

# COMPILATION OF SELECTED CASES ON VICTIMS OF CRIME

**PREPARED BY  
TEAM PROBONO INDIA**



**FEBRUARY 2022**



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***“Always the innocent are  
the first victims, so it has  
been for ages past, so it is  
now.”***

***– J. K. Rowling***

**February 2022**

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Team ProBono India has made all efforts to summarize the cases from original cases retrieved from AIR, SCC, Manupatra and other leadings databases. For some cases, team has tried to summarize cases from the available sources as they could not find original ones.



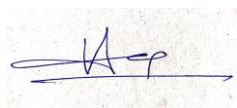
## FOREWORD

Crime impacts a significant number of victims who go through physical, financial, social or even emotional harm which has to be addressed as soon as possible by ensuring that there is an access to justice. Despite the fact that victims of crimes often receive aid and support from their family, friends, community, they are often ignored in the criminal justice system. Publication of Justice Malimath Committee Report on Reforms of Criminal Justice System (2003), and the Law Commission of India's 226th Report on "Compensation to the Victims" (2010) have given boost for victim empowerment and rehabilitation through legal reforms. The Victim Compensation Scheme is an another milestone inserted through the Criminal Procedure Code (Amendment) Act, 2008 .

Hon'ble Supreme Court in *Rattiram v. State of M.P.* (2012) 4 SCC 516) stated that Criminal jurisprudence with the passage of time has laid emphasis on victimology, which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context and, thus, victim's rights have to be equally protected. More recently, in *Jagjeet Singh & Ors. v. Ashish Mishra @ Monu & Anr.* (2022 SCC OnLine SC 453) the Apex court reiterated that victim's right to be heard. The court noted that the victim being the de facto sufferer of a crime had no participation in the adjudicatory process. The current ethos of criminal justice dispensation to prevent and punish crime had surreptitiously turned its back on the victim. Finally, the Court observed that "It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. crime."

This **Compilation of Selected Cases on Victim of Crimes** is a welcome addition of its own kind to the legal literature on court-oriented basic rights jurisprudence. The onerous task of bringing this compilation project to its ultimate conclusion has been accomplished by a dedicated team of enthusiastic twenty-two law students, ably led by their ever-energetic mentor **Dr. Kalpeshkumar L. Gupta (Founder, ProBono India)**. Even with numerous unpredictable challenges thrown by the Covid-19, the term work, perseverance and determination of the group made them to achieve yet another milestone.

I hope that this compilation would encourage enthusiastic law students and faculty to take more projects of this nature. I wish all the best to the compilers of this Volume.



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## PREFACE

*“To those who abuse: the sin is yours, the crime is yours, and the shame is yours. To those who protect the perpetrators: blaming the victims only masks the evil within, making you as guilty as those who abuse. Stand up for the innocent or go down with the rest.”*

*- Flora Jessop*

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders ratified the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, stating “victims are persons, who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws, including those laws proscribing criminal abuse of power.” With victims being a prominent component in the criminal justice system, why are they still the most neglected in the process of justice with limited rights and protections accorded to them? Where does retributive, reformative, rehabilitative, victim compensation and various aspect come in play and how much of it has it been truly implemented?

The case compilation has been titled as "**Compilation of Selected Cases on Victims of Crime**". The compilation is the result of hard work and determination of twenty law students pursuing law in different corners of India. In truth, credit of the current level of success goes to each and every member who helped this work become a reality. The enthusiasm and compassion of these students under the guidance of the pioneer **Dr. Kalpeshkumar L Gupta (Founder, ProBono India)** kept the project alive and developing while it was in the process of development. Sir kept us motivated and determinate through the period of the compilation of this project.

The project began with me being appointed as a student coordinator of this exemplary compilation under the banner of ProBono India which was indeed a pleasure and a learning experience for me. It was a sheer pleasure for me to work and share this project with the like-minded and talented group of people. Here's an introduction to my beloved team:

1. **Srishti Mukherjee** (Indore Institute of Law, Indore)
2. **Pooja Lakshmi** (Bennett University, Greater Noida)
3. **Sakshi Mehta** (Symbiosis Law School, Noida)
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17. **Rishi Raj** (Symbiosis Law School, Noida)
18. **Srishti Mukherjee** (Indore Institute of Law, Madhya Pradesh)
19. **Rakshita Shah** (V. T. Choksi Sarvajanik Law College, Surat)

The idea that Dr. Kalpeshkumar wanted all of us to understand that “Whether tales are told by the light of a campfire or by the glow of a screen, the prime decision for the teller has always been what to reveal and what to withhold. Whether in alone or with images, the narrator should be clear about what is to be shown and what is to be hidden.” With the idea of teamwork, it was the importance of working with minimal resources and achieving the most is what he wanted to teach us. I am thankful to the team and Dr. Kalpeshkumar for the never-ending support and hard work.

