

(2006) 06 GAU CK 0026
In the Gauhati High Court
Case No : C.R. (H.C) No. 32 of 1998

Khundrakpam Ongbi Ibetombi Devi

APPELLANT

Vs

Commanding officer, 317 Field Regiment and Others

RESPONDENT

Date of Decision : 08-06-2006

Acts Referred:

Constitution of India, 1950 — Article 20, 21, 22, 226, 32

Criminal Procedure Code, 1973 (CrPC) — Section 357

Universal Declaration of Human Rights, 1948 — Article 1, 2, 3, 4, 5

Citation : (2006) 2 GLT 735

Hon'ble Judges : T.N.K. Singh, J; R.B. Misra, J

Bench : Division Bench

Advocate : M. Rakesh, for the Appellant; N. Ibotombi Singh and Th. Ibohal, for the Respondent

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—The instances of dehumanizing torture, assault and death of citizens in the custody of the guardian of law are ever increasing. No doubt, it is true that the cry for justice is so loud that it deafens the ear of the peace loving citizens of India that they could not live in a peaceful atmosphere and they are disturbed with the apprehension that they may be one of the victims of torture, assault and death in the custody of law protector in uniform.

2. The Constitution of India is adorned with Articles 20, 21 and 22 which are almost in consonance with the rights contained in the Universal Declaration of Human Rights, 1948 adopted and proclaimed by General Assembly, 217 A (iii) of 10th December, 1948. Articles 1, 2, 3, 4 and 5 of the Universal Declaration of Human Rights, 1948, read as follows:

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a

spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right of life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

3. In *Kharak Singh Vs. The State of U.P. and Others*, the Apex Court held that the term "life" indicates something more than mere animal existence and so also in *State of Maharashtra Vs. Chandrabhan Tale*, No doubt, the Apex Court in *Bandhua Mukti Morcha Vs. Union of India (UOI)* and *Others*, held that the right to life under Article 21 means right to live with dignity, free from exploitation. The Apex Court is of the similar view in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, and *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*,

4. The word "life" has been used, as we have seen, keeping in view of the law laid down by the Apex Court, prominently in the Universal Declaration of Human Rights, 1948. "Life" is recognized as a basic human right in the Universal Declaration of Human Rights, 1948 and it has the same meaning and interpretation as had been placed with the word by the Apex Court in various decisions relating to Articles 20, 21 and 22 of the Constitution of India. The meaning of words cannot be narrowed down. Lord Diplock in *Salomon v. Commnr of Customs and Excise* : (1996) 3 All ER 871 states that there is a prima facie presumption that the Parliamentarian does not intend to act in breach of international law. Again, Lord Bridge in *Brind v. Secy of State for Home Department*: (1991) 1 All ER 720 (HL) observed that it was well settled that in construing any provision in domestic legislation which was ambiguous in the sense that it was capable of a meaning which either conforms to or conflicts with the, internal law conventions, the Court would presume that parliament intended

to legislate in conformity with the conventions and not in conflict with it.

5. Since the act of dehumanization, assault and torture of a citizen of India are committed by the protector of law in uniform in their custody where nobody is allowed to enter except with their permission, it would be next to impossible to have direct evidence to prove as to who the offenders are. Disturbed by this situation, the law commission in its 113th report recommended amendment to the Indian Evidence Act, 1872 so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in police custody, the Court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. We may here recall the observations of Supreme Court in *Munshi Singh Gautam (D) and Munshi Singh Gautam (D) and Others Vs. State of M.P.*, speaking through Hon'ble Justice Arijit Pasayat, J. that:

8?Keeping in view of the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The Courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.

6. Unfortunately, the police officer and members of the security personnel are taking that they have the unfettered right to take recourse to which are not permissible under the above discussed Articles of Declaration of Human Rights, 1948 and Articles 20, 21 and 22 of the Constitution of India to interrogate a citizen of India in their custody for the purpose of extracting information. They had forgotten that their duty should be done within the four corners of law and law enforcers cannot take law into their hands in the name of collecting evidence.

