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# WRIT COMPENSATION: ISSUES AND PERSPECTIVES

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## Introduction

It is well settled law, that for the violation of fundamental rights by the state instrumentality's, compensation must be awarded. This was not the trend prior to the 1970's. The Supreme Court had, in a number of decisions held that compensation could not be awarded in writ petitions. It was in the mid-seventies that a revolutionary change was brought about in the outlook of the Indian judiciary because of "Judicial Activism". The Supreme Court which had been a "general conservative tradition bound institution became sensitive to the needs of the weaker sections, the downtrodden and the traditionally oppressed classes of India"<sup>1</sup>. This change can be explained by referring to the circumstances, which were prevailing at that time. The emergency years were witness to a number of excesses by the Government. The victims of these excesses were not only the downtrodden, but also the elite who lived in the urban areas. The Supreme Court was eager to correct its mistakes and re-establish its legitimacy as the protector of the rights of the citizens and this became apparent in its subsequent decisions.

It is pertinent to note that 'writ compensation' is an extraordinary remedy and a creation of the judiciary. No statute has provided for it. Therefore, in light of this the importance of Article 32 has to be understood. In *Keshavananda Bharathi v. State of Kerala*<sup>2</sup>, a 13 Judge Bench opined that the chapter on fundamental rights was a part of the basic structure of our Constitution and thus could not be amended. It also held Article 32 to be the most fundamental of the fundamental rights guaranteed under the Constitution. The significance of this Article has also been aptly assessed by Gajendragadkar, J. (as he then was) who stated that: "the fundamental right to move this Court can be appropriately described as the cornerstone of the democratic edifice raised by the Constitution."<sup>3</sup> In the Constitutional Assembly Debates it has

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1. A. Santosh Hegde, "Public Interest Litigation and Control of the Government", 4 *Student Advocate* 172 (1992).
2. AIR 1973 SC 1461.
3. *Prem Chand Garg v. Excise Commissioner, UP.*, AIR 1963 SC 996 at 999.

been stated that, "the right to move the Supreme Court by appropriate proceedings for the enforcement is a very valuable right guaranteed by our constitution. The objectives of the Drafters in including a provision like Article 32 in the Chapter was to ensure that the government would not be allowed to function in the irresponsible way in which it was seen to have functioned prior to India securing independence".<sup>4</sup> Thus a necessity was felt to impose strong safeguards against the misuse and abuse of the powers which may be conferred on the Government.

However, there are still a number of unresolved issues, which need to be addressed. Who is to pay compensation- the officer or the State? Should the doctrine of strict liability be the basis of writ compensation as is the present trend? Should the nature of compensation be in the form of a palliative or an exemplary cost? It is also to be noted that the manner, in which the quantum of compensation may be determined, lacks jurisprudence.

This article discusses the development of the jurisprudence of writ compensation by the Courts, and analyses the above-identified issues in light of recent judicial trends.

### History and Background

It was in this scenario that the Supreme Court first forged the remedy of providing compensation to the victims of government excesses. While *Rudul Shah v. State of Bihar*<sup>5</sup> is often touted as the case wherein compensation was awarded for the first time in India the first known case of compensation paid for state lawlessness was actually the famous Jallianwala Bagh case in 1919. The Hunter Commission, which investigated into this massacre by General Dyer on April 13, 1919, held that the shooting was unjustified and awarded compensation of Rs. 2,000 each to relatives of those who were killed<sup>6</sup>.

The first two cases, which raised the question of whether Article 32 provided for the relief of compensation, were *Khatri v. State of Bihar*<sup>7</sup> and *Veena Sethi v. State of Bihar*.<sup>8</sup> In the former case, while the Supreme Court opined that Article 32 allows the judiciary to forge new tools and devise new remedies it refused to award compensation to the victims. In the latter case,

4. B.Pocker Sahib Bahadur, CAD Vol VII, 943.

5. (1983) 4 SCC 141.

6. P.Srikrishna Rao, "Custodial Deaths in India", 6 *National Law School Journal* 42, 56 (1994).

7. AIR 1981 SC 928.

8. (1982) 2 SCC 583.

though the question was posed before the Supreme Court, Justice Bhagwati didn't answer as to whether the prisoners were entitled to compensation from the State government for their illegal detention in contravention of Article 21 of the Constitution.

