
(2012) 07 MAD CK 0096
In the Madras High Court
Case No : Writ Petition No. 15794 of 2003

S. Anand

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Constitution of India, 1950 — Article 142, 20, 21, 22(1), 225
Criminal Procedure Code, 1973 (CrPC) — Section 200, 357, 357(1), 357(3)
Penal Code, 1860 (IPC) — Section 306, 324, 330, 331, 342

Citation : (2012) 4 RCR(Criminal) 833

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : J. Antony Jesus, for the Appellant; K.V. Dhanapalan and D. Krishakumar, for the Respondent

Judgement

S. Manikumar, J.—Though Courts in India, have time and again have indicted "Men in Uniform" who indulged in custodial and human rights violations, and issued directions to bring out a change in the attitude of police personnel to recognise and respect human and fundamental rights, the directions are flouted by some "Men in Khaki" with impunity. A victim who suffered torture, bodily injuries, humiliation, violation of human rights at the hands of the Inspector of Police (L & O), Samayanallur Police Station, Madurai District, 5th respondent herein, has sought for a Writ of Mandamus, directing the Human Rights and Social Justice C.I.D., which is under the control of the Additional Director General of Police, Human Rights and Social Justice CID, Anna Nagar West, Chennai, 2nd respondent herein, to investigate the matter, on the basis of his complaint dated 14.05.2003 and prosecute the 5th respondent and other policemen, who illegally detained and brutally attacked the petitioner and prayed for a further direction to the State of Tamil Nadu, represented by its Secretary to Government, Department of Home, St. George Fort, Chennai-9, 1st respondent herein, to pay compensation of Rs. 5,00,000/- to the petitioner for the atrocities committed by its employees against the petitioner and also sought for a direction to the

respondents 1 to 3, to take departmental action against the 5th respondent and other policemen who abetted him.

2. During the course of hearing, Mr. D. Krishna kumar, Learned counsel for the 5th respondent, brought to the notice of this Court that the petitioner's mother namely, S. Mallika had already preferred a petition u/s 200 Criminal Procedure Code read with Section 30 of the Human Rights Act, 1993, and the designated Human Rights Court, Viz., Learned Principal District & Sessions Judge, Madurai, who took cognizance of the same in C.C. No. 6/2004, upon trial, has found that the 5th respondent has violated the fundamental rights enshrined in the Constitution of India, tortured and fractured the right thumb of the petitioner, PW5 in the above-said criminal case, and ultimately, convicted the 5th respondent, u/s 324 IPC read with Section 30 of the Human Rights Act, to pay a fine of Rs. 4,000/- in default to undergo one year rigorous imprisonment. He also submitted that out of the fine amount, the Criminal Court has ordered Rs. 3,500/- to be paid towards compensation, to PW5, the petitioner herein, u/s 357(1) Criminal Procedure Code.

3. It is also brought to the notice of this Court that being aggrieved by the same, the 5th respondent filed a Criminal Appeal No. 102/2004 before this Court and that the same has been dismissed as withdrawn. Thus the conviction and sentence imposed on the 5th respondent has reached finality. The learned counsel for the 5th respondent submitted that all the reliefs prayed for in the present writ petition have already been adjudicated and ordered by the criminal court. Listing out the same, he submitted that though the petitioner has sought for an Investigation by the Human Rights and Social Justice C.I.D., which is under the control of the Additional Director General of Police, Human Rights and Social Justice CID, Anna Nagar West, Chennai, 2nd respondent herein, mother of the petitioner has already filed a petition u/s 200 read with Section 30 of the Human Rights Act, 1993, and that the allegations of illegal detention, torture etc., have already been enquired into and that the 5th respondent has been tried by a criminal court and convicted. He farther submitted that departmental proceedings were initiated in P.R. No. 104/2005, and on completion of enquiry, vide order in Rc. No. B1/1361/EOW/2007 dated 11.02.2008, of the Inspector General of Police, EOW-II, Chennai-2, a punishment of censure had already been awarded. The criminal court and the department did not find any incriminating materials against other policemen and therefore, no action was taken. The writ petitioner, PW5 in the criminal court has also been awarded compensation of Rs. 3,500/- by the criminal court out of the fine amount and that he has not chosen to file any appeal, seeking for any enhancement. He also submitted that during the trial before the Criminal Court, the petitioner has suppressed the filing of this writ petition, claiming compensation and therefore, he has not approached this Court with clean hands. For all these reasons, he prayed for dismissal of the writ petition. This Court has gone through the judgment in C.C. No. 6/2004 on the file of the Learned Principal District & Sessions Judge, Madurai and is of the view that there is no necessity for this Court to readjudicate as to whether there was

any torture, violation of fundamental and human rights guaranteed under the Constitution of India. On the aspect of illegal detention, torture, humiliation, violation of human rights, the averments made in the writ petition and the complaint are more or less the same. However, the facts pleaded in this writ petition and deduced by the criminal court, after considering the evidence of the mother of the petitioner and others in C.C. No. 6/2004 on the file of the Learned Principal District & Sessions Judge, Madurai, requires reproduction. -

She had deposed that on 17.04.2003, the Inspector of Police, Kalifulla along with constables took her son Anand in a Jeep to Kadupatti Police Station and they refused Mari to see the other son Anand in the police station and he was informed that Anand was taken to Sholavandan police station on 18.4.2003 and again he came to know that the police have taken Anand to Kadupatti police station on 19.4.2003 and no one was allowed to see him and that on 21.4.2003 at about 2.00 a.m. Inspector Kalifulla along with policemen came to her house and took her and her minor daughter Priya in the jeep and since the ward member Pandian and other neighbours protested for taking the ladies in the mid night the Inspector of Police dropped her and her daughter from the jeep and also abused in filthy language and took her son Mari in the police jeep and sent back after half an hour and that she had sent several telegram to higher officials and also preferred complaint to the Human Rights Court on 21.4.2003 and that her son Anand came from the police station on 22.4.2003 at about 12.00 mid night and from him she came to know that the police have tortured him and also beat him and his right thumb was fractured due to the torture given by the Inspector of Police and that there was contusion all over the body of her son Anand and the right thumb was swollen and he could not even take his meals and that she took her son Anand to Government Rajaji Hospital, Madurai, on 23.4.2003 and admitted him for treatment and he was admitted as an inpatient for 21 days and operation was conducted on the right thumb and plates were inserted. She has further stated that since right thumb was fractured he could not drive the car as before. She has also produced Ex. P1 series of acknowledgement card and postal receipt for the complaint she has preferred to the Human Rights Court and other higher police and revenue officials. Ex. P2-series is the copy of the complaint preferred by the petitioner to Home Secretary, Tamil Nadu Government and Ex. P3 is the acknowledgement card for the complaint sent to Additional D.G.P. and also to Human Rights Judge, and that Ex. P4 is the medical records to show that her son Anand was treated at the Government Rajaji Hospital and an operation was conducted for his right thumb.

4. The discussion on the evidence let in by PW1- mother of the victim and others, including PW5- the petitioner herein and the finding of the Human Rights Court, culminating into conviction and imposition of fine and payment of compensation from out of fine directed to be paid to the petitioner u/s 357(1) of the Criminal Procedure Code, are extracted hereunder :-

THE POINT: - The only point for determination is whether the accused had beat

PW5 Anand and caused grievous injury to his right thumb as alleged by the complainant. There was a case registered as girl missing at Sholavandan Police Station. It was alleged that one Pandiarajan kidnapped a girl at Sholavandan. PW5 is a taxi driver. The accused who was the Inspector of Police Sholavandan Police Station for the purpose of investigation in the said Kadupatti case took PW5 to the police station on the pretext of enquiry, on 17.4.2003. This fact was spoken to by PW1, the mother of PW5 Anand PW2 the brother of Anand, and PW3 the sister of Anand and PW4 the ward member of Sholavandan and also by PW5 Anand himself. PW2 the brother of PW5 had deposed that since Anand did not return to the house he along with PW4 a ward member of Sholavandan Panchayat went to Kadupatti Police Station on 18.4.2003, to Sholavandan Police Station on 19.4.2003. On 20.4.2003 to Samayanallur Police Station to see his brother and his brother Anand returned to his house only on 22.4.2003 midnight with swelling all over his body. The fact that the brother of PW5 Anand Viz., Mari went to the abovesaid police station in search of Anand was corroborated by PW4 Pandian a ward member of Sholavandan Panchayat. PW5 the victim Anand has categorically stated what had happened to him from 17.4.2003 to 21.4.2003 in Kadupatti Police Station. He has stated that with the help of waist rope the accused Inspector of Police tied his right thumb bending backward and beat with lathi causing fracture on the right thumb and due to it he could not even take his meals with the help of right hand and he has also spoken to the fact that on the pretext of interrogation the Inspector of Police, Kalifulla beat him with lathi all over his body and only after hearing the news through telephone that missing girl was rescued he allowed him to go to his house in the midnight of 21.4.2003 and that he came to the house that on seeing injuries all over the body his mother PW1 took him to the hospital and the fact that Anand PW5 was admitted in Madurai Government Rajaji Hospital and was spoken to by PW6 the Doctor who had treated him and from Ex. P5 wound certificate issued by PW6 the Doctor it is seen that the right thumb bone of PW5 was fractured and a surgery was conducted and plates were inserted to set right the fracture. The X-rays taken to PW5 are M.O. 1. series. So it is clear from the evidence of PWS 1 to 6 that the accused had committed an offence u/s 324 IPC r/w 30 of Human Rights Act. Even at the fag end of the 21st century the police are still resorting to third degree methods while interrogating such type of minor offences, without seeking scientific aids like lie detector etc. The act of the accused who is none less than an experienced Gazetted Police Officer, without following the fundamental rights enshrined in the Constitution of India had violated all rules and regulations had tortured and fractured the right thumb of PW5 Anand on the pretext of investigation in a kidnapping case in which PW5 Anand is not the main accused. Hence I hold on the point that the guilt u/s 324 IPC r/w 30 of Human Rights Act has been proved beyond any reasonable doubt. The point is answered accordingly.