7. The succinct fact, leading to the filing of present writ petition in the nature of Habeas Corpus are that:

The Petitioner is mother of one Shri Kh. Yaima alias Boyai Singh aged about 20 years. Her son Shri Kh. Yaima Singh alias Boyai Singh was a student who had passed Class-XII Science Examination, 1996 of the Council of Higher Secondary Education, Manipur. It is also said that her son Shri Kh. Yaima Singh alias Boyai

Singh never committed any offence nor has he ever involved in any police case and also that he is a man of sound health, good physique and sober temperament.

8. It is alleged that in the night between 24.9.1998 and 25.9.1998 Petitioner's son Shri Kh. Yaima Singh alias Boyai Singh along with his friend namely, Moirangthem Churchil Singh, aged about 18 years were arrested by the army personnel of 317 Field Regiment at Jiribam, Kadamtala on their way to Dibong Karong. Shri M. Churchil Singh who was arrested with the Petitioner's son, Shri Kh. Yaima alias Boyai Singh by the personnel of 317 Field Regiment, Jiribam was released on the next day in the morning. As Shri Kh. Yaima alias Boyai Singh was not released or handed over to the Civil Police till 27.9.1998, the President of Apunba Jiribam Meira Paibi (Women Association) submitted a representation dated 27.9.1998 to the Addl. Deputy Commissioner, Jiribam and C.O. of 317 Field Regiment, Jiribam with copies to the Joint Secretary of Civil Liberties and Human Rights Organization (CLAHRO) to hand over Shri Kh. Yaima alias Boyai Singh to the civil police.

9. The Addl. Deputy Commissioner, i.e. Imphal East, Jiribam under his letter dated 28.9.1998 addressed to the C.O. of 317 Field Regiment, Jiribam had requested the later to clear and intimate the matter to avoid any eventuality. The Addl. D.C., Imphal East, Jiribam also send a W.T. Message on 28.9.1998 to the DC, Imphal East seeking further information and necessary action on the reported arrest and further detention of one youth out of the two youths arrested by the personnel of said 317 Field Regiment, Jiribam in the night between 24th and 25th of September, 1998 at Jiribam, Kadamtala. The Petitioner also personally contacted the said Moirangthem Churchil who was arrested along with her son Kh. Yaima alias Boyai Singh by the personnel of 317 Field Regiment and from whom it was confirmed that her son Kh. Yaima alias Boyai Singh was taken into the custody of the said Regiment since the late night between 24th and 25th September, 1998. Mr. Churchil also informed the Petitioner that he along with Kh. Yaima alias Boyai Singh were taken into the custody of the personnel of 317 Field Regiment and they were tortured while they were in their custody.

10. The Sub Divisional Police Officer, Jiribam also sent a crash message dated 2.10.1998 to the Superintendent of Police, Imphal East intimating that the arrested youth was not yet handed over to the civil police and also that Jiribam Meira Paibi (Women Association) pressing hard with staging of procession. The SDPO, Jiribam also informed the Petitioner that her son Shri Kh. Yaima alias Boyai Singh was wanted to be detained by the personnel of 317 Field Regiment, Jiribam in their custody for some time so as to enable them (army personnel) to locate other insurgents with the help of her son Kh. Yaima alias Boyai Singh. The Petitioner also approached different authorities with the help of Meira Paibi (Women Association) for releasing her son Kh. Yaima alias Boyai Singh from the custody of the personnel of 317 Field Regiment, Jiribam and also the Petitioner had approached the C.O., 317 Field Regiment for releasing her son. As the

Petitioner could not get any help from the said authorities in releasing her son from the custody of the personnel of 317 Field Regiment, Jiribam, she filed the present writ petition.