The Supreme Court in the year 1983 considered writ compensation under Article 32 in the three following cases. In *Jiwan Mal Kochar v. Union of India*<sup>9</sup>, the petitioner claimed damages against the Union of India, the State of Madhya Pradesh and the other officials involved for the loss, humiliation and indignity suffered by him, as they were responsible for certain remarks passed by the Courts in his absence. The Court contented itself by passing an order that these remarks "shall not be taken into consideration in any proceeding" against the petitioner. This decision followed the approach of the earlier two cases by holding that the relief of compensation claimed "could not be granted in this proceeding under Article 32 of the Constitution". However, in the following two cases the Courts diverted from this well trod path to forge a new remedy.

In the case of *Rudul Shah v. State of Bihar*<sup>10</sup>, the Court of Session, Muzaffarpur, Bihar acquitted the petitioner, in June 1968 but he was released from jail only in October 1982, i.e. 14 years after his acquittal. The State authorities failed to place before the Court any satisfactory material for his continued detention for such a long period<sup>11</sup>. The petitioner had filed a habeas corpus petition under Article 32, claiming ancillary relief in the form of compensation for his illegal detention for 14 years, medical treatment at government expense and *ex gratia* payment for his rehabilitation.

The question before the Court was whether it could grant such ancillary relief under Article 32. If precedent was to be followed, such a remedy could be claimed only by filing a suit against the government to recover damages. However, Chandrachud, CJ. opined that justice could be done only by awarding such compensation.<sup>12</sup> This decision raised a lot of questions to

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9. AIR 1983 SC 1102.

10. (1983) 4 SCC 141.

11. *Id.*

12. "Article 32 cannot be used as a substitute for the enforcement of rights and liabilities which can be enforced through the ordinary processes of Courts, civil and criminal. A money claim is therefore to be agitated in and adjudicated upon in a suit instituted in a court of the lowest grade competent to try it. But the important point for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if an order is in the nature of compensation consequential upon the deprivation of a fundamental right." The court felt that if it refuses to pass an order of compensation in favour of the petitioner, "it will be doing mere lip

which no answer was provided. Firstly, can the remedy under Article 32 be denied if the claim to compensation was factually controversial? What is the basis for awarding compensation under Article 32? Can the State invoke the defence of sovereign immunity?

At the same time, the case of *Devaki Nandan Prasad v. State of Bihar*<sup>13</sup> was also decided. The facts in this case were that in 1971 a Constitutional bench of the Supreme Court issued a mandamus to the government directing them to pay to the petitioner his withheld pension. But the government failed to comply with the mandamus for a long period of 12 years "during which abominably long period the mandamus of ...[the] Court has been treated as a scrap of paper"<sup>14</sup>. Being in a helpless position the petitioner was constrained to approach the Court for a second time. The Court ordered exemplary costs of Rs. 25,000 to be paid to the petitioner as the officers of the Court had harassed the petitioner, which was intentional and deliberate.

These two decisions are considered to be landmark decisions, for they made a bold departure from the then existing legal position. However, at that time the Courts were not prepared to hold that Article 32 allows for the remedy of compensation in all cases of violation of fundamental rights. In *Rudul Shah's case*<sup>15</sup>, Chandrachud, C.J. has observed that, "if the facts had been such that in an ordinary suit the claim to compensation would have been factually controversial, i.e. the civil court may or may not have allowed the remedy, then the Court would have to order the petitioner to approach the civil court". However, the facts in the present case were unambiguous and the Court was convinced that compensation would be awarded to the petitioner were he to approach the Civil Court. The Court therefore was entitled to pass an order, under Art 32, directing the government to pay compensation. In determining such a question, the test to be laid down was whether the violation was such that it shocked the conscience of the Court. It was further held by the Court held that the award of compensation was only in the form of a palliative.

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service to his fundamental right to liberty which the State government has so grossly violated". The Court held that compensation could be paid to the petitioner as, "one of the telling ways in which violation of Article 21 can be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation." See *Id.* at 146,147.

