

(2005) 01 DEL CK 0040

In the Delhi High Court

Case No : Writ Petition (C) No. 10 of 1999

Ashwani Gupta

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Citation : (2005) 1 ACC 361 : (2006) ACJ 1901 : (2005) 117 DLT 112

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : A.M. Singhvi, amices Curaie, M. Datta and Anusuya Salwan, Amiet Andley, for the Appellant;

Judgement

Sanjay Kishan Kaul, J.—A State is the comity of individuals. The object is the existence of individuals governed by certain norms agreed to by the society. A duly constituted Government derives its authority and power from the governed. Democracy is the principle of governance where the persons to be governed elect the Government by the rule of majority.

2. The classical theory of social contract highlights that the social contract is on account of the rules of conduct required by a just society. All persons are basically the same in terms of the innate human nature and the society is created and the norms are laid about the interaction between individuals amongst themselves. Since the people rationally foresee the consequences, they authorize a power to create a social environment in which the people adhere to their respective promises to govern the society. The most important aspect is the necessity of Government in the interest of all citizens where people are essentially free and live together with some laws to produce a more happy life than living in anarchy. The social contract, thus, establishes legal equality and encourages minimal restriction of individuals' freedom by the State. A cardinal principle underline the theory is the consent of the governed given to the Government on a basic premise - the promise of the Government to provide them security, safety and well being in return for minimal restriction of their

rights and freedom. Edmund Burke said:

"Government is a contrivance of human wisdom to provide for human wants. Men have a right that these wants should be provided for by this wisdom."

The very basic want is security and safety of the individual person.

3. In the year 1946, the Constituent Assembly was given the task of deciding the mode and manner of such governance. After Independence in 1947, on 26th November, 1999, the Constituent Assembly on behalf of the people of India adopted, enacted and gave to the country the Constitution of India (hereinafter to be referred to as, "the Constitution") whereby the India was constituted as a Sovereign Democratic Republic (subsequently substituted in 1976 as Sovereign Socialist Secular Democratic Republic). The Constitution came into force on 26th January, 1950. The Preamble to the Constitution is as under:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a 1[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the 2[unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS Constitution."

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Section 2, for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 3-1-1977).

2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Section 2, for "unity of the Nation" (w.e.f. 3-1-1977).

4. Part III of the Constitution deals with the Fundamental Rights, while Part IV deals with the Directive Principles of State Policy. Articles 14 and 21 form part of Part III of the Constitution and provide for "equality before law" and "protection of life and personal liberty" respectively. In terms of Article 21, no person is to be deprived of his right to life and personal liberty except according to the procedure established by law. Judicial interpretation in an innovation has extended the scope of Article 21 of the Constitution and, thus, it has been held to be a duty of the State to act and create conditions conducive for a life of dignity as opposed to a mere animal existence. None of the protections granted by Part III of the Constitution can really be enjoyed without the provision of safe, secure and protective environment in which a citizen of India may realize full

potential of his existence. A person's right to life is, thus, not negotiable. The inability of the State to provide for such secure environment is, thus, clearly in breach of and in violation of the constitutional mandate and the privilege provided to a citizen of this country under the Constitution. The State must take all due care to uphold the Constitution. A natural consequence of this would be that if a person loses his life or suffers grievous injuries for no fault of his own, his Fundamental Rights under the Constitution are breached.

5. The present writ petition is, in fact, a saga of such a citizen of the country being the petitioner who suffered grievous injuries as a result of a bomb blast on 1st October, 1997. The petitioner aged 19 years on the said date was participating in Maharaja Agrasen Jayanti procession held in Sadar Bazar, Delhi. A bomb blast occurred. The result of the bomb blast was that the petitioner lost his right leg below the knee, both hands except two fingers on the left hand and injury to both eyes. The physical pain and trauma, which the petitioner suffered, cannot even be expressed. The claim in the present petition is based on the fundamental plea of failure of the State to protect the life and limbs of the petitioner. The petitioner, thus, seeks compensation of Rs. 5 lakhs, provision of suitable service and artificial limbs and a residential house of a status where he can live an independent and honourable life.

6. The factual matrix is not in dispute that the procession was going on when the bomb blast occurred. The petitioner was injured in the bomb blast and suffered injuries and has been diagnosed with 90% disability of a permanent nature in terms of the certificate issued by Dr. Ram Manohar Lohia Hospital, New Delhi.