We hope our effort inspires great creations !

On behalf of the Team ProBono India,

***Akanksha Bhattarai***  
***(Coordinator)***

## ABBREVIATIONS

<b>AIR</b>	All India Reporter
<b>ANR.</b>	Another
<b>ART.</b>	Article
<b>ASG</b>	Additional Solicitor General
<b>CAL</b>	Calcutta
<b>CBI</b>	Central Bureau of Investigation
<b>CCR</b>	Current Criminal Reports
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEHAT</b>	Centre for Inquiry into Health and Allied Themes
<b>CrLJ</b>	Criminal Law Journal
<b>CJ</b>	Chief Justice
<b>CJI</b>	Chief Justice of India
<b>CO.</b>	Company
<b>CRC</b>	Conventions on the Rights of the Child
<b>CrPC</b>	Criminal Procedure Code
<b>CSB</b>	Central Supervisory Board
<b>CSWB</b>	Central Social Welfare Board
<b>DLSA</b>	District Legal Services Authority
<b>DPSP</b>	Directive Principles of State Policy
<b>ECHR</b>	European Convention on Human Rights
<b>FIR</b>	First Information Report
<b>HIV</b>	Human Immunodeficiency Virus
<b>HON'BLE</b>	Honourable
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IEA</b>	Indian Evidence Act
<b>ILO</b>	International Labour Organization
<b>IPC</b>	Indian Penal Code
<b>ITPA</b>	Immoral Traffic (Prevention) Act
<b>MEF</b>	Ministry of Environment and Forest
<b>MLC</b>	Medico Legal Case



<b>NALSA</b>	National Legal Services Authority
<b>NCA</b>	Narmada Control Authority
<b>NDPS</b>	Narcotic Drugs and Psychotropic Substances
<b>NEERI</b>	National Environmental Engineering Research Institute
<b>NGO</b>	Non-Governmental Organization
<b>ORS.</b>	Others
<b>PCMA</b>	Prohibition of Child Marriage Act
<b>PDS</b>	Public Distribution System
<b>PIL</b>	Public Interest Litigation
<b>PMCH</b>	Patna Medical College and Hospital
<b>PMLA</b>	Prevention of Money Laundering Act
<b>POCSO</b>	Protection of Children from Sexual Offences Act
<b>PUCL</b>	People's Union of Civil Liberties
<b>PUDR</b>	People's Union for Democratic Rights
<b>S or Sec.</b>	Section
<b>SC</b>	Supreme Court
<b>SCC</b>	Supreme Court Cases
<b>SCR</b>	Supreme Court Reporter
<b>SSWB</b>	State Social Welfare Board
<b>TALCO</b>	Tamil Nadu Leather Development Corporation
<b>TDS</b>	Total Dissolved Solids
<b>TN</b>	Tamil Nadu
<b>TNPCB</b>	Tamil Nadu Pollution Control Board
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UGC</b>	United Grants Commission
<b>UN</b>	United Nations
<b>UNHRC</b>	United Nations Human Rights Commission
<b>UOI</b>	Union of India
<b>UP</b>	Uttar Pradesh
<b>UT</b>	Union Territory
<b>V.</b>	Versus
<b>WP</b>	Writ Petition

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**CASE NO. 1**  
**TUKARAM & ANR.**  
**V.**  
**STATE OF MAHARASHTRA**  
**[(1979) 1 SCR 810]**  
**MATHURA RAPE CASE**

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**ABSTRACT**

The historic case of *Tukaram and Anr. v. State of Maharashtra*, also known as the Mathura Rape Case, aroused fervour and uncontrolled hostility, resulting in significant reforms in India's rape laws. In this case, a young girl named Mathura was subjected to custodial rape. The decision of Justices Jaswant Singh, Kailasam, and Koshal in this case was widely ridiculed and denounced for its rational, legal, and linguistic flaws, as well as its vague and sexist tone. This case came into limelight when four prominent professors by the name of Upendra Baxi, Raghunath Kelkar, Lotika Sarkar and Vasudha Dhagamwar wrote a letter to then CJI and requested to rehear the case. This case has contributed significantly to laws related to women in India.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Criminal Appeal No. 64 of 1977
Jurisdiction	:	Supreme Court of India
Case Filed On	:	March 26, 1972
Case Decided On	:	September 15, 1978
Judges	:	Justice A. D. Koshal, Justice Raja Jaswant Singh, Justice P. S. Kailasam
Legal Provisions Involved	:	Indian Penal Code, 1860, Section – 34, 354, 375, 376
Case Summary Prepared by	:	Shraddha Tiwari, School of Law, Christ University, Bangalore