13. AIR 1983 SC 1134.

14. *Id.*

15. *Supra* note 11.



## Development

After Rudul Shah, the Judges further developed this principle in *Sebastian Hongray v. Union of India*.<sup>16</sup> In this case, 2 people had been taken into custody by the jawans of the 21 Sikh Regiment in March 1982. Their wives filed a *habeas corpus* petition, requesting the Court to order the army to release them. The Court passed a writ of *habeas corpus* commanding the respondents – Union of India, State of Manipur and Commandment, 21 Sikh Regiment – to produce the persons who were missing from police custody, before it on the specified date in December, 1983.<sup>17</sup> However, the army could not produce the two men. The Court suspected foul play on the part of the army and found from the records that the respondents had misled the Court and thus committed a wilful disobedience of its writ. It treated this as wilful contempt under Sec. 2(b) of the Contempt of Courts Act, 1971. The consequences of civil contempt are imprisonment as well as fine. The Court, however, did not impose imprisonment or fine. The Court awarded exemplary costs of Rs. one lakh each against the Union of India and the State of Manipur, payable to the wives of the untraceable persons.<sup>18</sup>

This was followed by the decision in *Bhim Singh v. State of Jammu and Kashmir*.<sup>19</sup> In this case, the police officers in a most high-handed and authoritarian way, played with the personal liberty of an MLA. They were bent upon preventing the petitioner from attending the session of the Legislature.<sup>20</sup> The police had obtained orders of remand first from the Executive Magistrate and then from the Sub-Judge on the applications of the police officers without production of the accused before them. The Court criticised the Magistrate and the Sub-Judge, observing that they, “had passed the remand

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16. AIR 1984 SC 571.

17. *Id.*

18. *Id.*

19. AIR 1986 SC 494.

20. On August 17, 1985, the opening day of the Budget Session of the Legislative Assembly, Shri Bhim Singh was suspended from the Assembly. He questioned the suspension in the High Court of Jammu and Kashmir. The order of suspension was stayed by the High Court on September 9, 1985. On the intervening night of September 9-10, 1985, he was proceeding from Jammu to Sringar. En route, at about 3.00 a.m. (on 10th), he was arrested at a place called Qazi Kund about 70 kms. from Srinagar. He was taken away by the police. As it was not known where he had been taken away and as the efforts to trace him proved futile, his wife Smt. Jayamala, acting on his behalf, filed the present application for the issue of a writ to direct the respondents to produce Shri Bhim Singh before the court, to declare his detention illegal and to set him at liberty. She impleaded the State of Jammu and Kashmir through the Chief Secretary as the first respondent, the Chief Minister, the Deputy Chief Minister and the Inspector General of Police, Jammu and Kashmir as respondents 2, 3 and 4.

orders without having any concern that the person whom they were remanding to custody had not been produced before them. They acted in a very casual way and without any sense of responsibility or genuine concern for the liberty of the subject.”<sup>21</sup> The Court concluded that undoubtedly the constitutional rights under Articles 21 and 22(2) of the petitioner had been violated with impunity.

At the time of the judgement, Bhim Singh was no longer in custody. Thus, there was no question of passing a writ for his release. However, the Court awarded compensation to the tune of Rs. 50,000 by way of exemplary costs. Justice Chinappa Reddy opined that, “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”.

The Court deviated from the rule of Habeas Corpus being remedial and made it punitive. One finds in *Bhim Singh's case*,<sup>22</sup> a collection of rules and reasoning evolved both in *Rudul Shah's case*<sup>23</sup> and *Sebastian Hongray's case*<sup>24</sup> – a mixture of palliative compensation and exemplary costs.

In the next few years, the scope of the cases in which compensation could be awarded was extended much beyond the contemplation of the Judges in *Rudul Shah*. The Courts have awarded compensation to the relatives of persons who have died in custody of police/army due to torture<sup>25</sup>, due to negligence of State officials<sup>26</sup>, in fake encounters<sup>27</sup>, violence of fellow

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21. *Id.* The Court, further, opined that, “the police officers acted deliberately and malafide and the Magistrate and the Sub-Judge aided them either by colluding with them or by their casual attitude. However, the responsibility lies elsewhere and with the higher echelons of the Government but it is not possible to say precisely where and with whom, on the material before the Court.”