When questioned about sentences the accused said that this case has been foisted against him. But the evidence of the injured PW5 corroborated with the

medical evidence of PW6 proves the guilt against the accused.

In the result the accused is convicted u/s 324 IPC r/w 30 of Human Rights Act to pay a fine or Rs. 4000/- in default to undergo one year rigorous imprisonment. Out of the fine amount of Rs. 3500/- is to be paid to PW5 as compensation u/s 357(1) Cr.P.C.

M.O. 1 series X-ray films is order to be kept with the case bundle.

5. The narration of events from 17.04.2003 till the midnight of 22.04.2003, when the petitioner was set free, makes it clear that the petitioner has been taken to the police station on 17.04.2003 in connection with a case registered as girl missing on the file of Sholavandan Police Station and using a waist rope, the Inspector of Police has tied his right thumb bending backward and beaten him with lathi causing fracture on the right thumb and due to which, the petitioner could not even take his meals with the help of his right hand. Till the missing girl was rescued, the petitioner has been kept in illegal detention and on the pretext of interrogation, the Inspector of Police has beaten the petitioner with lathi all over his body. Thereafter, PW5- the petitioner herein, has been admitted in Madurai Rajaji Government Hospital and PW6 Doctor, who treated him, has deposed that the right thumb bone of the petitioner has been fractured and that a surgery has been done, plates were inserted to set right the fracture. M.O. 1-X-Ray series have also been filed before the Human Rights Court. Mother of the victim has also spoken to the effect that there was contusion all over the body of the petitioner and the right thumb was swollen. Evidence has been let in to prove that he has been treated in Government Hospital, Madurai, for 21 days. Before the Criminal Court, copy of petition of Tmt. Malliga, sent to the Superintendent of Police, Madurai has been marked as Ex. P1. Ex. P2 is the copy of petition of Tmt. Malliga, sent to the Home Secretary, Madras, Ex. P3 is the copy of petition of Tmt. Malliga, sent to the Additional Director General of Police, Human Rights Commission, Madras, Ex. P4 is the medical records to show that the petitioner was treated as an inpatient in Government Rajaji Hospital, Madurai, for 21 days and that an operation has been performed in his right thumb. PW3- minor girl Priya, has been permitted to depose after ascertaining her mental capacity. The Court has recorded her evidence as follows :-

That on 17.04.2003, at 8.00 P.M. Inspector of Police kalifulla took her brother Anand to the Police Station and he was not allowed to see by any of the inmates of the house. On 21.04.2003 at 02.00 A.M. Inspector of Police, Kalifulla along with 5 constables come to the house and abused her and her mother and due to the timely intervention of the neighbours and ward member Pandian left them in the house and that she saw her brother only on 22.04.2003 at 12,00 mid night with swelling all over his body and he, mother took Anand to Government Rajaji Hospital on 23.04.2003 and admitted him for treatment for nearly 20 days.

6. The inhuman behaviour of the 5th respondent resorting to third degree methods while interrogating the petitioner, torture, physical assault, has been

held as proved beyond all reasonable doubt. The relief sought for in this writ petition i.e., a Writ of Mandamus, directing the Human Rights and Social Justice C.I.D., which is under the control of the Additional Director General of Police, Human Rights and Social Justice CID, Anna Nagar West, Chennai. (Now Greenways Road, Chennai, 2nd respondent herein, to investigate into the matter, on the basis of the petitioner's complaint dated 14.05.2003 and to prosecute the 5th respondent and other policemen, who have illegally detained and brutally attacked the petitioner, no longer survives. The further direction to the respondents 1 to 3, to take departmental action against the 5th respondent and other policemen who abetted him, also no longer survives, in view of the judgment rendered in C.C. No. 6/2004 on the file of the Learned Principal District & Sessions Judge, Madurai. Pursuant to the departmental proceedings initiated against the 5th respondent, under rule 3(b) of the Tamil Nadu Police Subordinate Service Rules, in P.R. No. 104/2005, and finding that the delinquent was guilty of misconduct, vide order in Rc. No. B1/1361 /EOW/2007 dated 11.02.2008, the Inspector General of Police, EOW-II, Chennai-2, the disciplinary" authority has awarded a punishment of censure- deferred for six months. It is also brought to the notice of this Court that the 5th respondent has been subsequently promoted as Deputy Superintendent of Police. Though violation of the human rights of illegal detention, torturing the petitioner mercilessly, causing physical injuries all over his body, including a fracture, and the manner in which the fracture has been caused, have been elaborately discussed and proved in the criminal court, the Inspector General of Police, EOW-II, Chennai, the disciplinary authority, has taken a lenient view, considering the plea that the delinquent was undergoing mental agony of facing a criminal trial and of the fact of imposition of fine of Rs. 4,000/- by the District and Sessions Court, Madurai. It is unfortunate and sorry state of affairs that the said authority has failed to take into consideration the harassment, humiliation, torture and illegal detention, injuries sustained by the petitioner, period of treatment and the threat given to the petitioner and his family members. Violation of human rights and other aspects extensively dealt with by the Human Rights Court, have not been taken note of, in proper perspective by the Inspector General of Police, EOW-II, Chennai-2 and he has only considered the mental agony of the 5th respondent. Though the Human Rights Court has categorically analysed the evidence and came to a conclusion that the 5th respondent has violated the fundamental rights, by torture, illegal detention, etc, the Inspector General of Police, EOW-II, Chennai-2, has dealt with the misconduct in a very light manner describing it as alleged illegal detention. When a competent criminal Court has recorded the evidence of the witnesses regarding illegal detention and torture, the disciplinary authority has simply sit in over the judgment by describing it an alleged illegal detention. Mental agony of the man in uniform of facing criminal trial and receipt of certain awards by the 5th respondent appears to have been the consideration and mitigating factors for dealing with the delinquent in a lenient manner, and the said authority in the opinion of the Court has closed his mind and heart, and failed to visualise, as to how the petitioner would have been treated, beaten up, while he was under

illegal detention from 17.04.2003, till he was set free on 22.04.2003 midnight.

7. As pointed out earlier, during trial in C.C. No. 6/2004, Ex. P1 -copy of petition of Tmt. Malliga, sent to the Superintendent of Police, Madurai, Ex. P2- copy of petition of Tmt. Malliga, sent to the Home Secretary, Madras, Ex. P3- copy of petition of Tmt. Malliga, sent to the Additional Director General of Police, Human Rights Commission, Madras, Ex. P4- Wound Certificate of the petitioner, Ex. P5- Private Wound Certificate, Ex. P6- Acknowledgement Card (ADSP), Ex. P7- Acknowledgement Card (Home Secretary), Ex. P8- Acknowledgement Card (DGP Madras), Ex. P9-Acknowledgement Card (SP Madurai), have been marked. When representations have been acknowledged, none of the authorities have come forward to enquire into the matter, until a petition has been filed u/s 200 Criminal Procedure Code read with Section 30 of the Human Rights Act, 1993. It only reflects the mindset and unrealistic approach in respecting human rights. Though the Apex Court has consistently held that the police training should be re-oriented to bring a change in the mind and attitude of the police personnel with regard to investigation and that they should duly recognise and respect human rights and also directed, stern and speedy action to be taken against the police personnel, who have indulged in custodial violence, failure to respect human rights, adherence to law, a case of this nature has been dealt with by the disciplinary authority, as if it was a minor misconduct warranting only censure. If illegal detention and beating a person mercilessly, by causing a fracture, could be treated as if it was a minor misconduct and if a person found guilty and convicted of offence, causing grievous injury, can be rewarded with a promotion as Deputy Superintendent of Police, then, conviction in a criminal case of this nature or any other crime can also be considered as one of the positive factors, in favour of such policemen, for assessing his merit and ability, a factor considered for a selection post.

