ex-gratia payments and in some cases the court even directed the petitioners to approach the civil court as it was the proper forum for claiming compensation, at the same time raise a doubt whether the petitioner would succeed in such an attempt in claiming the compensation. In many case, initial grant of ex-gratia payments and referring the case for further adjudication through civil court would contribute some financial strength or further pursuit of the matter in the civil court. Such a step is welcome in cases where the court find it difficult to grant full compensation without further procedure in civil court.

Smt. Charanjit Kaur v. Union of India and others[156], this writ petition was filed to take action against army officers and for claiming compensation, for the death of a military officer. The petitioner's husband Mukhbain Singh was a lieutenant in the Indian Army. He was promoted to the rank of Major on 24-05-1978 and posted at Kargil on 10-06-1978 when he suffered from chest pain on 12-06-1978 he was removed to Leh on 16-06-1978, on diagnosis, he was suffering from heart disease. On receiving the information regarding her husband's disease, his wife reached there with children on 16-06-1978. Then he was lying in a make shift hospital without any life saving treatment. She found him in a precarious condition and was unable to move. Both the petitioner and her husband requested the authorities to give air lift to Ambala or Srinagar Military hospital for proper treatment. This was refused and was threatened with court martial. After a great deal of persuasion and pleading on 19-06-1978 one Dr Major Bofflo agreed to shift him to Ambala but her request to accompany him was denied. When the petitioner and her children reached there at Ambala they were informed that her husband was not well and she should return to Leh. There to

[156] AIR 1994 SC 1491.

their great surprise they found the burned body of her husband. It was proved that there was gross negligence and callousness on the part of the authorities who caused mental torture and financial hardship to the widow and the children of the Army officer.

According to the authorities, even though the complained of chest pain, his condition was not so critical, and on that day he had gone to the cook house and later his charred body was found with 98% burns due to kerosene oil. The authorities did not disclose to her the circumstances under which her husband had received the burns. Later on, she was only given a report of the post-mortem examination conducted by the Army Medical Authorities at Leh which attributed the death due to “extensive burns”.

She contended that his death was under mysterious circumstances because he was unable to move then the question was how he received such burn injuries. After sending several letters to the authorities and after seven years of this incident the finding of the enquiry was that the death of her husband was not attributable to the military service. When she applied for getting a copy of the report for submitting an application for family pension this was refused on the ground of privilege in keeping the confidential document.

Then the petitioner approached the Supreme Court claiming family pension. The authorities stated that her application was incomplete due to failure to produce the document and took decision denying the family pension and she was informed to file an appeal against this decision within six months if she was not satisfied with the decision. They admitted the fact that the report of death of her husband being the confidential matters it was not disclosed to her. Her family

pension was not denied because she was informed to file an appeal to the government if she was not satisfied with the decision. They also made a contradictory statement that all the family of Army officers are not granted family pension, but granted only if the death was aggravated or attributable to the military service. They had conducted an enquiry they regretted to carry out the investigation at the late stage.

The responsibility of his death is prima facie traceable to the act of criminal omission and commissions on the part of the concerned authorities. The same way the petitioner sought the enquiry report and this was denied on the ground that the document was confidential. Even his condition became so worse his wife and children were allowed to meet him only after some persuasion. The case reveals the irresponsible attitude of the officers. In the said circumstances the court concluded that the office died while in service under mysterious circumstances and his death is attributable to and aggravated by the military service. The petitioner is, therefore, entitled to suitable compensation as well as to the special Family Pension and the Children Allowance according to the relevant Rules from the death of her husband. The court awarded her compensation of Rs. 6,00,000/- and directed that the said amount be paid to her within six weeks from that day. The court also directed that the arrears of the Special Family Pension and the Children Allowance be paid to her within eight weeks from that day with interest at 12% per annum. And directed to pay the costs of the writ petition which were fixed at Rs. 6,000/-.

Even though the deceased was an army officer, he and his family had to suffer gross human rights violation due to the criminal omission and acts of the

other army officers. It is painful to think about the irresponsible conduct of the other officers towards the member of their own fraternity. Defence version of the state based on suicidal attempt of the army officer would not stand as he was in a critical condition and not able to even move. They failed to give timely medical treatment, even though the victim and the widow requested it. The writ court considered the whole plea of the widow of the victim and grievance and suffering of the victim and their family for giving justice. While deciding the liability of the state the court could have fixed the liability of the irresponsible officers also. If complete liability was fixed on the state it would affect the financial stability of the state. Because of this gross injustice shown towards the respectable family of an army officer, the society would lose confidence in the legal system. Attitude of the court in redressing the grievance of the victim is admirable and would help to win the confidence of the society. Lf so cases of state atrocities are decided in one court, compensation and punishment for the wrong could be decided at one trial so it would save the precious time of the court.