22. *Id.*

23. (1983) 4 SCC 141.

24. AIR 1984 SC 571.

25. *P.N.Thokehom v. General Officer Commanding*, (1997) 7 SCC 725; *P.J.Goyal v. State of Assam*, 1992 Cri.L.J. 154. The case concerned an army custodial death, and an award of Rs. 2 lakh was ordered.

26. *Kumari v. State of Tamil Nadu*, (1992) 2 SCC 223. Death of boy due to fall into open sewerage tank. Compensation of Rs. 50,000 awarded.

27. *R.S.Sodhi v. State of U.P.*, 1994 Supp (1) SCC 142.

prisoner,<sup>28</sup> denial of emergency medical aid by government hospitals.<sup>29</sup> In addition, compensation has been paid to those who suffered due to employing third degree methods of interrogation,<sup>30</sup> illegal detention,<sup>31</sup> negligence of police in dealing with injured,<sup>32</sup> handcuffing of an undertrial,<sup>33</sup> victims of molestation,<sup>34</sup> or those who suffered due to poisonous gas leak<sup>35</sup> and discharge of untreated industrial waste into water.<sup>36</sup>

However, none of these cases clarified the questions raised in *Rudul Shah*. The Court made an attempt to clarify these points in the decision of *Neelabati Bahera v. State of Orissa*.<sup>37</sup> It held that, "the wide powers given to the Court under Article 32 impose a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights, and enables the award of monetary compensation in appropriate cases, where that is the only form of redress available".<sup>38</sup>

### Quantifying the Compensation

In all the above cases, the Court awarded compensation without any basis or principle for quantifying the amount. The Supreme Court in *PUDR v. State of Bihar*,<sup>39</sup> for the first time attempted to evolve a working principle for awarding compensation to victims of police atrocities. The principle that was evolved is however not a good working principle. In this case, 21 persons including some children died and many more were injured in Arwal, Bihar due to unwarranted police firing. The Court awarded compensation of Rs. 20,000 for those who had died and Rs. 5,000 for injuries. Then, in *Neelabati Bahera v. State of Orissa*,<sup>40</sup> the Court for the first time used objective principles

28. *Kewal Patil v. State*, (1995) 3 SCC 600. Widow and children held entitled to compensation of Rs. One lakh.

29. *Panchim Banga Khat Mazdoor Sabha v. State*, (1996) 4 SCC 37. Awarded compensation of Rs. 25,000.

30. *Lakshmi v. Sub Inspector*, 1991 Cri.L.J. 2269.

31. *Susheela v. State of Karnataka*, 1991 Cri. L.J. 2675; *T.C.Pathak v. State of U.P.*, (1995) 6 SCC 357.

32. *S.C.L.A.C. v. Union of India*, (1991) 3 SCC 482.

33. *State of Maharashtra v. Patil*, (1991) 2 SCC 373.

34. *M.J.Cherien v. Union of India*, 1995 Supp (3) SCC 387. Rape of nuns, award of Es. 2.5 lakh ordered.

35. *M.C.Mehta v. Union of India*, (1987) 1 SCC 395.

36. *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCALE 647.

37. AIR 1993 SC 1960.

38. *Id.*

39. AIR 1987 SC 965.

40. AIR 1993 SC 1960.



to determine the value of compensation. They observed that the deceased Suman Bahera was aged 22 years\*and had a monthly income between Rs.1200/- to Rs.1500/-. The finding was based on the evidence of the District Judge. On this basis, the Court ordered compensation to the tune of Rs.1,50,000 to be paid to the petitioner. However, there is a lack of guidelines and rules in the award of compensation and this has left the matter to the varying discretion of the individual Judges.