11. The Petitioner also filed supplementary affidavit stating that one Shri Moirangthem Nabachandra Singh, aged about 50 years, by occupation a Contractor, S/o. Late M. Tomba Singh of Jiribam Kadomtala, P.S. Jiribam, Manipur had voluntarily come out by swearing an affidavit dated 24.10.1999 to the effect that he knows the Petitioner's son Kh. Yaima alias Boyai Singh and that he affirmed about the factum of arrest and confinement of the Petitioner's son Shri Kh. Yaima Singh alias Boyai Singh by the army personnel of 317 Field Regiment in their custody in the night of 24th September, 1998. Shri M. Nabachandra Singh, further stated that in the night between 24th and 25th September, 1998 a group of army personnel came to his house along with his eldest son, Shri M. Churchill Singh under arrest for verification about the identity of M. Churchill Singh. He also further stated in his affidavit that in the very night volunteers of Apunba Jiribam Meira Paibi, requested the army personnel of 317 Field Regiment to release the 2 (two) youths including his son M. Churchill and the army personnel assured him and representatives of the said Meira Paibi Association that his son, M. Churchill Singh would be released in the next morning and that the other youth would be handed over to the civil police after some days. On the next day, i.e. 25.09.1998 he went to the camp of 317 Field Regiment to take his son, M. Churchill. A civil police personnel was also requisitioned by the army to their camp in the process of releasing his son and when he was in the said camp premises he heard Shri Kh. Yaima alias Boyai crying as "ah" and saw the army personnel interrogating Shri Kh. Yaima alias Boyai Singh at their camp.

12. The Respondent No. 1, The Commanding Officer, 317 Field Regiment (317 Army camp), Jiribam (Manipur), 2. The Union of India represented by its Secretary to the Government of India, Ministry of Home Affairs, New Delhi, 3. The Secretary to the Government of India, Ministry of Defence, New Delhi, 4. The General Officer Commanding 57th Mountain Division, Leimakhong (Manipur) had filed their joint affidavit in the present writ petition. In their Affidavit-in-opposition they admitted that Mr. Churchill Singh was arrested by them in the night between 24th and 25th September, 1998 he was released on 25.09.1998. But they are denying in their Affidavit-in-opposition that Mr. Kh. Yaima alias Boyai Singh was arrested by them in the night of 24th and 25th of September, 1998. In the Affidavit-in-opposition, Respondent Nos. 1,2,3 and 4 are denying the allegations and assertions of the Petitioner against them in the present writ petition.

13. The Respondent No. 6, Director General of Police, Government of Manipur also filed Affidavit-in-opposition in the present writ petition stating that the SDPO Jiribam vide his message No. 2/SDPO- JBM/98-398 dated 28.9.1998 had sent a message to the S.P. Imphal East with the information to DIG (V/R) stating that out of the two youths picked up by the 317 Field Regiment, Jiribam, one person

namely M. Churchill had been handed over to his parent on 25.9.1998 itself. However, the whereabouts of the another youth was not known.

14. This Court by an order dated 13.10.1998, in the present writ petition had directed the Respondent Nos. 1 to 4 to hand over Shri Kh. Yaima alias Boyai Singh to the Officer-in-charge of the nearest police station immediately on receipt of the order. But the personnel of the 317 Field Regiment, Jiribam did not hand over Shri Kh. Yaima alias Boyai Singh to the O/C of the nearest police station in spite of the order of this Court dated 13.10.1998 by simply denying that Shri Kh. Yaima alias Boyai Singh was arrested by them.

15. This Court again, by an order dated 19.5.1999 directed the District Judge, Manipur East to make an elaborate inquiry by giving reasonable opportunity of being heard to the parties concerned and also by giving the concerned parties to produce evidences in support of their respective cases. It was also made clear that the parties shall be at liberty to cross examine the witnesses. In pursuance of the said order of this Court dated 19.5.1999 the learned District Judge, Manipur East for the purpose of holding an inquiry framed 2 (two) issues i.e.:

(1) Was Shri Kh. Yaima @ Boyai Singh arrested either alone or along with another youth by Army personnel from Kunabon and Kadomtala area of Jiribam on or about 24.9.98?

(2) Has the said Kh. Yaima @ Boyai Singh been in custody of the C.O., 317 Field Regiment (Army Camp), Jiribam since the said arrest.