7. The Government of National Capital Territory of Delhi and the Union of India have both expressed sympathy for the petitioner, but it is a case of platitudes rather than any action. The petitioner has been given an ex-gratia compensation of Rs. 25,000/-. This has been defended by both the respondents as adequate. The Union of India has taken a stand that though the right to life enshrined in the Constitution is absolute, there are situations beyond the control of the State in which unfortunate citizens become victims of violence perpetrated by fellow human beings. It is stated that though the Government takes all precautions to eliminate such violence in civic society, the Government cannot be made liable to compensate for loss of life or injuries. The ex-gratia payment made has been stated not intended to compensate the victim for the loss suffered by him, but only to ameliorate the miseries. In fact, the plea raised is of financial constraints. The Union of India accepts that in Union Territories, as Delhi then was, law and order is directly the concern of the Central Government. Normally, the ex-gratia payment of Rs. 10,000/- is made, but in the present case, Rs. 25,000/- has been paid.

8. The State Government and the police authorities have stated that adequate precautions were taken by posting about 130 members of the local police, but yet 30 persons were injured in the bomb blast. An F.I.R. was registered under the Explosive Substances Act and the accused are stated to have been arrested

and the case pending before the trial court.

9. The petitioner came from not an affluent background and was stated to be doing a part-time job when he suffered the injuries. The petitioner was born on 27th March, 1978 and was, thus, 19 years of age when he suffered the trauma. The petitioner was at that time a III Year student of B. Com. The incident had completely derail the life of the petitioner and drastically affected his earning capacity and potential for a job. Any matrimony is almost out of question.

10. The petitioner has also pleaded that on 29th October, 1997 at Karog Bagh, Delhi, a similar bomb blast had occurred and ex-gratia payment of Rs. 1 lakh had been made available by the then Prime Minister from the Prime Minister Relief Fund.

11. The aforesaid facts were so glaring that directions were passed on 16th October, 2001 in the present proceedings and the matter was directed to be considered by the Cabinet Secretariat. The original records have been produced in respect of the said consideration. The nothings in the file make a sad commentary. Though initially, the concerned Joint Secretary was of the view that in view of the ex-gratia relief being paid of higher amounts to other such terrorist victims in the country, the Govt. of NCT of Delhi may be advised to consider suitable enhancement of the ex-gratia relief in the case of the petitioner, the matter ultimately did not find favor right up to the Cabinet Secretary. The basic reason for that appears to be that neither the Govt. of NCT of Delhi nor the Union of India was willing to accept the responsibility for payment of the monetary amount and it was a case of one trying to pass on the burden to the other. For the petitioner, it is immaterial from which pocket the money would come. The fact remained that nothing more than Rs. 25,000/- was paid. This Court can only express its deep anguish that keeping in mind the nature of sufferings of the petitioner, the Administration at the highest level found Rs. 25,000/- to be a liberal amount.

12. There was no other relief flowing to the petitioner and, thus, the other two reliefs relating to the artificial limbs and providing of employment opportunity were also considered by this Court. It, in fact, required direction of the Court for personal presence of the Health Secretary to be able to even see to the artificial limbs being provided to the petitioner. It is only in April, 2004 that finally at least the artificial limbs were provided for the petitioner.

13. On the issue of providing employment to the petitioner, the case of the petitioner was initially considered within the parameters of the Scheme for Compassionate Appointment and the same was not accepted. This was noticed in the proceedings held on 19th March, 2004 when it was pointed out by the Court that case of the petitioner ought not to be considered under the said Scheme, but the factum of the petitioner having suffered as a consequence of the bomb blast and having 90% disability should enable the case of the petitioner to be considered under the provisions of The Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred to as, `the said Act"). It required a number of directions resulting in the final direction in this behalf being made on 21st May, 2004 to the effect that application of the petitioner to be made to the Employment Exchange under the said Act may be considered and the application be treated as with reference to the date when the incident occurred where the petitioner was injured. The petitioner's name was, thus, included in the list of such persons enrolled at the Special Employment Exchange, K.G. Marg, New Delhi vide registration No. 2004/10/00503 dated 29.07.2004 in the category of `Physically Handicapped Persons".