## **2. BRIEF FACTS OF THE CASE**

Mathura, an orphan Adivasi girl of age 14-16 years use to live with her brother named Gama. She was a worker at Nunshi's house; there she met Ashok, Nunshi's nephew and developed an intimate relationship with him and both decided to marry each other. On March 26, 1972, Gama lodged a complaint at Desai Ganj police station alleging that Ashok and his family has kidnapped her sister. At 9-00 p.m. the Head Constable, Baburao summoned Ashok, Mathura, Nunshi and Gama and also recorded their statements. Around 10-30 p.m., Head constable asked all four to leave after recording their statements. When they were leaving, Constable Ganpat called Mathura and asked her to come with her. He took her inside the bathroom, started flashing torch at her private parts and he along with Head constable Tukaram sexually assaulted. They then abducted her and constable Ganpat raped her at the back of the police station. Head Constable Tukaram was unable to rape her due to his inebriation.

On March 27, 1972 at 8-00 pm, Dr. Kamal Shastrakar examined her and discovered no bruises on her body or traces of intercourse. But he found semen on the cloths of both Mathura and Ganpat. On the advice of Dr. Khume, who had initially examined her, Mathura filed an FIR against the two police constables. In 1979, the appellants were acquitted by the Supreme Court after a long battle.

On June 1, 1974, the case was heard in the Sessions Court where the defendants were found not guilty. The bench said that since no injuries were discovered therefore there is no rape, it is just sexual intercourse. And since Mathura was "habituated to sexual intercourse" hence her consent was voluntary.

On appeal, the Bombay High Court's Nagpur bench overturned the Sessions Court's decision and sentenced Tukaram and Ganpat to one and five years in prison, respectively. The Bench observed that passive submission produced by serious threats could not be regarded as consent or desired sexual intercourse.

In June, 1979, the Hon'ble SC of India reversed the judgement of the Hon'ble HC and acquitted the defendants. The SC observed that Mathura had not raised any alarm, and there were no apparent signs of harm on her body, implying no resistance and hence no rape. The bench further mentioned that "Because she was used to sex, she might have incited the cops (who were intoxicated on duty) to have intercourse with her."

### **3. ISSUES INVOLVED IN THE CASE**

- I. Was there Mathura's consent?
- II. Is the action of the police officer will be the same as rape defined under the Indian Penal Code?
- III. Whether appellant one named Tukaram had committed offence under Section 354 of the Indian Penal Code and the second appellant named Ganpat under Section 376 thereof?
- IV. Are the findings of the Courts justified?

### **4. ARGUMENTS OF THE PARTIES**

#### **Appellant**

- There is no direct evidence about the nature of the consent of the girl to the act of sexual intercourse. Hence, one could not arrive at the conclusion that the girl had been subjected to or was under any fear or compulsion as would justify an inference of any "passive submission."
- The alleged intercourse was a peaceful affair and the story of stiff resistance is all false.
- The allegation made by the girl that she had shouted loudly is false.

#### **Respondent**

- The appellants raped and sexually assaulted Mathura on March 26, 1972 at the Desai Gunj Police Station when Gama had filed a complaint that she had been kidnapped by Nunshi's family. The statements were recorded by Head Constable Baburao and had asked them to leave the station. But Mathura was asked to stay by appellant, Ganpat. Immediately after that he took her at the back of the police station and sexually assaulted her by taking her by staring at her private parts using a torch. He then raped her despite her stiff resistance.
- It was also contended that appellant Tukaram fondled her private parts. He intended to rape her but failed as he was in a highly intoxicated state.
- On medical examination, the doctor detected the presence of semen on the clothes of Mathura and appellant Ganpat.

- The age of the girl was estimated to be 14-16 years.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

### **Indian Penal Code, 1860**

#### **Section 375 : Definition of Rape**

A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: —

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be law-fully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age..

#### **Section 376 : Punishment for rape.**

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

**Section 34 :** Acts done by several persons in furtherance of common intention

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

**Section 354 :** Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.



## **6. JUDGEMENT IN BRIEF**

### **Session Court's Judgment**

The learned Sessions Judge concluded that there was insufficient evidence to show that Mathura was under the age of 16 at the time of the incident. The Judge also mentioned that she was a "shocking liar" whose testimony was "riddled with lies and inconsistencies." According to the learned Judge, Mathura most likely had sexual intercourse with Ganpat. However, the Judge clarified that "sexual intercourse" and "rape" are not the same thing. Mathura had sexual intercourse with Ganpat on her own desire, the Judge claimed. Tukaram also grabbed her because she was "used to sexual intercourse." Moreover, prosecution also failed to prove its case.