16. The learned District Judge, Manipur East Examined two witnesses i.e. the present Petitioner and Shri M. Churchill as the witness for the Petitioner in support of case of the Petitioner in the present writ petition. PW/2, M. Churchill testified that he along with Kh. Yaima alias Boyai Singh were arrested by the army personnel of 317 Field Regiment, Jiribam in the night between 24th and 25th of Sept., 1998 at Jiribam Kadomtala on their way to Dibong Karong. He also testified that a Meitei Police Constable was along with the army personnel when they were arrested by the army personnel in the night between 24th and 25th of September, 1998. Both he (M. Churchill) and Shri Kh. Yaima alias Boyai Singh was blind folded and taken to the army camp. At the army camp when his blind fold was removed, he saw Kh. Yaima alias Boyai Singh who were still blind folded, being taken up the stair of the main building of the Railway Police Station, Jiribam used by the army as their camp and since then Shri Kh. Yaima alias Boyai Singh had not been seen. Further, he testified that he was released on the next day in the morning. The Respondent Nos. 5 and 6, produced 5 (five) witnesses namely, (1) Shri Kh. Nabakesho Singh, SDPO, Jiribam (2) Shri H. Gyan Prakash, Dy. Secretary (Home), Govt, of Manipur, (3) Shri Sinam Rajendra Singh, Police Constable attached to the Jiribam Police Station (4) L.M. Khaute, AIG, Police Headquarter, and (5) Shri Koijam Radheshyam Singh, S.P., Imphal East. Shri S. Rajendra Singh, Police Constable testified that he was posted at Jiribam Police Station as Police Constable at the relevant time.

17. According to Shri S. Rajendra Singh, Police Constable, on 24.3.1998 at about 6.30 p.m. he and two other police constables, namely Sharat Singh and Bhubon Singh were detailed by the O/C, Jiribam Police Station for assisting army personnel of 317 Field Regiment at Jiribam at the time of making patrol for preventing activities connected with the celebration of rising day of PLA. He further testified that while he and some army personnel were taking position at the hillock near Jiribam College on the direction of the officer, commanding the party, two youths were seen coming at about 1 a.m. i.e. in the night between 24th and 25th September, 1998 and both of them were arrested by the army personnel. He further testified that those two arrested youths are M. Churchill and his friend who had been taken by the army personnel in two vehicles and some other army personnel were proceeded along the road to Borobekra and that while they were proceeding along the road they met Meira Paibis i.e. members of Women Association who demanded for release of the two arrested youths. On the direction of commander of the said army patrol, he (Shri S. Rajendra) consoled them saying that the said arrested two youths would be handed over on the next day at the camp of 317 Field Regiment, Jiribam Railway Station.

18. Shri Kh. Nabakesho Singh, SDPO, Jiribam at the relevant time also testified that two youths were arrested by the army personnel of 317 Field Regiment at Jiribam. He further testified that he confirmed such arrest of two youths by the personnel of 317 Field Regiment, Jiribam from his constable Shri S. Rajendra Singh. He also further testified that he has sent wireless message being No. 2/SDPO- Jiribam/ 98-318 to the SP, Imphal East on 28.9.98 giving information about the agitation made by the members of the Meira Paibi to the civil administration for releasing the said youths arrested by the army personnel. He also further testified that on 2.10.98 after meeting with the present Petitioner he came to know the name of the youth arrested with Shri M. Churchill is Kh. Yaima alias Boyai Singh.

19. Shri L.M. Khaute, IPS, who was serving as AIG (Admn.), Police Headquarter also testified that the S.P., Imphal West had been instructed to make an inquiry in connection with the whereabouts of Shri Kh. Yaima alias Boyai Singh alleged to have been picked up by the army personnel of 317 Field Regiment. According to him, two inquiry reports i.e. Ext. X/7 and X/8 were submitted by the SP, Imphal East to the DIGP, Manipur and DGP, Manipur respectively to the effect that according to the police constable Shri S. Rajendra Singh who had been detailed to assist the personnel of 317 Field Regiment, Jiribam at the time of patrol on 24.9.98, two youths had been picked up by the personnel of 317 Field Regiment but only one youth namely, K. Churchill had been released.