14. It was not clear as to the time-period, which would be required for the petitioner to get such an employment since the reservation could be meaningful only if it was actually provided. The Govt. of NCT of Delhi was, thus, directed to file an affidavit in terms of the Order dated 2nd September, 2004 providing details of the reservation. On such affidavit being filed, startling facts came to light. The chart filed by the Govt. of NCT of Delhi along with the affidavit dated 22nd September, 2004 showed that since the year 2000, not even a single post in Category A had been notified under the said Act. Four posts in Category B had been notified, out of which only one post had been filled up. Though greater number of posts had been notified for Categories C and D, position of the posts filled up remained equally pathetic. The result was that while the post was going abegging, appointments were not being made. It was, thus, found that even the seniority granted to the petitioner in the list of such persons would not have any meaning unless the posts were filled up. The relevant chart is as under:

Group	2003	2002	2001	2000	Notified	Notified	Notified	Notified	Filled	Filled	Filled
Filled A	-	-	-	-	-	-	-	-	-	-	-

B 1 - - - - 3 1

C 53 6 36 3 33 - 18 3

D 17 3 25 8 52 5 22 3

15. This Court at an earlier occasion noticed that the lack of reservation of posts and filling them up was, in fact, negating the legislative mandate under the said Act. In Ravi Kumar Arora Vs. Union of India (UOI) and Another, , it was observed as under:

"20. The pleadings filed in this petition have brought to light some shocking facts. In response to an unstarred question in Parliament answered on 05.08.2003 enquiring into the details of visually impaired candidates selected / recommended on the basis of the CSE during the last four years, the DOPT answered that no candidate applying as a visually impaired candidate had been recommended during the said period of last four years. On further information being sought by this Court, it has been admitted by learned counsel for the respondents that out of 26 services of Group "A" and "B", no post had been

identified for a visually impaired candidate during this period of time. In fact for the year 2001, six posts had been identified under the said Act - two each for the Indian Information Services Group "A"; Indian Post and Telegraph, Accounts and Finance Services Group "A"; and Armed Forces Headquarters, Civil Services Group "B", but even these were not for a visually impaired candidate.

21. Learned counsel for the Chief Commissioner for Persons with Disabilities brought to notice of this Court that proceedings had been initiated by one Mr. Umesh Puranik under the said Act, which was registered as Case No. 1247 of 2001. The grievance of Mr. Puranik was that for the conduct of the CSE, 2001, neither advertisement nor the rules for the Examination had prescribed as to which post in the 26 services were suitable for physically disabled persons and required the same to be published. This case was disposed of on 18.08.2003 and some interesting facts, which emerged during the said proceedings, are relevant for the present controversy. The UPSC washed its hands off the issue saying that they only conduct the examination strictly in accordance with the rules framed and notified by the DOPT, Government of India as notified in the Gazette of India. The Narsimhan Committee in 1996 had given its report suggesting that all Government Ministries / Departments should identify the posts for persons with disabilities, but none of the Ministries / Departments had done so till the Examination for the year 2001. For the Examination of 2001, only three services had identified the six posts referred to above. The said Ministry also expressed his helplessness since the relevant Ministries / Departments are to place indents along with format and the concerned Cadre Controlling Authorities did not provide information. In this behalf, reference was made to the office memorandum of 10.07.2003 of the DOPT referring to the proceedings in the case of Mr. Umesh Puranik. The office memorandum requests the various Ministries to specify the post(s) / vacancy(ies), if any, reserved for the physically handicapped persons and a special mention has been made whether any post is reserved for person(s) suffering from blindness or low vision. Information was also sought that in case no reservation for physically handicapped persons for that particular year is there, whether some posts had been identified for such persons and if so, the category for which the post(s) had been identified along with their physical / functional requirements."

16. The Supreme Court in Javed Abidi Vs. Union of India and Others, while dealing with provisions of the said Act had observed that the object was to create a barrier-free environment for persons with disability and to make special provisions for the integration of persons with disabilities into the social mainstream apart from the protection of rights, provision of medical care, education, training, employment and rehabilitation. These observations and directions of the Supreme Court seem to have fallen on deaf ears.

17. The petitioner has claimed a specific relief of employment. In view of 90% disability, the petitioner's name stands included in the list of persons with disability, who can be provided employment out of the percentage reserved for

such persons under the said Act. The posts have even been identified, but remained unfulfilled.