### **High Court's Judgment**

The High Court concurred with the learned Sessions Judge with respect to the findings related to Mathura's age, but concluded that the charges made by Mathura against Ganpat were credible due to circumstantial evidence, particularly the existence of semen stains on the girl's and Ganpat's cloths. Although the learned Sessions Judge was correct in stating that there is a world of difference between sexual intercourse and rape, the High Court went on to add that there is a difference between consent and "passive submission." The sexual intercourse in question was forced and amounted to rape, according to the High Court. The High Court did not believe that appellant Tukaram sought to rape the girl, but it accepted her word for it when it came to appellant Ganpat's claim that he fondled her private areas after sexual intercourse. The High Court convicted and sentenced appellant Tukaram to one year in prison and appellant Ganpat to five years in prison.

### **Supreme Court's judgment**

The type of the victim's assent had to be judged from the circumstances, and the circumstances made it evident that the assent was not "passive," according to the Supreme Court. There was no injury to the girl's body, and it was impossible to conclude that she had been subjected to or was under any fear or force that would justify a conclusion of "passive submission." In terms of the allegations made against Tukaram, the girl's FIR contained significant allegations, which she refuted at the trial, and the acts covered by which she assigned to Ganpat instead in her deposition. Where is the assurance that the girl's word is true in relation to what she currently says about Tukaram if she may change her mind about

these severe claims at will? As a result, the charge against Tukaram appellant remains unproven.

## **7. COMMENTARY**

The SC's evaluation of the lack of refusal to consent for what occurred is surprising. If the young girl had tried to resist, she would have felt helpless and powerless in the presence of two well-built, strong men, and thus there are no "signs of injury" on her body because she would not have been able to fight the two, while the Court reads Section – 375(3) because she did not object to the situation when she was asked to stay inside while her family members were asked to leave, and it excluded Section – 375(2) which states that rape is a forceful activity that takes place without the consent of the woman. Second, I believe it is highly improbable that the Courts can guarantee that the girl did not scream for aid. When the appellant took Mathura to rape her, he shut the doors. Furthermore, if she had cried for help, it is highly unlikely that she'd be heard.

Because the Court found that if she had contested her original evidence by relocating the accused from Tukaram to Ganpat, she might have also lied about everything else is illogical. In my opinion, she did not know the appellants and she had never seen them before the incident and it would be difficult for her to see their faces properly as the lights were off when they raped her. Furthermore, it was pointless to think about her sexual history. All women, not just Mathura no matter what their caste, status, history was, have the right to receive all the protection they need in order to deal with any form of harassment.

Although rape laws in India have been changed after the Mathura case and in the long run, rape cases continue to increase every year. In addition to causing serious physical harm to the victim, these crimes have serious psychological consequences such as depression, relapses, and more. One-step towards elimination of this crime would be to improve safety and security for women in the State. More than stringent laws to penalize the wrongdoers, it is the attitude and mentality of men, like the SC Judges in the Mathura Rape Case that requires reformation.

## **8. IMPORTANT CASES REFERRED**

- *Mohd. Habib v. State*, 1989 CriLJ 137, 1988 (2) Crimes 677, 35 (1988) DLT 170
- *Smt. Bhanwari Devi v. State of Rajasthan and Ors.* 1997 (2) WLC 473, 1997 (1) WLN

**CASE NO. 2**  
**DELHI DOMESTIC WORKING WOMEN'S FORUM**  
**V.**  
**UNION OF INDIA**  
**[1995 SCC (1) 14]**  
**ISSUANCE OF BROAD PARAMETERS FOR RAPE TRIAL**

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**ABSTRACT**

*For the rape victim, compensation is a right, not mercy shown by the state. "As a matter of fact, no amount of money can restore the dignity and confidence of rape victims. However, certain measures such as adequate compensation, insurance, employment and social security scheme may help in the rehabilitation to some extent."* A Bench of Justice R. M. Lodha and Justice Madan B. Lokur of Supreme Court. The experience of giving evidence in court has been negative and destructive. Also, is rightly said that, trauma of rape victims continues throughout their life and such victims cannot be compensated by any amount. Furthermore, many victims report that the ordeal from legal proceedings was worse than the rape. This Writ Petition at the request of the petitioner Delhi Domestic Working Women's Forum supports the unfortunate situation of four domestic servants who were raped by seven army personnel. The Hon'ble Supreme Court reviewed the areas that required immediate attention due to their importance in terms of impact on the lives of rape victims in reaching its verdict in this case. This includes the Fundamental Right entrenched in Article 21 (The Right to Live with Dignity), as well as measures for relief for victims of such horrific acts, all of which are expanded with the help of this summary. This case is significant because it establishes a precedent for how to aid rape victims and ensure that they receive justice.