8. Reverting back to the issues raised, let me now consider the objections of the respondents to the relief sought for in this writ petition. A counter affidavit has been filed by the 5th respondent, denying the averments relating to illegal detention, torture and physical assault. As stated supra, there is no need to advert to the same, in view of the specific finding recorded by the Human Rights Court.

9. One of the objections of Mr. D. Krishna kumar, learned counsel appearing for the 5th respondent is that the petitioner having been compensated with a sum of Rs. 3,500/- from out of the fine amount of Rs. 4,000/- imposed against the 5th respondent and having not chosen to seek for an enhancement by way of an appeal, the petitioner is not entitled to prefer a separate writ petition for compensation of Rs. 5,00,000/- against the state for the acts alleged to have been committed by the 5th respondent. According to him, the learned trial Judge has rightly considered the quantum of compensation to be awarded and therefore, there is no need to award a separate compensation or enhancement. He also submitted that the victim himself was one of the witnesses, PW5, in C.C.

No. 6/2004, on the file of the Learned Principal District & Sessions Judge, Madurai and he has suppressed the fact of filing of the present writ petition, before the criminal Court. The writ petition has been filed on 10.12.2002 by the petitioner. Mother of the petitioner has filed a petition before the Human Rights Court for prosecution of the policemen. The Court has found the 5th respondent guilty. When the 5th respondent alleges suppression, he has to prove that the petitioner who has approached this Court for an equitable remedy, has willfully and deliberately suppressed material fact, and abused the process of this Court. The jurisdiction of this Court is extraordinary, equitable and discretionary and a writ petition filed complaining violations of Article 21 of the Constitution of India, particularly human rights, cannot simply be thrown out. The Court is bound to consider the facts and circumstances of the case in entirety and arrive at a conclusion, as to whether there would be miscarriage of justice, if the relief sought for is declined to a victim, who has approached this Court, after approaching all the authorities. It is a settled legal position that suppression and furnishing of twisted facts should be apparent and writ large and that the same should be material for the purpose of determination of the lis, the logical corollary whereof would be the same should be material for grant or refusal of the relief prayed. The filing of the writ petition is much earlier to the criminal complaint preferred by the mother. Prima facie, therefore it cannot be said that the petitioner has suppressed any fact in this writ petition, at the time of filing. At this juncture, it is also to be noted that the 5th respondent who had received the rule nisi from this Court, in this writ petition on 05.07.2003 has also not brought before the notice of the criminal court about the pendency of this writ petition, claiming the relief stated supra. The subsequent complaint preferred by the mother of the petitioner would not in any way affect the right of the petitioner to claim compensation under public law remedy. Therefore, the objection of the 5th respondent that the writ petition has to be dismissed on the grounds of suppression is rejected.

10. On the aspects of right to life, violation of human rights, compensation to be awarded to a victim, power of the Supreme Court and the High Courts under Article 32 and 226 of the Constitution of India, to award compensation by way of public law remedy, maintainability of the writ petition, let me consider some of the decisions of the Supreme Court as well as this Court.

11. In *Palaniappa Gounder Vs. State of Tamil Nadu and Others*, the Supreme Court, while considering the compensation awarded by the courts below held that the compensation in question should be commensurate with the capacity of the accused to pay, as also other facts and circumstances of that case like the gravity of the offence, the needs of the victim's family etc. This Court also observed that it is clear that the jurisdiction of the court, to grant compensation is accepted by this Court.

12. In *Rudul Sah Vs. State of Bihar and Another*, , the Apex Court held as follows :

... But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioners rights. It may have recourse against those officers.

13. In Sebastian M. Hongray Vs. Union of India (UOI), , the Apex Court ordered payment of compensation to the wife of the victim who suffered torture, agony and mental oppression and in Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , the Apex Court held as follows :

We can only say that the police officers acted in a most high-handed way. We do not wish to use stronger words to condemn the authoritarian acts of the police. If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals Police officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. Any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in Rudul Sah v. State of Bihar (supra) and Sebastian M. Hongroy v. Union of India (supra). When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In

appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000 within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh.

14. In *M.C. Mehta and another Vs. Union of India and others*, dealing with a writ petition filed for closure of certain units, the Supreme Court observed that when violations of fundamental right is brought to the notice of the Court, then hypertechnical approach should not be avoided, to meet the ends of justice. The Apex Court has observed as follows :

The applications for compensation are for enforcement of the fundamental right to life enshrined in Art 21 of the Constitution and while dealing with such applications, a hyper-technical approach which would defeat the ends of justice could not be adopted. If the Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the Court for Justice, there is no reason why the applications for compensation which have been made for enforcement of the fundamental right of the persons affected by the oleum gas leak under Art. 21 should not be entertained. The Court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form.

15. In *Peoples' Union For Democratic Rights Through Its Secretary and Another Vs. Police Commissioner, Delhi Police Headquarters and Another*, there was report by the Deputy Commissioner, accepting the atrocities committed by the police officers and that the matter was investigated for criminal prosecution. In the above said circumstances, the Apex Court directed a sum of Rs. 50,000/- to be paid to the family of the deceased, as compensation which would be invested in a proper manner so that the destitute's family might get some amount every month towards their expenses.

16. In *Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, dealing with custodial death and compensation, the Hon'ble Supreme Court held as follows :

10. It is now apparent from the report dated December 5, 1987 of the Inspector of the Crime Branch, Delhi as well as the counter-affidavit of the Deputy Commissioner of Police, Delhi on behalf of the Commissioner of Police, Delhi and also from the fact that the prosecution has been launched in connection with the death of Naresh, son of Kamlesh Kumari showing that Naresh was done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the power vested in such agency. The mother of the child, Kamlesh Kumari, in our considered opinion, is so entitled to get compensation for the death of her son from respondent 2, Delhi Administration. -

11. An action for damages lies for bodily harm which includes battery, assault,

false imprisonment, physical injuries and death. In case" of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the SHO, Lal Singh and as such she is entitled to get the damages for the death of her son. It is well settled now that the State is responsible for the tortious acts of its employees. Respondent 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her son due to beating by the SHO of Anand Parbat Police Station, Shri Lal Singh.

12. It is convenient to refer in this connection the decision in *Joginder Kaur Vs. The Punjab State and Others* wherein it has been observed that:

In the matter of liability of the State for the torts committed by its employees, it is now the settled law that the State is liable for tortious acts committed by its employees in the course of their employment.

13. In *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, it has been held that:

Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer. The immunity of the Crown in the United Kingdom, was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and the Common Law immunity never operated in India.

14. In *Peoples' Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters (supra)* one of the labourers who was taken to the police station for doing some work and on demand for wages was severely beaten and ultimately succumbed to the injuries. It was held that the State was liable to pay compensation and accordingly directed that the family of the deceased labourer will be paid Rs. 75,000 as compensation.

15. On a conspectus of these decisions we deem it just and proper to direct the Delhi Administration, respondent 2 to pay compensation to Kamlesh Kumari, mother of the deceased, Naresh a sum of Rs. 75,000 within a period of four weeks from the date of this judgment. The Delhi Administration may take appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found responsible, if they are so advised. As the police officers are not parties before us, we state that any observation made by us in justification of this order shall not have any bearing in any proceedings specially criminal prosecution pending against the police officials in connection with the death of Naresh. The writ petitions are disposed of accordingly.

17. In *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, regarding the powers of the Court to grant compensation for deprivation of fundamental right, the Hon'ble Supreme Court has extensively considered the same and held as follows :

11. In *Rudul Sah v. State of Bihar (supra)*, it was held that in a petition under Article 32 of the Constitution, this Court can grant compensation for deprivation of a fundamental right. That was a case of violation of the petitioners right to personal liberty under Article 21 of the Constitution. Chandrachud, CJ., dealing with this aspect, stated as under: (paras 9 and 10)

It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for (sic) consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of Money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases.

The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioners rights. It may have recourse against those officers.

15. The decision of Privy Council in *Maharaj v. Attorney General of Trinidad and*

Tobago (No. 2), (1978) 2 All ER 670 is useful in this context. That case related to Section 6 of the Constitution of Trinidad and Tobago 1962, in the chapter pertaining to human rights and fundamental freedoms, wherein Section 6 provided for an application to the High Court for redress. The question was, whether the provision permitted an order for monetary compensation. The contention of the Attorney General therein, that an order for payment of compensation did not amount to the enforcement of the rights that had been contravened, was expressly rejected. It was held, that an order for payment of compensation, when a right protected had been contravened, is clearly a form of redress which a person is entitled to claim u/s 6, and may well be the only practicable form of redress. Lord Diplock who delivered the majority opinion, at page 679, stated:

It was argued on behalf of the Attorney General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in *Jaundoo v. Attorney General of Guyana*, 1971 AC 972: (1971) 3 WLR 13. Reliance was placed on the reference in the subsection to enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships view an order for payment of compensation when a right protected u/s 1 has been contravened is clearly a form of redress which a person is entitled to claim u/s 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction to hear and determine any application made by any person in pursuance of sub-section (1) of this section. The very wide powers to make orders, issue writs and give directions are ancillary to this.