In a case where the superintendent of police abducted seven persons from a house allegedly for seeking vengeance on some seven persons from a house allegedly for seeking vengeance on some of them for having helped the terrorist to finish off the superintendent's brother, though the police accepted the complexity and undertook to investigate the matter nothing concrete came out of it and a writ petition filed because infractuous.

In Inder Singh v. State of Punjab and others[157], when the efforts to release seven persons Sadhu Singh, Gurdeep Singh, Amanjit Singh, Hardev Singh,

[157] AIR 1995 SC 312.

Davinder Singh, Sukhdev Singh and Sharnjith Singh from the custody of police failed, this petition was filed by Inder Singh who is the son of Sandu Singh the brother of Gurdeep Singh the father of Hardev Singh and the uncle of Amanjith Singh, Davinder Singh, Sukhdev and Sharnjith Singh. The Facts of the case is that on 29th October 1991 a police party under the command of Baldev Singh came to the petitioner's residence and directed that all those present be lined up in the courtyard and plakhed them in a police van. The petitioner and his family were told that they would be given the dead bodies of the above said seven persons. They were lodged in the police station until 28th December 1991.

Addl. Solicitor General stated that the investigations revealed that the third respondent Deputy Superintendent of police, was guilty of causing the abduction of the seven persons in 1991 in complicity with other policemen and that the investigations have not revealed whether the abducted persons were alive or by the Deputy Superintendent the third respondent and his police accomplices. A charge-sheet was planked against him, and other police officers involved in it. The Punjab Police submitted that it was a rare case in which the police admitted that one of its officers had been guilty of abducting citizens, therefore they should be trusted to carry out the investigations. These persons taken into custody were not wanted by the Punjab Police in connection with any criminal offence.

He also clarified that the 2nd respondent had taken charge as Director General of Police Punjab on November 1991 and when received the complain dated 25th january 1992 regarding the abduction of seven persons, this was entered in the diary by his P.A as he was on leave on that date. When DIG asked the report from Majitha, on 23rd April, 1992, he stated that all allegations were

found to be false. Dissatisfied with this report, DIG again suggested for another investigation by a senior official this was again investigated by the same official Majitha.

The Special Branch, recommended registration of a case against the 3rd respondent under Section 364, Indian Penal Code[158] and he submitted that the 3rd respondent had abducted the said 7 persons on the suspicion that they had got his brother abducted through terrorists and it was "highly regrettable that a member of police force should have resorted to retaliatory action and taken the law in his hands". In the report it was stated that even though investigating officers had made all possible enquires to trace the whereabouts of the abducted persons under the guidance of senior officer, the police had not been able to locate them. Mean while the police had framed a charge sheet against the third respondent and a case was registered against him so the respondent prayed to dispose the writ petition as the trial on the incident was likely to commence in the criminal court.

The Supreme Court criticized that even though the complaint was filed on 25th January 1992 addressing the 2nd respondent. He stated that upto july 1994 he knew nothing about this incident. As he was on leave, the complaint was received by his personal Assistant and entered in the register by him. The court commended that this practice is merited by the Punjab police. When the court asked the reason for not bringing the notice of the superior officers about the illegal detention of these seven persons, it was answered by the P.A that in those days there were dire times in Punjab, and many such accusations were common

[158] 364 of IPC deals with Kidnapping or abducting in order to murder.

so no comment seemed necessary. No explanation was given for taking 18 months delay for submitting the report. But it was found that no disciplinary action was taken against the accused and he was not suspended from service. The court was surprised to see how leisurely the Punjab police had acted upon the complaint. The court was concerned about the safety of the citizenry at the hands of such errant officials being unchecked and highhanded.

The Supreme Court (the bench consisting of M.N. Venkatachaliah C.J., Dr.A.S.Anand and S.P.Bharucha JJ.) directed the CBI for high level investigation into the matter and directed the state government to ensure all assistance to the CBI. However the Supreme Court made it clear that it would be free to make an order for compensation when they receive enquiry reports after four weeks from the CBI with the assistance of state police. The action of the Supreme Court is a positive step for protecting the rights of the people and is a warning to the police which had to admit custodial disappearance. The complaint about the detention and the custody of the seven persons, submitted by the petitioner had not been recorded and registered by the police. They were lodged in various stations while the petitioners compliant were pending before the high officials. This is also one of the defect and loopholes seen in the existing system. If a complaint submitted by the aggrieved is not registered and no action is taken, how can the complainant prove that they had already given the compliant before the officials. Here the complainant had to approach the very same authority for filing his submission against them, can be rectified by allowing the complaint to be plakhed through NHRC.