**1. PRIMARY DETAILS OF THE CASE**

Case Citation	:	1995 SCC (1) 14
Jurisdiction	:	Supreme Court of India
Case Filed on	:	1993
Case Decided on	:	October 19, 1994
Judges	:	Justice M. N. Venkatachalliah, Justice S. Mohan, Justice S. B. Majmudar

Legal Provisions Involved	:	Constitution of India, 1949: Articles 14, 21, 32, 38(1); Indian Penal Code, 1860: Section 376(B); The Code of Criminal Procedure, 1973: Section 173; National Commission for Women Act, 1990: Section 10
Case Summary Prepared By	:	Shagun Kashyap Hidayatullah National Law University, Raipur

## 2. BRIEF FACTS OF THE CASE

- On February 10, 1993, six women were travelling by the Muri Express from Ranchi to Delhi. About 7/8 army 'jawans' began to molest these women and further raped them.
- On objection they threatened them with throwing them out of the running train and killing them.
- Women attempted to file a police report along the way, but no one helped. When the train arrived at New Delhi Railway Station, they attempted to apprehend these individuals and were able to apprehend one of them.
- Meanwhile, a group of people gathered nearby. One of the accused was captured by army officers and police officials and taken to the MCO office. After a while, they returned to the station and handed up another suspect.<sup>1</sup>
- This was the basis for the first information report for offences under Section 376-B read with Section 341 IPC, which was filed on February 11, 1993 at the New Delhi Railway Station Police Station. The six rape victims were then taken to the hospital for medical examination. On August 13, 1993, a case-report under Section 173 CrPC was filed against the accused persons in the Court of the Chief Judicial Magistrate, Aligarh. The matter remained pending before Aligarh's District and Sessions Court.
- To meet the victims, members of the petitioner-forum travelled in groups to all of the addresses given by the police. They were not allowed to meet the victims in any of the locations, despite the fact that the employers acknowledged to learning about the rape and that the victims were there.
- Because the victims were its members, the petitioner forum grew worried about obtaining the necessary social, cultural, and legal protection. Furthermore, the victims

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<sup>1</sup> Based on the incident described by one of the victims

were vulnerable tribal women from Bihar who were at the mercy of employers and police. They were easy prey for intimidation.

- Despite the fact that such horrific assaults on women's person and dignity had occurred, neither the Central Government nor the State Government had given significant consideration to the need for rehabilitative and compensating justice for women.
- In such cases, this Court can grant relief. In this regard, a writ petition under Article 32 of the Indian Constitution has been filed.

### **3. ISSUES INVOLVED IN THE CASE**

- I. What are some concrete ways and parameters by which rape victims can be assisted?
- II. Whether the National Commission of Women engage itself in framing appropriate schemes and measures regarding compensation and rehabilitation to victims of such crimes of violence?

### **4. ARGUMENTS OF THE PARTIES**

#### **Petitioner**

- That a speedy trial is one of the law's most important criteria. A trial of this sort cannot be defeated by a lengthy investigation in such a case. The court must establish the conditions for a fast trial and investigation; otherwise, the constitutional rights guaranteed by Articles 14 and 21 will be rendered meaningless.
- That the National Commission for Women is legitimately involved in analysing and recommending changes to various women's legislations. But efforts must be made to develop a compensation and rehabilitation programme to ensure that victims of such violent crimes are compensated and rehabilitated. The poorer sections of society are disproportionately targeted by such violence. The civil courts are unable to provide them with justice. Without a doubt, the Indian Penal Code and the Indian Evidence Act have been amended. Nevertheless, victims of such assaults are unable to seek meaningful justice. As a result, the respondent National Commission for Women must be persuaded to commence the process of drafting such a programme as soon as possible, as well as to urge the Union of India to do so.

## **Respondents**

- That the National Commission for Women was founded under the National Commission for Women Act of 1990. This Act became effective on January 31, 1992, as per Notification No. SO 99(E) dated January 31, 1992. The Act's Chapter III outlines the Commission's responsibilities. The proposal that the Commission devise necessary programmes and measures falls outside of the scope of the National Commission for Women's mandate.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

### **Constitution of India**

**Article 32**, Remedies for enforcement of rights conferred by this Part:

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

**Article 14**, Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

**Article 21**, Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

### **Indian Penal Code, 1860**

**Section 376B**, Intercourse by public servant with woman in his custody: Whoever, being a public servant, takes advantage of his official position and induces any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

**Section 341**, Punishment for wrongful restraint: Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

When it comes to delivering justice in India, police/authorities have a history of delaying or prolonging investigations. Police are also prohibited from delaying an inquiry excessively under Section 173 of the CrPC. This delay in investigation leads to a delay in trial, which is a violation of Article 21 of the Indian Constitution's fundamental right to a speedy trial. In the landmark case *Hussainara Khatoon v. Home Secretary, State of Bihar*, the Supreme Court of India ruled that the right to a speedy trial is a component of Article 21.