18. The unfortunate trauma through which the petitioner had to undergo did not deter the petitioner from following up his academic pursuit. The petitioner completed his Graduation from Delhi University in Commerce (B.Com.) in 1999. Not only this, the petitioner was further able to complete a 'O' Level Computer Diploma from DOEACC Society, an Autonomous Body of the Department of Information and Technology, Ministry of Communications and Information and Technology, Government of India for accreditation of computer courses under AICTE - DIT Scheme in May, 2003. In my considered view, there is no manner of doubt that in view of the existing vacancies, the petitioner ought to be forthwith appointed to a post identified for persons with locomotive disability and of the requisite category keeping in mind the professional qualifications of the petitioner.

19. The issue of the monetary compensation is now to be considered in view of the refusal of the respondents to pay anything more than Rs. 25,000/- as ex-gratia payment. The liability fundamentally hinges on whether the respondents can be held to be liable to pay the amount on account of any breach of their responsibility.

20. This Court has the benefit of the judgment of Badar Durrez Ahmed, J. in *Kamla Devi (Smt.) v. Government of NCT of Delhi and Anr.*, 2004 4 AD (DEL) 557. That was a case of death in a bomb blast occurred in April, 1996 in Pahar Ganj area in Delhi. A similar issue arose about the responsibility of the State and the consequential liability to pay as a result of the breach of the responsibility. In the said judgment, it was observed as under:

"4. There can be no doubt that in the death of Uday Singh consequent upon the bomb explosion a wrong has been committed and the fundamental right of protection of life and personal liberty enshrined in article 21 of the Constitution has been violated. When such a thing happens the old and accepted maxim *Ubi jus, ibi remedium* (There is no wrong without a remedy) comes into play. But, where is the remedy? Surely, not the sum of Rs. 50,000/- .

5. Let us see who are the persons responsible for the wrong. Primarily it is the terrorist who was assembling the bomb. Next, it is the State as it failed in living up to its guarantee that "no person shall be deprived of his life .. except according to procedure established by law". The State failed to prevent the terrorist from harming innocent citizens like Uday Singh. Terrorism itself is an indicia of the inability of the State to curb resentment and to quell fissiparous activities. Social malaise in itself is a reflection of the State's inefficiency in dealing with the situation in a proper manner. Apart from the general inability to tackle the volatile situation, in this case, the State agencies failed in their duty to prevent terrorists from entering Delhi. It was their responsibility to see that dangerous explosives such as RDX were not available to criminals and terrorists. The incident occurred as there was a failure on the part of state to prevent it.

There was failure of intelligence as they did not pick up the movement of this known and dangerous terrorist. So, it would be extremely difficult even to suggest that the State did not fail in its duty towards the late Uday Singh and his family.

... ..

6. A crime has been committed. A wrong has been done and a citizen has lost his life because the State was not vigilant enough. A fundamental right has been violated. But, mere declarations such as these will not provide any succour to the petitioner. She needs to be compensated. It is too late in the day to now suggest, that in a situation such as this, the petitioner should be relegated to the ordinary civil courts to seek her tort law remedy. In *D.K. Basu Vs. State of West Bengal*, , the Supreme Court held that -- "The Court, where the infringement of the fundamental right is established, Therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience."

The Supreme Court cleared the ground for the grant of compensation under article 226 in situations where there was a dereliction of public duty on the part of the State. The following passages from *D.K. Basu* (supra) clarifies the legal position:-

"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since 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 wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the

people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, Therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

... ..

54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defense of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

Earlier, in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, :-

"35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the

citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah v. State of Bihar* granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law."

The current position of the law is stated by the Supreme Court in *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, :-

"28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages. As a matter of fact the decision in *D.K. Basu* has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach". Law courts will lose their efficacy if they cannot possibly respond to the need of the society - technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

7. It is true that the cases which came up before the Supreme Court related to custodial death, death of school children on a picnic, death of a passenger in a train as a result of the inaction on the part of the railway employees. In all these

cases it could be said that the victims were under some sort of State custody, punitive or protective. It could be argued that Uday Singh was not in any such situation. He died as a result of a terrorist act and, perhaps, contributed, in part, due to the structural defect in the guest house building. What has the State got to do with this? I am afraid, the State has everything to do with this. The state owed a duty to protect the life and liberty of an innocent citizen such as Uday Singh. The State owes a duty to the widow (Kamla Devi) and the child (Mukesh), now that Uday Singh has been snatched away from them, that they live their lives with dignity. Compensation, in this case, would not only be a balm on their scars, it would also provide them with hope for the future. The fact of the matter is that Uday Singh lost his life on account of an act of terrorism. The State failed to prevent it. The Primary duty of the State is to maintain peace and harmony amongst its citizens. If for some reason, it is unable to put the lid on simmering discontent, then it is its duty to protect innocent citizens from harm. If it fails in this duty, then it must compensate the citizens who have been wronged.