### **Strict Liability as the Basis for Writ Compensation – Does It Hold Good?**

Till about two decades ago the liability of the Government for tortuous acts of its public servants was generally limited. The person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of fundamental right to life or the basic human rights, however, the Supreme Court has taken the view that the defence of sovereign immunity is not available to the State for the tortuous acts of public servants and for established violations of the rights guaranteed by Article 21 of the Constitution. *Kasturilal's Case*<sup>41</sup> which had emphasised the doctrine of sovereign immunity has fortunately been departed from, however interestingly till date, it has not been overruled. One interpretation of the decision of the Court in *Kasturilal's Case*<sup>42</sup> has been that the State's liability for the tortuous acts of its servants is limited to liability in tort which is distinct from its liability under the constitutional scheme and thus the doctrine of sovereign immunity has no application.<sup>43</sup>

The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous liability of the public servants. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved.<sup>44</sup>

However, having strict liability as the basis for writ compensation would seem harsh since a large amount of State powers are in the hands of officers

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41. *Kasturilal Ralia Ram Jain v. State of U.P.*, AIR 1965 SC 1039.

42. *Id.*

43. *See Nilabati Behera v. State*, (1993) 2 SCC 746.

44. *Supra*, note 41.

who are vested with discretionary powers. If every such action of theirs is weighed and measured by this precarious doctrine, the very nature of the powers would be futile and would not serve their purpose. Therefore, it is submitted that strict liability should not be the basis for such compensations as far as State actions are concerned. If we briefly look at the cases covered by the *Rudul Shah doctrine* it can be seen that the award of the compensation was not purely on the basis of strict liability. In *Rudul Shah* itself, an explanation was sought by the Court as to the reason for the callous behaviour. After hearing the petitioners, compensation was finally awarded, primarily because the Court was satisfied that the authorities concerned blatantly exceeded their power and they were well aware that their action in this particular case blatantly violated law. The question that can be asked is, whether the Court would have arrived to the same conclusion and whether compensation would be payable, if the State could have successfully proved that the death of the petitioner's child was due to a natural cause.

It is also pertinent to note that although the original reasoning for awarding compensation was based on the doctrine of strict liability, the Courts themselves do not strictly adhere to it, and in a large number of cases the respondents are given an opportunity to defend their action. On the other hand there have been certain cases where owing to the nature of the case and the hazard it causes to society at large, the Court has not been hesitant to award compensation applying the strict liability doctrine, as in the case of *M.C.Mehta v. Union of India*,<sup>45</sup> in which the oleum gas had leaked and liability was attached on the basis of strict liability. Again, however, it was not the State, which had to pay, but was merely directed to ensure, that the private industry responsible for the mishap compensates for the disaster. Thus it is submitted that excepting cases where the action of the State has been in blatant disregard of law, the principles of strict liability should not be applied against public bodies.

### **Personal Liability Versus State Liability**

Regardless of whether the nature of compensation is in the form of a palliative or an exemplary cost, what is important is who should compensate—the concerned individual or the State? More often than not while it is the actions of the officers of the State that are responsible for the violation of the fundamental rights, it is largely the State that pays. The strongest reason against attaching liability for compensation to officers is that it may deter conscientious officers from making decisions that are needed to protect the public interest.

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45. AIR 1987 SC 1086.

A large amount of discretion is vested in an administrative officer and he cannot perform his functions duly if his hands are constrained by invisible chains.

While it is indeed important to protect the personal liability aspect, it cannot however be said to be a ground rule. This is in the light of a host of cases where the actions of the officer are clearly in doubt, but the State is imputed. In *R.S.Sodhi v. State of UP*<sup>46</sup> the police pulled out ten young Sikhs from the bus carrying Sikh pilgrims back home and then took them to an adjoining jungle in a police van where they were shot dead. The State of Uttar Pradesh was initially asked to pay Rs. 50,000<sup>47</sup> to the next of kin, while the police officers involved in this particular incident were not asked to compensate. Similarly, in *Bacha Bora's Case*,<sup>48</sup> the petitioner complained against the arrest and detention of his sons aged 19 and 21 by the army authorities on the allegation that the two were accomplices in ULFA activities. Medical reports confirmed that police personnel tortured them. While the court directed the State to pay Rs. 5000/- to each as monetary compensation in the nature of palliative costs, the police personnel were not asked to compensate. There have been several other similar cases especially with regard to army atrocities and custodial violence, where the actions of the officers concerned, were not taken into consideration during the payment of compensation.<sup>49</sup> The main issue in question is whether it is fair to hold the officer concerned liable to compensate for the violation of the concerned right. A better understanding can be achieved by a study of some judicial decisions.