Lord Diplock further stated at page 680, as under:

Finally, their Lordships would say something about the measure of monetary compensation recoverable u/s 6 where the contravention of the claimants constitutional rights consists of derivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone.

20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling

provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

30. On basis of the above conclusion, we have now to examine whether to seek the right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same matter which may be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress by awarding monetary damages for the infraction of the right to life.

31. It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either.

32. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the

Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that far the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve new tools to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence.... This is not the task for Parliament the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.

33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor 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.

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the

liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making monetary amends under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damages awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

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 Vs. State of Bihar and Another*, 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. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.

18. In (In the matter of Rajakannu, husband of the petitioner herein) R. Parvathi Vs. State of Tamil Nadu, , the petitioner's husband died while in custody. There was a claim for compensation for the injuries and the disappearance of body. They investigation was taken up at the direction of Court, by an officer of the rank of I.G. of Police revealing that dead body of victim was handed over to relatives as per the records in another crime number and identified therein by relatives. Indifference of men in power and senior police officers and causal approach of courts in the proceedings deprecated. Directions were given for payment of/compensation to the petitioner, for investment thereof to ensure monthly income to the petitioner and to petitioner's minor daughters and to the other victim who suffered assault badly at the hands of the 4th respondent and to her children. Permission was given to Government to recover the same from the 4th respondent and such other accused persons as may be determined in the event of a trial according to law.

19. In Kartar Singh Vs. State of Punjab, , the Hon"ble Apex Court held that use of the word "deprive" in Article 21 is of great significance. According to the dictionary, it means "debar from enjoyment"; prevent from having normal home life. Since deprivation of right of any person by this State is prohibited except in accordance with the procedure established by law, it has to be construed strictly against the State and in favour of the person whose rights are affected.

20. In Consumer Education and Research center and others Vs. Union of India and others, , the Apex Court held that the expression life assured in Article 21 of the Constitution of India, does not connote mere animal existence or continued drudgery through life.

21. In Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi, , the Apex Court held that right to life includes right to human dignity. The right against torture cruelty or unusual punishment or degraded treatment has been held to be violation of right to life.

22. In Kaka Singh Vs. State of Haryana, the Supreme Court while considering the violation of human rights, abduction and elimination of seven persons, by a police party led by Deputy Superintendent of Police, held as follows:

9. The Punjab Police would appear to have forgotten that it was a police force and that the primary duty of those in uniform is to uphold law and order and protect the citizen. If members of a police force resort to illegal abduction and assassination, if other members of that police force do not record and investigate complaints in this behalf for long periods of time, if those who had been abducted are found to have been unlawfully detained in police stations in the State concerned prior to their probable assassination, the case is not one of errant behaviour by a few members of that police force. We do not see that "constitutional culture" as Mr. Tulsi put it, had percolated to the Punjab Police. On the contrary it betrays scant respect for the life and liberty of innocent citizens and exposes the willingness of others in uniform to lend a helping hand to one

who wreaks private vengeance on mere suspicion.

10. This Court has in recent times come across far too many instances where the police have acted not to uphold the law and protect the citizen but in aid of a private cause and to oppress the citizen. It is a trend that bodes ill for the country and it must be promptly checked. We would expect the DGP, Punjab, to take a serious view in such cases if he is minded to protect the image of the police force which he is heading. He can ill-afford to shut his eyes to the nose-dive that it is taking with such ghastly incidents surfacing at regular intervals. Nor can the Home Department of the Central Government afford to appear to be a helpless silent spectator.

23. In *State of M.P. Vs. Shyamsunder Trivedi and Others*, the Hon'ble Supreme Court considered the case of custodial death or police torture, the availability of direct ocular evidence of the complicity of the police personnel and the ground reality in such matters where the police personnel, would remain silent and more often than not even pervert the truth to save their colleagues. The Apex Court held as follows :-

... The High Court erroneously overlooked the ground reality that rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available, when it observed that direct evidence about the complicity of these respondents was not available. Generally speaking, it would be police officials alone who can only explain the circumstances in which a person in their custody had died. 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, and the present case is an apt illustration, as to how one after the other police witnesses feigned ignorance about the whole matter.

17... 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 belief 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. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in Khaki to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may

lose faith in the judiciary itself, which will be a sad day."

24. In *P. Amaravathy Vs. The Government of Tamil Nadu and Others*, where the petitioner's husband died in police custody. She sought for a Mandamus directing the official respondents therein, to register a case against private respondents 5 to 10 and hand over the investigation to CBI and also for a direction to the first respondent therein, to pay a sum of Rs. 20 lakhs, by way of compensation, for the custodial death of her husband. Taking note of the circumstances of the case, this Court ordered compensation of Rs. 1,00,000/- by way of interim compensation to be adjusted at a later stage.

25. In a historical judgment of *Dilip K. Basu Vs. State of West Bengal and others*, the Supreme Court, at paragraphs 22, 36, 37 and 39 has held as follows :

22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic "No". The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

37. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

39. The requirements mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements

on All India Radio besides being shown on the National Network of Doordarshan any by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes....

26. In *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, the issue before the Supreme Court was regarding the direction given by the High Court to pay a sum of Rs. Five lakhs as compensation to the parents of each of the children who died on account of drowning while they were in the custody of the school authorities. While considering the maintainability of the Writ Petition for payment of compensation, Supreme Court indicated the march of law on the subject of public law remedy thus:

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 told 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.

27. In *Rabindra Nath Ghosal Vs. University of Calcutta and Others*, , again indicated the obligation of Courts to meet the social aspiration of the people thus :

9. The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 225 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages

against, public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties, unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act.

28. In *Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and Another*, the Supreme Court dealt with the case of custodial violation of a policeman, resulting in death. Explaining the scope of Fundamental Rights under Article 21, dealing with personal right and liberty and tracing down the protection guaranteed under the Universal Declaration of Human Rights, 1948, Hon'ble Mr. Justice Arijit Pasayat, has made following observations :

2. Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

3. If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from rooftops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens rights.

4. Article 21 which is one of the luminary provisions in the Constitution of India, 1950 (in short the Constitution") and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The Article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. Chapter v. of the Code of Criminal Procedure, 1973 (for short the Code) deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is therefore difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing

torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of rule of law and administration of criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetuated by the protectors of law. Justice Brandies's observation which have become classic are in following immortal words:

Government as the omnipotent and omnipresent teacher teaches the whole people by its example, if the Government becomes a law breaker, it breeds contempt for law, it invites every man to become a law unto himself (in (1928) 277 U.S. 438 ,quoted in (1961) 367 U.S. 643 at 659).

5. The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because the guardians of law destroy the human rights by custodial violence and torture, invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in *Raghubir Singh Vs. State of Haryana*, case more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in *Gauri Shanker Sharma etc. Vs. State of U.P. etc.*, *Bhagwan Singh and another Vs. State of Punjab*, *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, *Pratul Kumar Sinha Vs. State of Bihar and another*, (1994) Supp. (3) SCC 100 , *Kewal Pati (Smt) Vs. State of U.P. and Others*, *Inder Singh Vs. State of Punjab and others*, *State of M.P. Vs. Shyamsunder Trivedi and Others*, and by now a celebrated decision in *D.K. Basu Vs. State of West Bengal*, seems to have caused not even any softening attitude to the inhuman approach in dealing with persons in custody.

6. Rarely, in cases of police torture or custodial death is there direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. 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 and the present case is an apt illustration as to how one after the other police witnesses feigned ignorance about the whole matter.

7. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. 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 at times of the courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in "khaki" to consider themselves to be above the law and some times even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and civilization itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens will be a sad day for anyone to reckon with.

8. Though Sections 330 and 331 of the Indian Penal Code, 1860 (for short "IPC") make punishable those persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows from the track record have been very few compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces or any ocular or other direct evidence to prove as to who the offenders are. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act, 1872 (in short "the Evidence Act") 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 the 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. Keeping in view the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in 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 custodial crime but also to see that 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 the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.

9. But at the same time there seems to be a disturbing trend of increase in cases where false accusations of custodial torture are made, trying to take advantage of the serious concern shown and the stern attitude reflected by the courts while dealing with custodial violence. It needs to be carefully examined whether the allegations of custodial violence are genuine or are sham attempts to gain undeserved benefit masquerading as victims of custodial violence. The case in hand is a unique case in the sense that the complainant filed a complaint alleging custodial torture while the accused alleged false implication because of oblique motives.

About the torture in police custody, the Apex Court has further observed, as follows :

Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times of the courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees under trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in Khaki" to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which if it happens will be a sad day, for any one to reckon with."