8. The criminal commits the crime. The State apprehends the accused and brings him to trial. If found guilty, he is convicted and sentenced to undergo punishment. Does this complete the wheel of criminal justice? What about the crime victims? Traditionally, it may have been sufficient that the criminal is caught and punished. But, the modern approach is to also focus on the victims of crime. It is all very well that the accused is given a fair and just trial, that the guilty are punished, that the convicts and prisoners are given a humane treatment, that jail conditions are improved and the erstwhile criminals are rehabilitated, but, what about the crime victim? In *State of Gujarat and Another Vs. Hon"ble High Court of Gujarat*, , the Supreme Court observed as under:

"99. In our efforts to look after and protect the human rights of the convict, we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. The subject of victimology is gaining ground while we are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace."

Keeping this in mind, it needs to be examined as to what are the avenues available to the crime victims and their families for seeking compensation. The tort law remedy made possible under the Fatal Accidents Act, 1855 is one such avenue. But, that is a civil law remedy where the victim is relegated to the rigours of a full-blown civil action against identified defendants (wrong-doers). In the context of the Bhopal gas tragedy, the Supreme Court found the 1855 act

grossly inadequate. It observed in Charan Lal Sahu Vs. Union of India, that "the Fatal Accidents Act, on account of its limited and restrictive application, is hardly suited to meet such a challenge". In my view, this observation would apply with equal vigour to the case at hand. So, this "avenue", is not an avenue at all and, if not a dead-end street, is too long, convoluted and winding to provide any relief to the crime victim or his family."

The aforesaid passages not only express the views of learned Single Judge with which I am in complete agreement, but are also supported by the observations of the Hon"ble Supreme Court on this aspect.

21. Learned Single Judge also considered the provisions of Section 357 of the Code of Civil Procedure, 1973 dealing with the application of fine to the benefit of the victim in case the sentence and fine are both imposed, but this was not also found to be an adequate remedy. Apart from the time factor to be taken for the criminal trial, the ability of the criminal to pay would also come into question as also the consequential realization.

22. In a civic society, there is not only to be a punishment for the crime of violation of the laws of the society, but also for compensation to the victim of the crime. It is in this context that the concept of the State was discussed hereinabove. The very object of creating a State giving a Governor for governance of the society to adhere to the norms itself imposes a responsibility on the Governors. The inability to protect the life and limb of the citizen must result in a consequential remedy for the citizen to be paid by the Governors. It is no answer that the money is short. If this plea were to be accepted, it would hit the very substratum of the concept of creating a State for the benefit of the citizens and to protect their lives and limbs. The absence of Statute in this behalf, as noticed in Kamla Devi's case (supra), cannot make a wrong remedy-less. In such a situation, the Courts have to step into to provide relief. This view is fortified by the observations of the Supreme Court in M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, where it was observed as under:

"86. The judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience."

[underlining added]

23. In Bhajan Kaur v. Delhi Administration, 1996 3 AD (DEL) 333, learned Single Judge of this Court, Anil Dev Singh, as his Lordship then was, had the occasion

to deal with the case of compensation for riot victims of 1984. The learned Single Judge observed that the State must act in time so that the precious lives of the people are not destroyed or threatened, as otherwise Article 21 of the Constitution would remain a paper guarantee. Thus, the State has to enforce minimum standards of civilized behavior of its citizens so that the life, liberty, dignity and worth of an individual is protected and preserved and is not jeopardized or endangered. If it is not able to do all that then it cannot escape the liability to pay adequate compensation for the lives lost or extinguished in clear violation of Article 21 of the Constitution.

24. There can be no doubt that what holds true for loss of life would equally apply to loss of limbs. This view is reinforced by the observations of the Supreme Court in *S.S. Ahluwalia Vs. Union of India and Others*, , which again dealt with 1984 riots in different States.

25. A Division Bench of this Court in *Shyama Devi and Others Vs. National Capital Territory of Delhi and Others*, held that the sweep of Article 21 of the Constitution is wide and far-reaching and would undoubtedly cover a case where the State fails to discharge duties cast upon it resulting in deprivation of life and limb of a person since right to life is not negotiable. The award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution was held to be a remedy available in public law since the purpose of public law is not only to civilize public power, but also to assure the citizens that they are under a legal system wherein their rights and interests shall be protected and preserved.