In the case of *Smt. Susheelamma v. State of Karnataka*<sup>50</sup> the Karnataka High Court was convinced about the illegal detention of the petitioner's husband and nephew in police custody without even a formal complaint or registration of a case against them. The police on the other hand flatly denied their arrest. The Court felt that the Sub-Inspector (SI) had misguided the Court and that the detinue-victims were deprived of their personal liberty under Article 21. Hence, to meet the ends of justice, the Court directed the SI to pay

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46. 1991 (2) SCALE 463.

47. The amount was subsequently modified to Rs. 20,000/ as it was believed by the Court that it would demoralise the police.

48. *Bacha Bora v. State of Assam*, 1991 Cri.L.J. 2782.

49. See *Smt. Purnima Barua v. Union of India*, 1991 Cri.L.J 2675 and *Niloy Dutta v. District Magistrate*, 1991 Cri. L.J 2933.

50. 1991 Cri.L.J 2436.

Rs. 2,500/- personally to the detainees. In the much publicised *Aslam's Case*,<sup>51</sup> where a news report showed a 12 year boy handcuffed, the Supreme Court ordered that out of a total sum of Rs. 20,000/- to be paid as compensation, Rs. 18,000/- to be paid by the State of Uttar Pradesh and a sum of 2,000/- to be paid by the constable personally from his salary. This was in light of repeated violations of the Supreme Court judgement in *Prem Shankar's Case*,<sup>52</sup> where the Court had laid down that, "even prisoners should not be handcuffed in normal circumstances". However the decision in the case of the *State of Maharashtra v. Ravikant S. Patil*<sup>53</sup> set the clock back. In this case, the police arrested the respondent on an allegation of involvement in a murder case. He was arrested and a newspaper article carried a news item on him, which stated that the undertrial was carried from one police station to another station with both arms tied. The respondent filed a writ petition seeking censure of the police officer and damages. Though the Bombay High Court held him responsible and awarded compensation to be paid by him, on appeal the Supreme Court disagreed with the findings of the High Court and stated that the police inspector could not be made personally liable even though he erred by exceeding the limits imposed on him. The approach of the Supreme Court can only be described as retrogressive and disappointing.

It is submitted that in all cases it should be the State that should be liable to pay compensation, because the State has the resources to compensate the victim, while the concerned officer may not. However, the state may, if it desires so and if required to, recover such compensation from the concerned officer. An exception to this rule would only exist where prima facie the action of the officer is gross and patent, that is incontrovertible and ex facie glaring<sup>54</sup>.

### Judicial Activism and Hyper-Activism

The Indian judiciary has received a lot of flak on account of its adopting an activist role in the present day. Formulating new remedies, i.e. compensation under Article 32 of the Constitution is just one of the examples. this trend has been described as "judicial activism" and sometimes "hyper-activism". Judicial Activism must not be understood to mean judicial trespass or judicial encroachment<sup>55</sup> into fields, which are not within their jurisdiction. Nobody

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51. Krishna Mahajan, "Legal Perspectives: SC v. Home Ministry", *Hindustan Times*, March 28, 1991, at 6.

52. *Prem Shankar v. Delhi Administration*, AIR 1980 SC 1535.

53. *Supra*, note 37. See Raju Ramchandran, *State of Maharashtra v. Ravikant S. Patil: The Inspector Absolved*, (1991) 2 SCC p.8.

54. *Supra*, note 43.

55. *Supra*, note 1.



can dispute judicial supremacy in dispensation of justice. A perusal of the facts of the various cases referred to above goes to show that the Indian Judiciary was forced to act in these areas because of utter carelessness of the government machinery which turned a blind eye to these problems of the citizens of India. Thus, it was the gross violation of basic human rights that originally compelled the Indian judiciary to discard its conservative cloak to come to the rescue of the citizens of India.