In the above reported case, considering the plight of the legal representatives of the deceased, the Supreme Court has awarded 1,00,000/- to be paid by the State and further observed that, "the said amount of compensation shall be as a palliative measure and does not preclude the affected person from bringing a suit to recover appropriate damages from the State Government and its erring officials, if such a remedy is available in law. The suit it goes without saying, if filed, shall be decided in accordance with law, uninfluenced by any finding,

observation or conclusion herein.

The views expressed in *Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble* (Supra), have been restated in *Munshi Singh Gautam (D) and Others Vs. State of M.P.*, (1) Apex Criminal 202 : AIR 2005 SC 402 : 2005 (9) SCC 631: LNIND 2004 SC 1140.

29. In *Ozair Husain Vs. Union of India (UOI) and Secretary, Ministry of Health and Family Welfare*, the High Court held that life and liberty have to be given paramount importance by Courts. The Court has held that above rights have to be held to be treated as fundamental, over all other attributes of the political and social order and consequently, the legislature, the executive and the judiciary are to be more sensitive to them", than to other attributes of daily existence.

30. In *Lakshmana Naidu (deceased) and Others Vs. The State of Tamil Nadu*, , legal heirs of three persons sought for a Mandamus, directing the respondents therein to pay a sum of Rs. 5 lakhs each, as compensation for the loss and suffering caused by the officials of the Forest Department due to their torture, murder and burning of the said three persons. In this case, prosecution as well as departmental proceedings were initiated, following which, the officials of the Forest Department were dismissed from service. The Sessions Court, Salem also convicted some of the accused to undergo life imprisonment and acquitted others. Following the Division Bench decision of this Court in *K. Kabali @ Kabaleeswaran v. State of Tamil Nadu and others*, 2006 (2) TLNJ 33, where the Division Bench, after referring to a number of judgments of the Hon'ble Supreme Court, as well as this Court held that, where public functionaries are involved and the matter relates to violation of fundamental rights or enforcement of public duties, the aggrieved person can very well approach this Court for necessary relief, including compensation under Article 226 of the Constitution of India and after considering the decision of the Hon'ble Supreme Court in *Malkiat Singh Vs. State of U.P.*, and this Court in *Smt. R. Dhanalakshmi Vs. Government of Tamil Nadu and Others*, , awarded compensation to the victims.

31. In *Sube Singh Vs. State of Haryana and Others*, , the Supreme Court considered a writ petition filed under Article 226 of the Constitution of India, directed against the State and six other Police Officers, alleging detention, physical assault, violation of human rights were some of the matters considered. One of the issues considered by the Supreme Court, was regarding payment of compensation, when there is an infringement of Article 21 of the Constitution of India. While dealing with the same, as a public law remedy, the Supreme Court considered several decisions, which are reproduced hereunder :-

13. In the *Khatri and Others Vs. State of Bihar and Others*, Bhagwati J., (as he then was), speaking for the Bench, posed the following question while considering the relief that could be given by a court for violation of constitutional rights guaranteed in Article 21 of the Constitution :-

... but if life or personal liberty is violated otherwise than in accordance with such

procedure, is the Court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty.

The question was expanded in a subsequent order in Bhagalpur Blinding case, [Khatri (II) v. State of Bihar (supra), thus :-

If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the court for injuncting the State from acting through such officer in violation of his fundamental right under Article 21 ? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action ? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who is aggrieved can move the court under Article 32 for a writ injuncting such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him ? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the court for enforcement of his fundamental right, the court cannot give him any relief.

Answering the said questions, it was held that when a court trying the writ petition proceeds to inquire into the violation of any right to life or personal liberty, while in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation. This Court clarified that the nature and object of the inquiry is altogether different from that in a criminal case and any decision arrived at in the writ petition on this issue cannot have any relevance much less any binding effect, in any criminal proceeding which may be taken against a particular police

officer. This Court further clarified that in a given case, if the investigation is still proceeding, the Court may even defer the inquiry before it until the investigation is completed or if the Court considered it necessary in the interests of Justice, it may postpone its inquiry until after the prosecution was terminated, but that is a matter entirely for the exercise of the discretion of the Court and there is no bar precluding the Court from proceeding with the inquiry before it, even if the investigation or prosecution is pending.

14. In *Rudul Sah v. State of Bihar* (supra), the petitioner therein approached this Court under Article 32 of the Constitution alleging that though he was acquitted by the Sessions Court on 3.6.1968, he was released from jail only on 6.10.1982, after 14 years, and sought compensation for his illegal detention. This Court while recognizing that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal, raised for consideration the important question as to whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for payment of money, as compensation for the deprivation of a fundamental right. This Court answered the question thus while awarding compensation :-

Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

Rudul Sah was followed in *Bhim Singh v. State of J & K* (supra) and *Peoples' Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters* (supra).

The law was crystallized in *Nilabati Behera v. State of Orissa* (supra). In that case, the deceased was arrested by the police, handcuffed and kept in a police custody. The next day, his dead-body was found on a railway track. This Court awarded compensation to the mother of the deceased. J.S. Verma J., (as he then was) spelt out the following principles :-

Award of compensation in a proceeding under Article 32 by this Court or by the

High Court under Article 226 of the Constitution is a remedy available in public law, based (sic) strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort "resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution.

[Emphasis supplied]

Dr. A.S. Anand J., (as he then was) in his concurring judgment elaborated the principle thus :-

... Convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody.

The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation " in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong

on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends "under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

16. In *D.K. Basu v. State of West Bengal* (supra), this Court again considered exhaustively the question and held that monetary compensation should be awarded for established infringement of fundamental rights guaranteed under Article 21. This Court held :-

Custodial violence, including torture and death in the lock ups strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.

Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilized nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him ? Can the right to life of a citizen be put in abeyance on his arrest.... The answer, indeed, has to be an emphatic "No".

Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it."

17. It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation u/s 357 of Code of Civil Procedure.

18. This takes us to the next question as to whether compensation should be awarded under Article 32/226, for every violation of Article 21 where illegal detention or custodial violence is alleged.

Whether compensation should be awarded for every violation of Article 21

19. In *M.C. Mehta v. Union of India* (supra), a Constitution Bench of this Court while considering the question whether compensation can be awarded in a petition under Article 32, observed thus :-

We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue act in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32....

If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation.

(Emphasis supplied)

In Nilabati Behera (supra), this Court put in a word of caution thus :-

Of course, relief in exercise of the power under Article 32 or 226 would be granted only (when) 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. 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.

(Emphasis supplied)

In D.K. Basu (supra), this Court repeatedly stressed that compensation can be awarded only for redressal of an established violation of Article 21. This Court also drew attention to the following aspect:

There is one other aspect also which needs our consideration. We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hard core criminals like extremists, the terrorists, drug peddlers, smugglers who have organized, gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalization and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation, it is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go scot-free without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worst than the disease itself.

[Emphasis supplied]

In Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble (supra) and Munshi Singh Gautam v. State of M.P. (supra), this Court warned against non- genuine claims :

But at the same time there seems to be a disturbing trend of increase in cases where false accusations of custodial torture are made, trying to take advantage of the serious concern shown and the stern attitude reflected by the courts while

dealing with custodial violence. It needs to be carefully examined whether the allegations of custodial violence are genuine or are sham attempts to gain undeserved benefit masquerading as victims of custodial violence.

In *Dhananjay Sharma Vs. State of Haryana and Others*, , this Court refused compensation where the petitioner had exaggerated the incident and had indulged in falsehood. This Court held :

Since, from the report of the CBI and our own independent appraisal of the evidence recorded by the CBI. we have come to the conclusion that Shri Dhananjay Sharma and Sushil Kumar had been illegally detained by respondents 3 to 5 from the afternoon of 15.1.94 to 17.1.94, the State must be held responsible for the unlawful acts of its officers and it must repair the damage done to the citizens by its officers for violating their indivisible fundamental right of personal liberty without any authority of law in an absolutely high-handed manner. We would have been, therefore, inclined, to direct the State Government of Haryana to compensate Dhananjay Sharma and Sushil Kumar but since Sushil Kumar has indulged in falsehood in this Court and Shri Dhananjay Sharma, has also exaggerated the incident by stating that on 15.1.94 when he was way laid along with Sushil Kumar and Shri S.C. Puri, Advocate, two employees of respondents 6 and 7 were also present with the police party, which version has not been found to be correct by the CBI, they both have disintitiled themselves from receiving any compensation, as monetary amends for the wrong done by respondents 3 to 5, in detaining them We, therefore do not direct the payment of any compensation to them.

However, on the facts of the above case, the Supreme Court did not award any compensation. At Paragraphs 20 to 24, the Supreme Court cautioned about false and motivated claims and ordered 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 any 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 interests 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.