26. In *Assn. of Victims of Uphaar Tragedy and Others Vs. Union of India (UOI) and Others*, , writ proceedings under Article 226 of the Constitution of India were held maintainable for claiming damages in public law once there were no highly disputed questions of facts which had arisen.

27. Learned Single Judge of the Punjab & Haryana High Court in *Punjab Istri Sabha and Others Vs. Shri Surjit Singh Barnala, Chief Minister and Another*, considered the issue of compensation and employment to victims of terrorist killing. It was observed in para 8 as under:

"8. On merits it must be said that the maintenance of law and order is the primary duty of the State and under the Constitution it is a State subject and tops the State List. No Government worth the name can abdicate this function and put the life and liberty, the hearth and home of the citizens in jeopardy. Article 38 of the Constitution enjoins on the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Under Article 19(1)(e) and (g) of the Constitution, any citizen of this country is entitled to reside and settle in any part of the territory of India and to practice any profession or to carry on any occupation, trade or business. Article 21 lays down that no person shall be deprived of his

right to life or personal liberty except according to the procedure established by law. As pointed out by the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , no person can live without the means of living, that is, the means of livelihood and the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Under Article 300A of the Constitution, no person shall be deprived of his property save by authority of law and to allow his properties to be reduced to ashes by the force of darkness and evil is a clear deprivation of the right to property guaranteed by the Constitution. The terrorists' victims form an integral part of the Indian society; they have every right to settle down in Punjab and carry on their profession. They have the constitutional right to live and they cannot be deprived of their lives, hearths and homes. Their right to property is inalienable. All these constitutional rights of the terrorists' victims have been flagrantly infringed by the inaction of the law enforcing authorities. Fundamental rights are not mere brutum fulmen. They are the throbbing aspirations and realities of civilized human life, they cannot be rendered desuetude or dead-letter or as observed by Bhagwati, J., as he then was, "a paper parchment, a teasing illusion and a promise of unreality", by the illusion and a promise of unreality", by the failure of the State to protect those rights. These unfortunate victims of terrorists violence are, Therefore, entitled to seek reasonable compensation from the State of Punjab which has failed in its duty to protect their constitutional and legal rights."

28. A reading of the aforesaid judgments leaves no manner of doubt about the responsibility of the respondents herein to compensate the petitioner. The petitioner cannot be left without remedy nor can the petitioner be relegated to only a suit. The very occurrence of the incident where the bomb blast occurred shows that material for the making of bombs or the bombs were brought into Delhi and were utilized to perpetrate crime against the society. The mere fact that there were 130 personnel posted at site cannot raise any presumption in favor of the respondents. The fact remains that the respondents failed to prevent the bomb blast and prevent the bombs to be brought into the area. There is, thus, definitely some failure on the part of the State in performance of its obligations. This may have occurred either in the intelligence system not giving prior information or in the implementation of security arrangements.

29. The failure of the State to protect the life and limbs of its citizens itself is sufficient to give rise to the liability. Nothing more needs to be said - rest ipsa loquitur. Such sufferance goes against the very grain of creation of a State or coming into being of individuals. The individual has surrendered certain individual rights for such safety. Taxes are paid for the functioning of a government. Safe environment is the very basic function. The citizens gave to themselves the Constitution of India and adopted a democratic polity. Franklin Roosevelt said:

"Democracy, the practice of self government, is a covenant among free man to respect the rights and liberties of their fellows."

It is this respect of the rights of the petitioner which have been violated. He suffered grievous injuries and 90% disability on account of the wrongful acts of other persons which the State was not able to prevent. It was undoubtedly the duty of the State to have done so.

30. Once the respondents are held liable for payment of the amount, the question arises about the computation.

31. Before proceeding with determination of the amount, it has to be appreciated that law and order is the responsibility of the Union of India even as per the affidavits which have been filed. The liability would, thus, be of the Union of India to pay the amount, though it may be noticed that the amount of Rs. 25,000/- paid earlier as ex-gratia payment is out of the corpus of the State Fund.

32. In order to determine compensation, it has to be appreciated that the very basic concept is restoration of an injured party to his former position.

33. Black's Law Dictionary defines 'compensation' as, "Compensation. Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position. Equivalent in money for a loss sustained."