In Bahlen Balmuchu v. State of Bihar[159], the petitioner approached the petitioner approached the court for granting compensation in custodial death allegedly committed by the police officials. Then the court had to consider whether the court was empowered to grant compensation while pending criminal case in the trial court and before attaining finality of the case. As far as the facts are concerned, three persons namely Udai Sharma, Wilson Alias Pappu and Jonsin Koro were taken into custody, in connection with a dacoity and they were subjected to brutal attack by iron rod and shouts, resulting in their deatg. When the complaint filed by the widow of Wilson and others was not considered by the police officials and no action was taken then they moved the Honorable Supreme Court and the concerned officials were arrested by the order of that court. Then a criminal case was charged against them. Finally they were tried by the second Additional Judicial Commissioner. The charges framed against the accused persons were proved in the court and they were held guilty and the court sentenced them to undergo rigorous imprisonment and to pay a fine of Rs. 20,000/-.

While the case was pending before the session court, the petitioner and others, had already moved, the Apex court and it had ordered an interim compensation of Rs. 25,000/- and this order had been carried out except the dependent of the deceased Udai Narayan as she was not residing at that station at the time of issuing the order for interim relief. Later she filed a petition before the High court under Article 226. Then the doubt arose whether the Jharkhand High court could pass an order for compensation at the stage of disposal of the criminal case. This was denied on the ground that if the police officials were found

[159] 2003 Cri. L.J. 3803.

guilty then the petitioner had to approach the competent court for getting compensation.

Again the refusal to grant compensation to the petitioner they approached Supreme Court. The court considered that Criminal case was passed on 27-03-1996 and the petitioner filed a writ application on 19-09-1996 and the G.P. failed to file counter against the order of Additional Sessions Judge, even after it served one more copy of the petition on 16-04-2003 as requested by him and expressed his inability to file counter as he had not received any instruction from the respondent. After considering the grievous human rights violation suffered by the victims due to the act of police in the name of dacoity, and the judicial commissioner having held the three person's guilty on the basis of post mortem report and deposition of eye witness, the state council failed to file counter and the right to file an appeals closed the said judgment deemed to have attained finality. It was well settled that in case of contravention of fundamental right by the state or its agency, compensation could be awarded under Article 226 of the Constitution of India. But the doubt in this case was whether an order of payment of compensation could be passed at that stage or not. It was found that the order of Judicial Commissioner had attained finality and in view of the observation made by this court in the earlier case relating to it that after the disposal of criminal case if it was found that aforesaid persons were murdered by the police officials it would be open to the petitioners to move for payment of compensation in accordance with the law. The petitioner had the right to move this court for payment of adequate compensation.

In this case the court clarified that on that fateful day; they took law in their hands and the protectors of law became destructors of law, such an attitude of the authorities would engulf the Article 21 of the Constitution and how could an Indian citizen believe that the Constitution ensured the right to life and the dignity. Justice Tapen Sen directed the respondents to pay compensation to the petitioner and fixed the liability by considering the loss of company of her husband, the mental torture, the feeling of loneliness and the loss of the care and protection of the head of family from every angle including the welfare of the children needed and calculated the compensation as Rs. 10,00000/-. However the entire amount was to be deposited in the nationalized bank in the name of the mother and minor children should have no right to withdraw any part of compensation money till they reached majority. And the petitioner could withdraw an amount of Rs. 2.5 Lakh and she would be at liberty to take it and in case of marriages and in the interest of education of their children if they brought sufficient record and furnished proof regarding the requirement to the concerned bank they could withdraw the amount. Thus the petition was allowed with no order as to costs.

It was already proved beyond doubt that death was due to excesses and abuse of power. As the evidence was weak, as the state did not seek permission to file an appeal, even after serving a copy to the G.P. as requested by him, he failed to file counter within the time expressing his inability due to lack of instruction. The court took a bold step to treat that the decision of the judicial commissioner attained finality. In the case of threat to fundamental right due to state atrocities resulting in constitutional torts the creative attitude of the Supreme Court would be a welcome step and help to promote justice to the

victim and the legal heirs. It took 12 to 13 years of delay in getting the compensation for the violation of fundamental rights by the state that was also because of filing two writ petitions. In the first instance only some ex-gratia payments were given on the ground of pending case in the Sessions court. To some extent granting of ex-gratia payments would be helpful to the victim to meet their immediate expense. After the incident though the complaints were submitted before the concerned officials by the legal heirs of the victim only after the intervention of the writ court they registered the case and charged for the wrong against them In this situation, the purpose of writ court is admirable.