32. In *C. Thekkamalai Vs. State of Tamil Nadu*, :: 2006 CrL.J. 1997: : LNIND 2005 SC 1631 :: (2006) I MLJ 108, a writ petition was filed on behalf of Thekkamalai and his wife, Lakshmi, to direct the Government to pay a fair and reasonable amount as compensation to Lakshmi and Thekkamalai, to provide adequate and suitable rehabilitative measures to them, to appoint a Special Public Prosecutor with the consent of the Chairman of the Tamil Nadu Legal Aid Board for conducting the trial on the file of the learned 1st Assistant Sessions Judge, Trichy and to provide adequate personal protection to the abovesaid persons. It was a case of rape committed by the Sub-Inspector of Police. The trial Court convicted the accused and directed him to pay Rs. 2,00,000/- and Rs. 50,000/- to Lakshmi and Thekkamalai respectively. This Court, on appeal, confirmed the same. In the writ petition filed, the Division Bench enhanced the compensation to Rs. 5,00,000/-. Taking note of the amount of Rs. 85,000/- already paid to the victims, the Division Bench directed the accused to deposit the balance amount in a fixed deposit. Thus from the above judgment, it could be seen that even after the finality of the criminal case, this Court in exercise of the powers under Article 226 of the Constitution of India, has enhanced the quantum of compensation to the victim. Therefore, even in a case, where the Court sitting under the appellate jurisdiction, to adjudicate the correctness of the judgment, sentencing and imposing a fine on the accused, has not enhanced the

quantum of compensation, considering the nature of infringement, i.e., violation of Article 21 of the Constitution of India, the Writ Court, has enhanced the quantum of compensation.

33. In *Shri Dino DG Dympep and Another Vs. State of Meghalaya and Others*, the High Court held as follows:

14. Having come to the conclusion that the deceased died due to custodial violence, the next question to be determined what is to be done by this Court on the facts and circumstances of the case. Since a case of breach of fundamental right to life guaranteed by Art. 21 of the Constitution by the State and its instrumentality has been made out, the award of compensation against the State respondents can only be the appropriate and effective remedy. The relief of monetary compensation as exemplary damages, in a proceeding under Article 226 by the High Court for established infringement of the enforceable right guaranteed under Article 21 of the Constitution is undoubtedly a remedy available in public law and is based on strict liability for contravention of the guaranteed basic and inalienable right of the citizen. To quote the Apex Court, the purpose of public law is not only to civilize public power but also to assure the citizen they live under a legal system which aims to protect their interests and preserve their rights. When therefore, the Court moulds the relief by granting compensation in proceeding under Article 226 of the Constitution seeking enforcement and protection of fundamental rights, it does so under the public law by way of penalizing the wrong doer and fixing the liability for the public wrong doer on the State which has failed in its duty to protect the fundamental right of the citizen. The payment of compensation in such a case is not to be understood, as it is generally understood general interest in a civil action for damages under the public law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damages awarded against the wrongdoer for breach of public duty and is independent of the rights available to the aggrieved party to claim compensation under the prevalent law through a suit instituted in a court of competent jurisdiction. The quantum of compensation will, however, depend on the facts and circumstances of the case. In the instant case, the deceased was 27 years old at the time of his death, was a daily wage earner and is surviving by his wife and two minor children. Considering the condition of the deceased and the circumstances in which he died. I am of the view that a compensation of Rs. 3 lakhs will meet the ends of justice.

15. For what has been stated above, this writ petition is allowed. The State-respondents are directed to pay a compensation of Rs. 3,00,000/- (Rupees three lacs) only to the petitioner No. 2 within a period of two months from the date of receipt of this judgment. The State-respondents shall also hold an enquiry to find out the police personnel involved in the custodial death of the deceased. The amount of compensation paid to the petitioner No. 2 may be realized by the

State-respondents from the police personnel found to be involved in the custodial death of the deceased. It shall also be open to the petitioner to approach a civil Court for compensation/damage available under the law of tort.

34. In *Union Territory of Pondicherry v. M. Latchumanan*, 2007 (4) MLJ 274, a Division Bench of this Court considered a case, where there was a custodial violence, in which, the respondents therein sustained injuries. One of the objections in the writ petition was that when there is an alternative remedy of approaching the Civil Court, the writ petition, seeking for compensation is not maintainable. Placing reliance on the decisions of the Apex Court in *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, and *Sube Singh v. State of Haryana* (supra), this Court, at Paragraphs 12 and 13, held as follows:

12. The contention regarding alternative remedy of approaching the civil Court does not merit acceptance at least in this case. It has been repeatedly held by the Courts that the burden of disproving custodial violence is on the police, if it is established that the injuries were sustained while in the custody of the police, that is, in this case, it is true that the petitioner sustained injuries while in custody. For all the various reasons stated, the attitude of the police in furnishing contradictory and conflicting statements of facts, is sufficient to hold that no useful purpose would be served in driving the victim to the civil Court. The availability of alternative remedy under ordinary law is no bar for the High Court to exercise its power and to grant compensation in appropriate cases vide *Chairman, Railway Board v. Chandrima Das* (supra), more so in a case of this type in which the available materials clearly indicate that the action of the respondents is culpable.

13. With regard to compensation, the same would be awarded only against the Officials, who had actually been the cause for the violence. But, in this case, as the Superintendent of Police had chosen to file a counter affidavit justifying their conduct, there is no other alternative except to direct the State to pay the compensation. Hence, the compensation of Rs. 60,000/- awarded by the learned single Judge is perfectly justified.

With regard to maintainability of the writ petition and the quantum of compensation, the Division Bench, at Paragraph 14 of the abovesaid judgment, extracted the observations made by the Apex Court in *Sube Singh v. State of Haryana* (supra), as follows :

31. Though illegal detention and custodial torture were recognised as violations of the fundamental rights of life and liberty guaranteed under Article 21, to begin with, only the following reliefs were being granted in the writ petitions under Article 32 or 226 :

(a)...

(b)...

(c) if the enquiry or action taken by the department concerned was found to be not satisfactory, to direct an inquiry by an independent agency, usually the Central Bureau of investigation.

Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades.

38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil Court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal Court ordering compensation u/s 357 of the code of Criminal Procedure.

49. 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....

35. In *Coimbatore Bar Association Vs. State of Tamil Nadu and Others*, a practicing advocate and member of the association, sustained injuries. The second petitioner therein claimed compensation of Rs. 10 Lakhs for insult, physical attack and for violation of human rights. This Court appointed Hon'ble Mr. K.P. Sivasubramaniam, as Commissioner to enquire into the alleged incident. On receipt of the report and after considering various issues, inter alia, as to whether, the High Court under Article 226 of the Constitution of India can award compensation, a Division Bench, after considering a catena of decisions, at Paragraph 9, held as follows :

The human rights of the second petitioner were violated with impunity and he is entitled to be suitably and adequately compensated. The power of the Court to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of the Supreme Court in *Rudal Sah v. State of Bihar* (supra); *Sebastian M. Hongray v. Union of India* (supra), *Bhim Singh v. State of Jammu & Kashmir* (supra); *Saheli, A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters* (supra) and *State of Maharashtra and Others Vs. Ravikant S. Patil, In Smt. Nilabati Behera alias Lalita Behera v. State of Orissa and Others* (supra), the Supreme Court after examination of the earlier cases, clearly laid down that the award of compensation in a proceeding under Article 32 of the Constitution by the Supreme Court or under Article 226 by the High Court is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. The same view

was reiterated in *Consumer Education and Research Centre and Others v. Union of India and others* (supra). In a recent judgment in *Chairman, Railway Board and Others v. Ms. Chandrima Das and Others* (supra) the Supreme Court observed where public functionaries are involved and the matter relates to violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law. In our opinion, the second petitioner has made a strong prima facie case for award of compensation and having regard to the inhuman way in which the second petitioner was mercilessly beaten, we feel that the ends of justice would be met, if we award Rs. 50,000/- as compensation to the second petitioner. The second petitioner has incurred an expenditure of more than a sum of Rs. 1,00,000/- (Rupees One lakh only) for his treatment and has also suffered mental agony. But on behalf of the respondents 5 to 7, the learned Government Pleader pleaded for some indulgence. Therefore, we fix the compensation at a sum of Rs. 50,000/- taking into account the situation of the parties. It is needless to state that the State would be entitled to recover this amount of compensation from respondents 5 to 7, who were found to be involved in the assault on the second petitioner.

36. In *Henri Tiphagne v. State of Tamil Nadu*, rep. by its Home Secretary, Secretariat, Fort St. George, Chennai 600009, 2008 (2) MWN (Cr.) 313: LNIND 2008 MAD 2966, this Court considered a pathetic case of unnatural death of a poor woman in police custody. After considering the principles laid down in *D.K. Basu v. State of West Bengal* (supra) and *Nilabati Behera v. State of Orissa* (supra) directed the State Government to pay compensation of Rs. 3 lakhs, including Rs. 1 lakh already awarded by the order of the State Government to the family of the victim.