20. Shri K. Radheshyam, SP, Imphal East also testified that he made an inquiry as directed by the Police Headquarter and he submitted report i.e. Ext. X/7 and X/8 respectively to the DIGP, Manipur and DGP, Manipur.

21. The Respondent Nos. 1 to 4 produced only 2 (two) witnesses namely, Capt.

Karanbir Singh Dhindsa and Naik Subedat P.T. Pande. The said two witnesses in their statement before the District Judge, Manipur East admitted that they had arrested Shri M. Churchill in the night between 24th and 25th of September, 1998 and Shri M. Churchill later on released. But in their statement they were simply denying that the personnel of 317 Field Regiment had arrested Shri Kh. Yaima alias Boyai Singh.

22. The learned District Judge, after taking into consideration of all the documents which were exhibited during the course of the inquiry and careful appreciation of the statements of the witnesses had made a finding in his report dated 28.9.2004 that:

21. Moreover, it is to be noted that as per evidence, on 27.9.98, President of Jiribam Meirapaibies sought clarification from the Addl. D.C., Jiribam and the C.O., Field Regiment 317, Army camp, Chandrapur, Jiribam about the whereabouts and the security of the youth arrested with Churchill Singh. On 28.9.98 the Addl. Deputy Commissioner, Jiribam also sought clarification from the C.O., Field Regiment 317, Jiribam. However, the concerned C.O. did not give any reply for days. As per counter affidavit given by Captain Karanbir Singh, the Addl. D.C. was informed on 30.9.98 that no one other than the said M. Churchill Singh was arrested in the said night. No reason or explanation is given as to why the allegation about arrest and illegal detention of one youth by the Army was not taken seriously and as to why, if no other youths other than the said Churchill had been arrested, the Civil authority of the area was not informed immediately. Shri Prasad, the then Addl. Deputy Commissioner, Jiribam is no more and as such though he is an important witness, he cannot be examined. On the basis of the materials before the Court, it is doubtful if the Addl. D.C., Jiribam was in fact given the said information on 30.9.98. Had the concerned authority of the Army given the information on 30.9.98 denying the fact of arrest of the other youth, the Addl. D.C., Jiribam would have most likely given the said information to the SDPO, Jiribam immediately as the matter was a serious one. In that situation, the fact of receiving the said information from the Army would have probably reflected in the messages/ communications made by the SDPO, Jiribam after 30.9.98 to his superior officers. In messages marked Ext. X/2, Ext. X/3, Ext. X/10 and Ext. X/11 which are the communications amongst police officials in connection with the matter after 30.9.98 till 31.10.98, nothing is mentioned about the said information said to have been given to the civil authority by the Army. The denial of the Army authority about the arrest of another youth other than the said Churchill Singh is found mentioned in the message marked Ext. X/4 purportedly sent by the SDPO, Jiribam to SP, Imphal East on 1.11.98. Had the Army authority informed the civil authority of Jiribam promptly, the fact would have been reflected in the communication about the matter made within a few days of the said date on which the information was allegedly given to the Addl. D.C., Jiribam. The above circumstances clearly show that despite restive situations at Jiribam on the issue of none release of an arrested person, the concerned Army authority of 317 Field Regiment did not inform the civil authority

promptly about the matter. On the other hand, on 9.10.98, the President of Jiribam Meirapaibies, Jiribam was purportedly asked by the Army to come with the said Churchill Singh on 10.10.98 at 10.00 hours in connection with clarification sought by her in her letter dated 27.9.98. No reason is given as to why the concerned official of the Army did not inform the concerned President of Meirapaibies about the said fact of not arresting any person other than Churchill Singh promptly straight way. The concerned authority of Army did not care to clarify it straight way to the President of Meirapaibies who had sought clarification about the matter. The delay on the part of the concerned authority of 317 Field Regiment in informing about time of his arrest. In the facts and circumstances, it is for the Army authority to account for the whereabouts of the said Yaima @ Boyai Singh. The issue No. 2 is decided accordingly. With the above findings, this enquiry report is concluded. It has not been possible to complete the enquiry and submit the report in time due to unavoidable reasons.