In *Vasantha R. v. Union of India and Ors*, Supreme Court observed “The human rights for woman is inalienable and it is an integral and an indivisible part of human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development and growth.”

As a result, new rules and regulations are required to enhance women's stature and status in society. There are certain specific initiatives for women, one being,

**National Commission for Women:** The government established this official committee in January 1992 with the particular goal of studying and monitoring all things relevant to the constitutional and legal guarantees afforded for women, reviewing current legislation and suggesting amendments as needed, and so on.

Rape is considered the most despised crime by the Supreme Court. A petitioner was raped by two army men in a similar case<sup>2</sup> in which the High Court of Guwahati cited the Supreme Court's remark on rape in the case of *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty* as: "Rape is a crime not only against the person of a woman, it is crime against the entire society. It destroys the entire psychology of a woman as pushes her into deep emotional crises, Rape is, therefore, the most hated crime. It is a crime against basic human rights and is violative of the victim's most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21.”

## **6. JUDGMENT IN BRIEF**

Rape is a horrible event that has a profound impact on the victims' lives. It has a long-term impact on many people, impairing their ability to build intimate relationships, influencing their behaviour and values, and generating an everlasting sense of fear. Adding to the pain of

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<sup>2</sup>*Lilabati Baisya v. State of Assam and Ors.*, [2004] 3 GLR 540

the rape, victims have had to experience further misery during legal processes. The process, according to many victims, was far worse than the rape itself. The legal proceedings undoubtedly increased and intensified their psychological pain as a result of the rape. As a result, it's critical to lay out the broad guidelines for assisting rape victims. The following are some of them:

- Legal representation should be offered to complainants in sexual assault cases. It is critical to have someone who is well-versed in the criminal justice system. The victim's advocate's role would include not only explaining the nature of the proceedings to the victim, preparing her for the case, and assisting her in the police station and in court, but also directing her to other agencies for help of a different nature, such as mental health counselling or medical assistance. It is critical to ensure consistency of assistance by having the same lawyer who represented the complainant's interests in the police station represent her throughout the case.
- Because the victim of sexual assault may be distressed when she arrives at the police station, legal assistance may be required. The direction and support of a lawyer at this time, as well as while she is being questioned, would be extremely beneficial to her.
- Before any questions be made to the victim, the police should tell her of her right to representation, and the police record should state that she was so told.
- For victims who do not have a lawyer in mind or whose own counsel is unavailable, a list of advocates willing to act in these circumstances should be kept at the police station.
- The court should appoint an advocate upon the police's request at the earliest possible time, however advocates will be authorised to act at the police station before seeking or obtaining permission of the court in order to ensure that victims are questioned without excessive delay.
- In all rape trials, the victim's confidentiality must be preserved to the extent possible.
- In light of the Directive Principles enshrined in Article 38(1) of the Indian Constitution, it is important to establish a Criminal Injuries Compensation Board. Victims of rape suffer a lot financially. Some people, for example, have been traumatised to the point that they can no longer work.
- Victim compensation may be given by the court if the criminal is found guilty, or by the Criminal Injuries Compensation Board whether or not a conviction has taken



place. The Board will consider pain, suffering, and shock, and also loss of earnings owing to pregnancy and childbirth expenditures.

On this point, the following passage from The Oxford Handbook of Criminology about the situation in England can be referred: "Compensation payable by the offender was introduced in the Criminal Justice Act, 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where 'injury, loss, or damage' had resulted. The Criminal Justice Act, 1982 made it possible for the first time to make a compensation order as the sole penalty. The Criminal Justice Act, 1988 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, impose a duty on the court to give reasons for not doing so. The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation."

The National Commission for Women is responsible for all or some of the following responsibilities, according to Section 10 of the National Commission for Women Act:

- Investigate and examine all issues relevant to the constitutional and other legal protections for women.
- Demand that special studies or investigations be conducted on specific problems or situations stemming from discrimination and atrocities against women, with the goal of identifying the obstacles and recommending solutions to overcome them.