However, now with the broadening horizons of this remedy, it might be necessary to sound a caution. The Supreme Court in a number of decisions<sup>56</sup> has criticised the excessive zeal of the High Courts in granting compensation in any and every writ petition filed before it. In an unprecedented move, the High Courts of Madras<sup>57</sup> and Jammu & Kashmir<sup>58</sup> awarded compensation for victims of communal riots. The rationale was that since the people had been denied their livelihood, the State must pay for inaction in protecting the properties of the people affected. If this rationale were to be followed in other cases, it may give rise to a number of problems, such as, fixing of liability, amount of compensation, etc. Further, as these types of incidents are on the increase, the Courts will be flooded with litigation, and the monetary capacity of the State exchequer will be severely burdened<sup>59</sup>.

This was clearly brought out by the Supreme Court in the case of *A.K. Singh v. Uttarkhand Jan Morcha*<sup>60</sup>. A public rally had been called to protest the notification announcing reservation on the basis of region and to ask for a separate state of Uttarakhand. There was a clash between the police and the protestors resulting in bloodshed. A social interest group filed a writ petition in the Patna High Court. The Court ordered compensation to be paid to the relatives of those who had died in the clash and also to the women who had been ravished. In addition it gave directions that funds beyond the normal plan allocations must be allotted for development of certain areas - Kumaon and Garhwal. The State Government filed a writ before the Supreme Court challenging the order of the High Court.

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56. In *State of Tripura v. Arati Bala*, (1997) 5 SCC 393, the petition sought the relief of an writ ordering the authorities to conduct an inquiry into the circumstances in which the petitioners husband had disappeared after falling down from a running train. The High Court gave directions to the State government to give suitable employment or a lump sum monetary compensation to the petitioner. The Supreme Court held that such a direction was improper, more so in view of the fact that the petitioner's husband was not in the employment of the State.

57. *R. Gandhi v. Union of India*, AIR 1989 Mad 205.

58. *Inder Pari General Stores v. State of J&K*, AIR 1992 J&K 11.

59. Vikram Raghavan, "Compensation Through Writ Petitions: An Analysis of Case Law", 4 *Student Advocate* 97, 102 (1994).

60. (1999) 4 SCC 476.

The Supreme Court while revoking the order of the High Court, criticised it<sup>61</sup> and observed that, "judicial creativity has, no doubt, expanded to newer dimensions in the recent past, but that is no justification for using judicial power for imposing such an unbearable burden on the State which in turn would be compelled to extract money out of the common man's coffers to meet such a massive financial burden"<sup>62</sup>.

## Conclusion

The initiative taken by the Supreme Court in awarding compensation through writ petitions must be appreciated, in the light of large-scale human rights violations especially when perpetrated by the State. As Upendra Baxi points out "what is truly striking about India is the lack of respect for the rule of law not just by the people but also by those who make and those who enforce them."<sup>63</sup>

However, what seem to be the problem today is that the judiciary in its zeal to remedy the public wrongs committed by the state instrumentality has awarded compensation in cases where it may not have been necessary. Further, so far, the judiciary has neither laid down guidelines nor been consistent in awarding compensation- both in terms of nature and amount. Guidelines as to the quantum of compensation need to be developed to ensure parity in the award of compensation. Till such time as it comes up with the requisite guidelines, the judiciary should adhere to the Rudul Shah principle in its original form, i.e. compensation must be awarded only when the violation is such as to "shock the conscience of the Court". It is reiterated that the doctrine of strict liability should not be the basis of awarding compensation. Liability should not be affixed personally to the officers of the State, unless the officer committed the violation with intent to do so.

Individual dignity and democracy are the corner stones of the modern age. Thus, it is important that the state is not allowed to exercise the vast powers that have been conferred on it, to oppress its citizens. When the state perpetrates violations of human rights, democracy will become a farce. In this context the issue of writ compensation promises to have great significance in the twenty-first century with its increasing significance on the rights of the individual vis-à-vis the state.

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61. *Ibid* at 483. Held: "the learned judges of the High Court had not considered the financial capacity of the State Government, nor its resources in making up the said amount nor the priorities to be honoured by the State Government nor even the legislative mandates involving State funding, while ordering the Government to incur such a huge expenditure of a recurring nature."

62. *Id.*

63. Upendra Baxi, *The Crisis of the Indian Legal System* 95 (Delhi: Vikas Publishing House, 1982).