23. This Court is not sitting as an appellate authority for re-appreciation of the statements of the witnesses examined by the learned District Judge in the course of his inquiry. But this Court is examining the report submitted by the learned District Judge as to whether the finding made by the learned District Judge in his report are perverse and based on no evidence. After such examination of the report of the District Judge, this Court is of the considered view that the report so submitted is acceptable for the limited purpose of deciding the present writ petition. From careful perusal of the report of learned District Judge, Manipur East dated 28.9.2004, this Court also is of the considered view that the finding made by the learned District Judge, Manipur East in his report that Shri Kh. Yaima @ Boyai Singh had been arrested by the army personnel of 317 Field Regiment, Jiribam in the night between 24th and 25th September, 1998 and taken him to the custody of the C.O., 317 Field Regiment, Jiribam and since then he has not been released from their custody are acceptable.

24. Redressing the wrong by award of monetary compensation against the State for its failure to protect the fundamental right of its citizen had been discussed by the Apex Court in a catena of cases and held that the award of compensation for established infringement of indefeasible right guaranteed to a citizen under Article 21 of the Constitution of India 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 citizen that they live under a legal system whereunder their right and interests shall be protected and preserved. The grant of compensation in proceeding under Article 32 or Article 226 of the Constitution of India for the established violation of fundamental right guaranteed under Article 21 is an exercise of the Court under the Public Law jurisdiction for penalizing the wrong doer and fixing the liability for the public wrong on the State which failed in discharge of its public duty to protect fundamental right of the citizens.

25. The Apex Court had considered the requirements of protection of right to life and liberty of the citizen against the lawlessness of the State in Sant Bir Vs.

State of Bihar, and Mrs. Veena Sethi Vs. State of Bihar and Others, Ultimately it had been settled that the most precious of the precious fundamental rights of the citizen is right to life guaranteed by Article 21 of the Constitution of India. It is the bounden duty of the State under the constitution to protect the life and personal liberty of a citizen and it shall not be deprived of except according to procedure established by law. The State is liable for the constitutional tort and the constitutional tort denotes the case in which compensation or exemplary damages were awarded by the Court while a constitutional right was violated. Such constitutional remedy was made to partake the character of civil actions. The award of compensation was made only in additions to the normal civil remedies. In the case of Devaki Nandan Prasad Vs. State of Bihar and Others, , the Apex Court laid down the concept of constitutional tort and compensatory jurisdiction and awarded Rs. 25,000/-(Rupees twenty five thousand) as exemplary costs for harassing the Petitioner. This concept of awarding exemplary costs had been also considered in Rudul Sah Vs. State of Bihar and Another, . In that case, the Petitioner filed the Habeas Corpus before the Court for his immediate relief and prayed for rehabilitation costs, medical charges and compensation for illegal detention. After his release in 1982, the question before the Court was whether in exercise of jurisdiction under Article 32, the Court can pass an order for payment of money, if such order is in the nature of compensation consequential upon the deprivation of fundamental right and decided in the affirmative. Therefore, the State must repair the damage done by its officers to the Petitioner's right. It may have recourse against those officers. The two important points decided in Rudul Shah (supra) are that (1) violation of constitutional right gives raise a right to a civil liability enforceable in civil Court and (2) it formulates basis for a theory of liability under which a violation of right to the personal liberty can give raise to civil liability with the extreme concern to protect and preserve the fundamental rights of a citizen. The Apex Court awarded compensation to the under trial for violations of his fundamental right and also for the failure of the State to discharge its constitutional obligations to the citizen.

26. The Apex Court in the case of D.K. Basu Vs. State of West Bengal, , held that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and property, 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 tortuous acts of the public servants. Public Law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of indefeasible right guaranteed under Article 21 of the Constitution of India 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 interest 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 penalizing 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.

27. The Apex Court in *D.K. Basu (supra)* in clear terms held that:

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts to 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 member of the deceased victim, who may have been the bread winner of the family.