37. In *Dalbir Singh Vs. State of U.P. and Others*, the views expressed in *Smt. Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble* (supra), has been reiterated, which also relates to custodial torture and diabolic acts of the police officials of Noida Police, where a 9 year old student was taken to police, beaten up. He died later on. The police came out with a theory of suicide by hanging with the help of his shirt. The external injuries over the body were not explained, post-mortem certificate was not accurate as compared with the photographs. The Supreme Court after considering the earlier judgments particularly *Smt. Shakila Abdul Gafar Khan's* case, and of the fact that an FIR had been registered against certain police officials for commission of offences u/s 330, 342 and 306 IPC and of the charge sheet did not issue any further directions.

38. In *N.M.T. Joy Immaculate v. State*, rep. by the *N.M.T. Joy Immaculate Vs. State* the petitioner was kept in illegal custody for four days and subjected to acts of molestation, attempt to outrage her modesty etc. At paragraphs 37 to 39, this Court held as follows:-

37. A rule as to the compensation even at the beginning of the prosecution to be awarded to the victim has been recognised by this Court as well as the Apex

Court as a rule of justice and fair play as laid down in Padmini Vs. The State of Tamil Nadu and others,

38. Since there has been denial of the right of personal liberty guaranteed under Article 21 of the Constitution on account of the illegal custody of the petitioner in P4 Police Station for four days and having regard to the other circumstances mentioned above, this Court is of the view that the petitioner, the victim should be suitably compensated for the deprivation of her personal liberty. This Court, in exercise of its jurisdiction can pass an order directing payment of money in the nature of compensation and consequential upon deprivation of fundamental rights by giving suitable direction to the State.

39. Therefore, I am of the view that the ends of justice would be met, if the State Government through the Home Secretary is directed to pay Rs. . 1,00,000/- to the petitioner towards compensation for her illegal detention in P4 Police Station by the police personnel who committed various acts such as molestation, obscene violation etc. and accordingly directed.

39. In Rajammal v. State of T.N. & Ors. 2010 CIJ 96 IPJ, the appellant's husband therein, aged 50 years, was suspected for receiving stolen jewels and taken to police station. Later, his body was found lying in reserve forest. The Government sanctioned prosecution of the police personnel, involved in the death. The appellant claimed compensation. A learned Single Judge, directed payment of Rs. 3,00,000/-, as compensation and that same was not challenged by the Government. Seeking enhancement of the compensation, the appellant preferred an appeal, as her family was suffering from financial crunch. Considering the number of family members and the financial difficulties, the Division Bench enhanced the compensation to Rs. 5,00,000/-. Though there is no specific method in arriving at the quantum of compensation, in these type of matters, where vicarious liability is fixed on the State Government, for tortious acts committed by the officers of the Government and where there is a prima facie finding of their involvement for the cause of death or custodial violence, or case of rape, torture, physical assault, etc., this Court is inclined to apply the method followed, while computing the compensation, arising out of the Motor Vehicles Claims cases, where, the victim has to be awarded "just compensation".

40. In Jaywant P. Sankpal Vs. Suman Gholap and Others, Human Rights Commission came out with a clear finding the victim was treated for tenderness over the left anterior chest, which indicated hairline fracture on his ribs. The commission ordered Rs. 45,000/- as compensation from the police officials. The said decision has been upheld by the Apex Court.

41. In Subbulakshmi Vs. The State of Tamil Nadu and Union of India (UOI), , Hon"ble Mr. Justice K.K. Sasidharan, as regards police and their commitment to rule of law has observed as follows :-

Police and their commitment to rule of law:

10. The second respondent was the custodian of law and he was entrusted with the solemn duty of crime management. He was duty bound to protect the life, liberty-and property of the people. Police stations are opened even in villages for the purpose of preserving peace and to maintain Law and Order. When the police themselves become law breakers, common man would be in a state of lawlessness. It would lead to a situation where anti- social elements would take up policing and jungle raj would be the result. Police force is entrusted with the responsibility of maintaining Law and Order and to extend helping hands to the people. Law enforcing agency must first abide by law. Only then they can expect people to respect law. Police should be the role model for others. To put it otherwise, there should be a change in their mind set.

11. Police force, which is expected to come to the aid of citizenry, very often becomes the law unto themselves. Reports regarding custodial violence, sexual abuse involving police men, tuning investigation to save the influential accused and other acts of complicity in crimes by the police are really alarming. Police force as a whole cannot be blamed. It is only some of the black sheep in the force which alone are responsible for creating such a situation and to bring bad name to the entire force. It is also true that the police force is functioning in a very difficult situation. But that will not give them the right to violate law, for the enforcement of which, the very police force was formed. The attitude and functioning of the police force requires a sea change. The slogan, "Police at your service" should be accompanied by the slogan "Police is a public servant; ever ready to serve the people." As Mr. Justice V.R. KRISHNA IYER puts it:

Policing, like justicing, has therefore to be at the service of the people commanding the credibility of the community at large without fear or favour, affection or ill-will. Independence and accountability with commitment to the Rule of law, are as much the non-negotiable qualities of the invigilating, investigating police force as of the "robed brethren" on the bench. If the investigative process fails, if the police presence to guard Law and Order is not functionally successful, the adjudicatory apparatus collapses and our adversarial system of justice becomes dysfunctional. The safety of society, sans police integrity, accountability, transparency and efficiency, suffers illusion and unreality.

(Mr. Justice V.R. KRISHNA IYER in "RANDOM REFLECTIONS").

42. In a recent judgment of the Supreme Court in *The Deputy Commissioner, Dharwad District, Dharwad, The State of Karnataka Vs. Shivakka Kuri and Others* (2) Recent Apex Judgments (R.A.J.) 64: 2011 (12) SCC 419, one B was mercilessly beaten by S. The police instead of arresting S, wrongfully confined B and B died in the police custody. An FIR was lodged u/s 342 IPC. The Deputy Commissioner of Police (DCP) granted ex gratia compensation of Rs. 1,00,000/- to the respondents I to 5 therein, (dependants of B). In addition to the above, the High Court awarded compensation of Rs. 3,00,000/-. The amount was lying in the High Court. An appeal was filed to the Supreme Court by the Deputy Commissioner, Dharwad District, (sic) others, challenging the order of the High

Court. The victim died due to multiple injuries and shock and hemorrhage. Prior to that, he was in custody of the police. Rejecting the plea, the High Court ought not to have entertained the writ petition and ordered payment of compensation, the Supreme Court after considering a catena of decisions at paragraph 16 and 17 ordered as follows :-

16. In view of the proposition laid down in the aforementioned judgements, we have no hesitation to hold that the learned Single Judge did not commit any error by entertaining the writ petition filed by Respondent 1 and the direction given by him for payment of compensation to Respondents 1 to 5 was rightly affirmed by the Division Bench of the High Court. At the same time, we are of the view that the compensation awarded by the High Court is less than just. The High Court should have taken note of the fact that the only breadwinner of the family was killed in a barbaric manner and awarded adequate compensation keeping in view the ratio of the judgments of this Court including *Railway Board v. Chandrima Das*.

17. Therefore, while dismissing the special leave petition, we deem it proper to exercise power of this Court under Article 142 of the Constitution and direct the petitioners to pay total compensation of Rs. 10 lakhs to Respondents 1 to 5. The petitioners are directed to pay the amount of compensation within two months by getting prepared a demand draft in the name of Respondent 1 from a nationalised bank.

43. It is also relevant to have a cursory look at the provisions empowering the criminal Court to award compensation.

357. Order to pay compensation. - (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied.

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them for such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same

if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section.

44. Awarding compensation to the victim u/s 357(1) of the Criminal Procedure Code is a matter of discretion. The word may which occurs in sub section (1) of section 357 of the Criminal Procedure Code does not state that the victim as a matter of right, can demand that a higher compensation be given to him, because the compensation is ordered from out of the fine amount to be fixed by the Court, depending upon the crime and injury, over which the victim has no right to demand.

45. Though the 5th respondent has submitted that the petitioner has been awarded adequate compensation by the criminal court and that when he has not chosen to prefer an appeal, for enhancement of the same, and therefore, he has no right to seek for further compensation in the present writ petition, no provision enabling the victim to claim enhancement of compensation under Criminal Procedure Code, has been pointed out. when the compensation is awarded u/s 357(1) of the code.

46. The power of the Courts to award compensation to the victim u/s 357 is not ancillary to sentence, but it is in addition thereto. It is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. It is to some extent, a constructive approach to crimes. Though the Supreme Court has recommended to all the Courts to exercise its power u/s 357 of the Criminal Procedure Code, liberally so as to meet the ends of justice in a better way, in the case on hand, the criminal court has ordered a fine amount of only Rs. 4,000/- out of which, a sum of Rs. 3,500/- has been ordered to be paid as compensation. The criminal court has not awarded compensation u/s 357(3) of the Criminal Procedure Code. The purpose enumerated in Clause (b) of sub-section (1) is the same in sub section 3 of Section 357 Criminal Procedure Code, the difference being that in a case under sub-section 1, fine imposed forms part of the sentence, whereas, under sub section 3, compensation can be directed to be

paid, when fine does not form part of the sentence.