34. Compensatory damages are such as will compensate the injured party for the injury sustained and nothing more. Pecuniary damages are ones which can be estimated in and compensated by money and not merely the loss of money or salable property or rights, but all such losses, deprivation or injury as can be made the subject of calculation and of recompense in money. Substantial damages are the sum of money assessed by way of damages, which are worth having as opposed to nominal damages, which are assessed to satisfy a bare legal right.

35. In *Lata Wadhwa and Others Vs. State of Bihar and Others*, , the issue before the Supreme Court arose from the death of employees in a fire in the factory premises of TISCO. A conventional sum of Rs. 50,000/- was settled by the Supreme Court.

36. In *Ward v. James*, (1965) 1 All ER 563, it was observed as under:

"Although you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected 'years of survival'. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The

judges have worked out a pattern, and they keep it in line with the changes in the value of money."

[underlining added]

The Supreme Court, with the approval, quoted this passage in *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, .

37. In *Nagappa Vs. Gurudayal Singh and Others*, , it was held by the Supreme Court that in calculating damages, the Courts are required to have some guess work in the quantification of the conventional sum and to the same should be added inflation and consequent decline in value of rupee.

38. The incident in *Lata Wadhwa's* case (supra) was of the year 1989. If the Consumer Price Index of the base year 1980 was taken as 100, for the year 1981, it came to 171 and an amount of Rs. 50,000/- had been awarded. If the same principle is applied taking the incident of 1997, the Index would be 358 and the amount would come to about Rs. 1,05,000/-.

39. However, in a recent judgment of the Supreme Court in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, , the case of permanent disability in case of an accident was assessed to compensation. The claimant therein was a mason by profession and became a paraplegic because of the accident. The petitioner did not have a permanent job. The damages were assessed both for loss of income, pain and suffering and loss of marital life and the non-possibility of marriage. Therein, the incident was of 4th June, 1995. The Supreme Court upheld the order of the Tribunal while modifying the order of the High Court in respect of pain and suffering and mental agony, which was quantified at Rs. 50,000/-. The damages for loss of marital life was quantified at Rs. 75,000/-. A sum of Rs. 50,000/- was quantified for future expenses keeping in mind the physical condition of the person. This was apart from the loss of future income.

40. The case of the petitioner herein is quite similar in a lot of aspects keeping in mind the nature of injuries sustained by him. Thus, I see no reason why a different view should be taken on quantification of damages under various heads as aforesaid.

41. However, in so far as the issue of future income is concerned, since the direction is being given to provide employment, loss of income would be only for a short period of time. This is especially so since the petitioner was stated to be doing only part-time work and passed B.Com. in the year 1999 and completed Computer Course in the year 2003. The period of about 7 years has passed and in these 7 years, the petitioner has been under-going medical expenses rather than earning any income. In the aforesaid judgment, for a mason, the amount was taken at Rs. 12,000/- per annum. In view of lack of evidence of the nature of work the petitioner could perform, but keeping in mind the fact that the petitioner became Graduate in the year 1999, I consider it appropriate to take

the said figure and apply it over a period of 7 years, which comes to Rs. 84,000/-. The total amount would, thus, come to say round about Rs. 2,60,000/-.

42. The interest rate of 9% per annum granted in The Divisional Controller, K.S.R.T.C.'s case (supra) can also be followed with convenience and this interest would be payable from 1st of January, 1998 till the date of payment since the incident is of 1st October, 1997. However, the amount already paid of Rs. 25,000/- would be adjusted against the amount to be paid.

43. The petitioner cannot be restored to the original position in which he was prior to the incident. This is at best an attempt to ameliorate his sufferings and to provide him some reasonable compensation.

44. A writ of mandamus is, thus, issued directing that the petitioner should be paid by respondent No. 1 / GOI compensation of Rs. 2,60,000/- along with interest @ 9% per annum from 1st of January, 1998 till the date of payment less the amount of Rs. 25,000/- already paid. To the extent the amount was paid, the interest on the amount would stop running from the date of payment of the said Rs. 25,000/-.

45. A writ of mandamus is further issued directing respondent No. 2 / Govt. of NCT of Delhi to appoint the petitioner to one of the vacant posts reserved under the said Act according to his qualifications within one month of the date of this Order.

46. The petitioner shall also be entitled to costs of Rs. 10,000/- jointly awarded against the respondents.

47. In the end, the Court would like to express its appreciation for the assistance rendered by the amices Curaie, Dr. A.M. Singhvi, Senior Advocate and Ms. Anusuya Salwan, Advocate.