The right of citizens to life and personal liberty are guaranteed under Article 21 of the Constitution. It is the bounder duty of the State under the Constitution to protect life and personal liberty of the citizen. The State is liable to the constitutional tort and constitutional tort did not come in which the compensation for exemplary damages were not awarded by the Court when the constitutional right was violated. In such circumstances, order was made to partake the character of civil actions. The matter regarding the tortuous liability of the states had been arisen and discussed in jurisdic circle beginning from the case of *Devaki Nandan Prasad v. State of Bihar (supra)*. The Apex Court in the case of *Sebastian M. Hongray* reported in AIR 1984 SC 1026 awarded exemplary cost of Rs. 1 lakh each to the wives of the missing persons. The Apex Court awarded compensation under the writ jurisdiction for the constitutional torts against the citizens. This concept of awarding compensation under the writ jurisdiction for violation of fundamental right had been followed in a number of cases. The Constitutional Bench in *M.C. Mehta and another Vs. Union of India and others*, , held that Article 32 is not only injunctive in ambit but also preemptory in scope. It is not powerless to redress a person while his fundamental right has been violated, it includes the power to award compensation.

28. In *Rameshbhai Lallubhai Luni Vs. Devraj Bhalabhai and Others*, this Court held that the Respondents are liable to pay compensation for their failure to do their duty to protect the Petitioner's husband who was put to have been taken away by the security forces and shot dead. It may be worth mention that the Apex Court in *Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others*, held that:

Thus to sum up, it is now well accepted position 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 defence 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 appropriating 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 of the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the State. The quantum of compensation will of course, depend upon the peculiar facts of each case and no straight-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 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.

29. In *Nilabati Behra (supra)*, the Apex Court appointed fact finding Commission in respect of the disputed facts in Writ Petition. Normally in writ proceedings the Supreme Court or High Courts do not take up the issues relating to the disputed facts. As discussed above, the Court of claim for compensation through public law remedy under Article 32 the Supreme Court instead of making the Petitioners to resort to private law remedy, invented the process of fact finding Commissions to inquire into the disputed facts and submits reports before the Court to consider the correctness of the facts placed before the Court.

30. The Apex Court (3 Judges) in its latest decision rendered on 3.2.2006 in *Sube Singh and Ors. v. State of Haryana and Ors. Writ Petition (Criminal) No. 237 of 1998* also reiterated that the award of compensation against the State in an appropriate and effective remedy for redress of an established infringement of fundamental right under Article 21 by a public servant, the quantum of compensation will, however, depend upon the fact and circumstances of each case. An award of such compensation (by way of public law remedy) will not come in the way of the aggrieved persons claiming the additional compensation in civil Court, in enforcement of private law remedy in Torts nor come in the way of Criminal Court ordering compensation u/s 357 of the Code of Criminal Procedure Para 20, 21, 22, 24 and 25 of the judgment in *Sube Singh and Ors. v. State of Haryana and Ors. (supra)* reads as follows:

20. Cases where violation of Article 21 involving custodial death or torture is

established or is incontrovertible stand on a different footing when compared to cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor an mark/scar, it may not be prudent to accept claims of human right violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. Courts should, therefore, while jealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interest of the society and to enable Police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture.

21. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, Courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) Whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the Court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement and where such allegation is not supported by any medical report or other corroboration evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, Courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

22. We should not, however, be understood as holding that harassment and custodial violence is not serious or worthy of consideration, where there is no medical report or visible marks or independent evidence. We are conscious of the fact that harassment or custodial violence cannot always be supported by a medical report or independent evidence or proved by marks or scars. Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned in the earlier para are satisfied. We may also note that this Court has softened the degree of proof required in criminal prosecution relating to such matters. In *State of M.P. v. Shyamsunder Trivedi* 1995 SCC 262, reiterated in *Abdul Gafar Khan and Munshi Singh Gautam* (supra), this Court observed:

Rarely in cases of police torture or custodial death, direct ocular evidence of the

complicity of the police personnel would be available. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case....often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the (sic) in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture.

24. Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very causes, which lead to custodial violence, so as to prevent such occurrences, following steps, if taken, may prove to be effective preventive measures:

(a) Police training should be re-oriented, to bring in a change in the mindset and attitude of the police personnel in regard to investigations, so that they will recognize and respect human rights, and adopt thorough the scientific investigation methods.