47. As per Section 324 IPC, the punishment that could be inflicted on the accused is imprisonment of either description for a term which may extend to seven years or with fine or with both. There is no limitation either in Section 324 IPC or Section 357 Criminal Procedure Code. It is well settled in *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another*, that a Criminal Court while fixing the quantum of compensation has to consider what could be the reasonable amount of compensation payable to the complainant. At this juncture, it is necessary to extract few decisions of the Supreme Court as to how the quantum of compensation should be determined and the matters to be taken, into consideration.

(i) In *Palaniappa Gounder v. State of Tamil Nadu and others* (supra), the Supreme Court held that it is the duty of the Court to taken into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity to pay and other relevant circumstances in fixing the amount of fine or compensation.

(ii) In *Sarwan Singh and Others Vs. State of Punjab*, the Supreme Court has pointed out that what are all the matters to be considered in awarding compensation. At Paragraph 11, held as follows :

It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation.

(iii) In *Hari Kishan Vs. Sukhbir Singh and Others*, the Supreme Court has set out certain factors to be taken into consideration, for awarding compensation to the victim, at Paragraph 11, held as follows:

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The court may enforce the order by imposing sentence in default.

(iv) In *Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another*, the Supreme Court dealing with the award of Compensation u/s 357 of the Criminal Procedure Code, at paragraph 27, held as follows:-

Compensation is awarded towards sufferance of any loss or injury by reason of act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which is awarded as compensation is considered to be

recourse of the victim in the same manner which may be granted in a civil suit.

After considering *Sarwan Singh v. State of Punjab* (supra), and *Hari Singh v. Sukhbir Singh* (supra), the Supreme Court in *Dilip Dahanukar v. Kotak Mahindra Co. Ltd.* and another (supra), at paragraphs 39 to 41, held as follows:-

39. If a fine is to be imposed under the Act, the amount of which in the opinion of Parliament would be more than sufficient to compensate the complainant; can it be said, that an unreasonable amount should be directed to be paid by the court while exercising its power under sub-section (3) of Section 357? The answer thereto must be rendered in the negative. Sub-section (5) of Section 357 also provides for some guidelines. Ordinarily, it should be lesser than the amount which can be granted by a civil court upon appreciation of the evidence brought before it for losses which might have reasonably been suffered by the plaintiff. Jurisdiction of the civil court, in this behalf, for realisation of the amount in question must also be borne in mind. A criminal case is not a substitution for a civil suit, far less execution of a decree which may be passed.

40. Prosecution under the Act may be contemplated as a measure of deterrence, but the same is never meant to be a persecution.

41. Even in a case where violation of fundamental right guaranteed under Article 21 is alleged, the amount of compensation cannot be arbitrary or unreasonable even under public law.

At paragraph 44, the Court held -

44. Magistrates cannot award compensation in addition to fine. When a fine is imposed, however, the private party has no right to insist that compensation may be awarded to him out of the amount of fine. The power to award compensation u/s 357(3) is not an ancillary power. It is an additional power. (See *Balraj v. State of U.P.*)

While summarising the power of the criminal court to award compensation u/s 357 of the Criminal Procedure Code, at paragraph 72, the Supreme Court held as follows :-

72. We, therefore, are of the opinion :

(i) in a case of this nature, sub-section (2) of Section 357 of the Code of Criminal Procedure would be attracted even when the appellant was directed to pay compensation;

(ii) the appellate court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

(iii) the amount of compensation must be a reasonable sum;

(iv) the court, while fixing such amount, must have regard to all relevant factors including the one referred to in sub-section (5) of Section 357 of the Code of

Criminal Procedure;

(v) no unreasonable amount of compensation can be directed to be paid.

48. The quantum of compensation awarded in the instant case, in the opinion of this Court is certainly not commensurate with the gravity of the offence, torture, the manner in which the fracture has been caused, illegal detention and the period of treatment etc. No doubt, while awarding compensation for violation of fundamental rights guaranteed under Article 21 of the Constitution of India, the amount of compensation cannot be fixed arbitrarily or unreasonably by the criminal court, but the compensation awarded by this Court should be a reparation to the injury suffered at the hands of the police. If the compensation ordered is inadequate, the victim can approach the Civil Court for redressal under private law remedy, under torts. When there is a blatant violation of the constitutional rights, law does not impose any fetter on the Constitutional Courts to order appropriate compensation to the victims, on the sole ground that the victim has not approached the private law remedy. In the case on hand, invasion of the rights under Article 21 of the Constitution of India has been found against the 5th respondent by the criminal court. In such circumstances, it is not necessary to relegate the victim to an alternate remedy of a civil court seeking for damages for the tortious acts of a public servant. The Constitutional Court is the protector and guarantor of fundamental and human rights, and it has a wider power than the court of civil jurisdiction.

49. While considering the claim for compensation under public law remedy, Courts are enjoined with a duty to consider and keep in mind that the most cherished and valuable right to life under Article 21 of the Constitution of India has been infringed. The award of compensation as against the individual, or State, as the case may be, should be a reparation or recompense, for the injury caused, considering the gravity of the offence, the physical and mental suffering, medical expenses incurred etc. Remedy for infringement of the Constitutional rights, by the erring police official or any public servant is available both under private law of torts and public remedy under the Constitution of India. The victim cannot be said to be remediless, when the criminal court fails to award compensation or award inadequate compensation, without taking into consideration various factors enumerated by the Supreme Court stated supra, and on facts and circumstances of this case, not considered effectively by the criminal court, as recommended.

50. The High Court has inherent powers to do justice to a victim, who suffered infringement of fundamental rights, violating Article 21 of the Constitution of India. Even assuming that there is an alternative and adequate legal remedy, it would not be a sound exercise of discretion to refuse to interfere, unless there are good grounds made therefor. The Supreme Court has time and again held that the rule of exhaustion of statutory remedy is only self imposed limitation. Such limitation is only a rule of convenience and discretion rather than a rule of law.

51. From the legal pronouncements extracted supra, the question as to whether the High Court in exercise of its equitable jurisdiction, can award compensation to the victims of human rights violation is no longer res integra.

52. Violation of human rights under Article 21 of the Constitution of India cannot be equated to the loss sustained by a victim, arising out of an accident. Even in such cases when the employer or Government servant commits negligence, causing injuries to a victim or disablement, as the case may be, the Supreme Court has ordered that compensation awarded to the accident victims, should be on the principles of just compensation. Reference can be made to few decisions :-

(i) In R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , the Apex Court held as follows :

In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."

(ii) In yet another decision in The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, in Paragraph 12, the Supreme Court has held that, "Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded.

In Paragraph 15 of the said judgment, the Supreme Court has held that,

Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and non-arbitrariness. If it is not so, it cannot be just.

53. Even in the case of accident victim, as per the table provided to Section 163A

to the second schedule of the Motor Vehicles Act, while awarding compensation, the Claims Tribunal should keep in mind the actual medical expenses incurred by the accident victim, loss of income, if any, for the actual period of disablement not exceeding 52 weeks in case of permanent and partial disablement or injuries affecting the loss of earning capacity, etc.

54. The judgment in *The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others*, is not applicable to the facts of this case. The other judgment in *Ex Rect Vighne Bali Ram vs. The Union of India* has been rendered by the Armed Forces Tribunal, Principal Bench, New Delhi, and it has no binding effect on this Court.

55. As pointed out earlier, though the victim and her mother have made repeated representations to various authorities, there was no response. Failure to discharge the duties by the respondents is per se apparent. After everything was over, the 5th respondent has been departmentally proceeded with. Had the higher officials taken prompt and appropriate action and directed for an enquiry, the illegal detention and suffering of the petitioner could have been avoided.

56. On the facts and circumstances of this case and considering the period of illegal detention from 17.04.2003 to 21.04.2003, this Court is of the view that a sum of Rs. 1,00,000/- would be appropriate compensation for the physical injuries caused to the petitioner, humiliation, torture, pain and suffering, expenses incurred for medicine, loss of income, agony and for such other factors stated in the judgments stated supra. As the 5th respondent has been found to have committed the act of illegal detention and caused injuries, he is liable to pay the amount to the petitioner. He is now stated to be a Deputy Superintendent of Police and considering his position i.e., paying capacity, in addition to the compensation awarded by the criminal court, this Court directs the 5th respondent to pay the petitioner the sum determined. On the principles of vicarious liability, the State Government is directed to pay the compensation of Rs. 1,00,000/- to the petitioner/victim, within a period of one month from the date of receipt of a copy of this order. The Government is at liberty to recover the said amount from the 5th respondent. In the result, the writ petition is partly allowed. No costs.