In view of the aforesaid provisions, the respondent must design a plan to wipe away the tears of such unfortunate victims within six months of the date of this judgement. The Union of India will next assess the situation and, if necessary, take steps to put the scheme into effect as quickly as practicable. The writ petition is dismissed, subject to the above-mentioned conditions.

## **7. COMMENTARY**

In this country, there has been some success in guaranteeing victim justice. The Supreme Court argued in this case that victims of sexual assault should have access to legal counsel throughout the pre-trial stages. Article 21 makes it mandatory to compensate a rape victim, which was formerly a discretionary prerogative of the sentencing judge in criminal proceedings. In *Delhi Domestic Working Women's Forum* and *Bodhisattwa*, the courts determined that the rape had a long-term impact on her ability to form personal relationships,

changed her behavioural attitudes, and put her in a major emotional crisis. According to the court, the compensatory remedy was based on the right to life and personal liberty. As a result of the judgment in this case, the victim woman's rights to legal representation and required compensation have been established. This is, in my opinion, one of the most thorough judgments that establishes a course, leads by example, and offers executory orders as well as follow-up to ensure that the terms of petition and the directions put down are carried out successfully.

## **8. IMPORTANT CASES REFERRED**

- *Hussainara Khatoon v. Home Secretary, State of Bihar*, [1979] AIR 1360 (SC)
- *Lilabati Baisya v. State of Assam and Ors.* [2004] 3 GLR 540
- *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty*, [1996] 1 SCC 490
- *Vasantha R. v. Union of India (UoI) And Ors.* [2001] IILLJ(Mad) 843

**CASE NO. 3**  
**MOHD. HAROON**  
**V.**  
**UOI**  
**[(2014) 5 SCC 252]**  
**VICTIMS OF SEXUAL VIOLENCE**

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**ABSTRACT**

Petitioners belong to the minority community who were brutally gang raped and sexually assaulted by men belonging to the other communities during the communal violence in Muzzafarnagar and adjacent districts. Also, their homes were destroyed and they were rendered homeless with no roof over their heads. They lost their earnings due to which it became very difficult for them to take care of their children and themselves. Due to the stigma attached to the victims of sexual violence, the agony of gang rape and looming fear of future assault, the petitioners were unable to promptly report the crime of gang rape committed against them. Petitioners also added that they had been displaced from their villages, namely, village Fugana and village Lakh, hence, they could not go to the police station to lodge the complaint of gang rape.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Writ Petition (Criminal) No. 11 of 2014
Jurisdiction	:	Supreme Court of India
Case Filed On	:	September 12, 2013
Case Decided On	:	February 20, 2014
Judges	:	Justice P Sathasivam, Justice Ranjana Prakash Desai, Justice Ranjan Gogoi
Legal Provisions Involved	:	Constitution of India, Article 21; Indian Penal Code. 1860, 376D, 376(2)(g); Code of Criminal Procedure, 1973, 154, 161, 164A, 164(5A); Indian Evidence Act, 1872, Section 114A
Case Summary Prepared By	:	Maitri Vyas, L. J. School of Law, Ahmedabad

## **2. BRIEF FACTS OF THE CASE**

Rape victims (Seven) filed instrument Petition (Criminal) No. 11 of 2014 for defense of their right to life under Article 21. All the petitioners belong to the minority community United Nations agency were viciously gang raped and sexually maltreated by men happiness to the opposite communities throughout the communal violence in Muzzafarnagar and adjacent districts. It's the assertion of the petitioners during this petition that their homes were destroyed and that they were rendered homeless with no roof over their heads, they lost their earnings and it's become troublesome for them to require care of their youngsters and themselves. Due to the stigma connected to the victims of sexual violence, the agony of gang rape and looming worry of future assault, the petitioners were unable to promptly report the crime of gang rape committed against them. It's the stand of the petitioners that they'd been displaced from their villages, namely, village Fugana and village large integer; hence, they might not attend the police headquarters to lodge the grievance of gang rape. It absolutely was additional submitted that in these circumstances, the delay on the part of the petitioners in lodging FIR is affordable and doesn't, in any way, impact on the truthfulness of their complaints of gang rape.