(b) The functioning of lower level Police Officers should be continuously monitored and supervised by their superiors to prevent custodial violence and adherence to lawful standard methods of investigation.

(c) Compliance with the eleven requirements enumerated in D.K. Basu (supra) should be ensured in all cases of arrest and detention.

(d) Simple and fool-proof procedures should be introduced for prompt registration of first information reporting to all crimes.

(e) Computerization, video-recording and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and ante-dating in regard to FIRs, Mahazars, inquest proceedings, Postmortem reports and statements of witnesses etc. and to bring a transparency in action.

(f) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power, to investigate complaints of custodial violence against Police personnel and take stern and speedy action followed by prosecution, whether necessary.

The endeavour should be to achieve a balanced level of functioning, where police respect human rights, adhere to law, and take confidence building measures (CBMs), and at the same time, firmly deal with organized crime, terrorism, white

collared crime, deteriorating law and order situation etc.

31. This Court in a number of cases had entertained claim in public law for compensation for unconstitutional deprivation of fundamental rights to life and awarded compensation for the established infringement of indefeasible rights guaranteed under Article 21 and 22 of the Constitution of India and that it is the remedy available in public law. Some of the cases are (1) Shri Ranjan Gogoi v. Union of India and Ors. 1995 (2) GLT384 Smt. Kangujam Ongbi Thoibi Devi Vs. State of Manipur and Others, , Terarongsen and Ors. v. Union of India and Ors. 2003 (1) GLT 218 Tarulata Devi Vs. State of Assam and Others, and (5) Kaisiliangmani (Th.) Th. Kaisi Liangmai Vs. Union of India (UOI) and Others, . Conclusion:

32. Articles 21 and 22 of the Constitution of India, which are the heart and soul of the Constitution of India, cannot be treated only as showpieces, which are to be polished time and again and kept in the rack. Article 21 and 22 of the Constitution of India are to be used, protected and enforced by all in consonance with the rights contained in the Universal Declaration of Human Rights and also the Declaration and Covenants of Civil and Political Rights and Convenient of Economic, Social and Cultural Rights to which India is also a party. The word "life" is also recognized as a basic human rights in the Universal Declaration of Human Rights, 1948 which has the same meaning and interpretation as had been placed in the Article 21 of the Constitution of India according to the various decisions of the Apex Court. The meaning of the word "life" cannot be narrowed down and protections guaranteed under Article 21 of the Constitution shall also be available to all the persons.

33. From the view of what has been discussed above, we are of the considered view that Respondent Nos. 1 to 4 should be responsible for the arrest of Shri Kh. Yaima @ Boyai Singh by the army personnel of 317 Field Regiment, Jiribam in the night of 24th and 25th of September, 1998 and failure to release him from their custody. Accordingly, the Respondents should be directed to pay compensation to the Petitioner. Respondent Nos. 1 to 4 are jointly or severally liable for the said illegal actions. For fixing the amount of compensation, the minimum wage of the Workmen fixed by the Government of Manipur and capability of earning of Shri Kh. Yaima @ Boyai Singh as well as the mental agony suffered by the Petitioner had been meticulously considered and fixed a sum of Rs. 3 lakh 50 thousand as amount of compensation. The amount of Rs. 3 lakhs 50 thousand awarded in exercise of public law jurisdiction shall substantially meet the ends of justice in the peculiar facts and circumstances of the case. The said amount of 3 lakhs 50 thousand shall be paid by the Respondent Nos. 1 to 4 within 4 (four) months from today.

34. This writ petition is allowed to the extent mentioned above. Further, it is made clear that the amount of compensation is in addition to the other remedies available to the Petitioner in the ordinary course of law by way of damage in civil suit and other remedies in a criminal proceeding against the wrong doers.

Further Respondent Nos. 1 to 4 have to pay a sum of Rs. 5000/- (Rupees five thousand) as fee for the counsel of the Petitioner, Shri M. Rakesh, Advocate in the present writ petition within 4 (four) months from today.