It is additional explicit by the petitioners that once registration of FIR below Section 154 of the Code of Criminal Procedure, 1973 and recording of statements below Section 161, the law prescribes that below Section 164(5A) of the Code, for all sexual offences as well as crime of rape, the police shall have the statement of the lady against whom the offence has been committed recorded before a Judicial official as shortly because the commission of offence is delivered to the notice of the police. it's explicit that albeit Petitioner Nos. 1, 3, 4, 5 and half-dozen had lodged the FIRs in September, 2013 and Petitioner No. 2 had lodged the FIR in early October, 2013, the police deliberately and with jugal bone fide intention dragged the investigation. Their statements below Section 164(5A) of the Code were recorded as late as in December, 2013 once the delay of just about 3 months. It's additionally highlighted that Section 164A of the Code provides for check-up of the rape victim associated casts a statutory duty upon the police to send the lady creating the grievance of rape to a registered health care provider inside twenty-four hours from the time of receiving data relating to the commission of such an offence. Within the case of the petitioners, in direct dispute of this legal provision, the police wittingly delayed their check-up. The petitioners are all married ladies having kids; hence, their check-up virtually 20-40 days once the incidents of gang rape

is unlikely to produce any perpetrated proof. Its additional detected that the petitioners were gang raped on September 8, 2013 whereas the check-up was conducted between September 29, 2013 to October 18, 2013. It is the grievance of the petitioners that FIRs of all the petitioners were registered below Section 376D of the Indian Penal code, 1860 a particular provision about gang rape. Although Section 376(2)(g) of the IPC is squarely applicable to the crimes of gang rape that are committed against the petitioners throughout the communal violence in September, 2013, the police has specifically omitted to incorporate Section 376(2)(g) of the IPC so as to dilute the case of the petitioners and to exclude the legal presumption that the law raises through Section 114A of the Indian Evidence Act, 1872 in favour of the petitioners. Therefore, the petitioners submitted that biased and driven investigation by the police is evident and manifest and through with the only real purpose of defending the suspect.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether the State is required to protect rights of the victims?
- II. Whether the State is required to take measures for rehabilitation of victims?

### **4. ARGUMENTS OF THE PARTIES**

#### **Plaintiff**

In the case of Petitioner No.7, in spite of specific info, there's no reason on why FIR wasn't registered. It absolutely was solely throughout the hearing before this Court, on February 13, 2014, once the counsel for Petitioner No.7 bimanual over the copy of the grievance to the counsel for the State, FIR was registered on February 18, 2014. Further, it's the grievance of the petitioners that FIRs of all the petitioners were registered under Section 376D of the Indian Penal Code, 1860 a selected provision with reference to gang rape. although Section 376(2)(g) of the IPC is squarely applicable to the crimes of gang rape that are committed against the petitioners throughout the communal violence in September 2013, the police has specifically omitted to incorporate Section 376(2)(g) of the IPC so as to dilute the case of the petitioners and to exclude the legal presumption that the law raises through Section 114A of the Indian Evidence Act, 1872 in favour of the petitioners. Therefore, the petitioners submitted that biased and driven investigation by the police is evident and manifest and finished the only purpose of protecting the defendant. It is more submitted that although Petitioner Nos. 1-6 named total 22 men as defendant in six FIRs, solely in Gregorian calendar

month 2014, one defendant, namely, Vedpal, was named in FIR No. 120 of 2013 was in remission. Even once lapse of 4 and 0.5 months, 21 named as defendant by the petitioners of the flagitious crime of gang rape throughout communal violence cast free. Neither those persons neither were in remission nor are any proceedings initiated under Section 83 of the Code. The petitioners claimed within the petition that the defendant area unit roaming free and enjoying the support of dominant community, Khap panchayat, political parties and besides thanks to their closeness, they are additionally discouraging the victims. Thus, it's the stand of the petitioners that unless the police provide protection to the victims and witnesses, it might be not possible for them to depose against the persons concerned within the gang rape. The petitioners have additionally controversial the claim of the State in disbursing compensation. It absolutely was declared that they weren't paid compensation a lot of less the adequate compensation. Further, a prayer was created for transfer of cases of gang rape outside the State of U. P. within the larger interest of the society and so as to confirm honest investigation, prosecution and trial of the cases with reference to Petitioner Nos. 1 to 7. Finally, they declared within the petition that if the investigation is not transferred to sit down comprising the officers of integrity from the States aside from U. P., there can't be justice for sexual violence suffered by them because of inaction on a part of the State of U. P. The prayers looked for by the petitioners within the said petitions area unit bushed a way or alternative seeking for social control of basic rights secure under the Constitution and it is the Constitutional obligation of this Court to intervene and admonish such violation of human rights and issue applicable orders for rehabilitation whereas at the same time issue directions to confirm that no return of this nature is witnessed by this country in times to return.

### **Defendant**

Learned Attorney General apart from reiterating the stand taken in their affidavit assured this Court that the Government of India is fully committed to provide all required financial assistance as well as security measures for the immediate and permanent relief to the stranded and affected persons. Dr. Rajeev Dhawan, learned senior counsel appearing for the State of U.P., after taking us through the various steps taken by them also assured this Court that apart from the steps taken by the State, they are taking further steps for providing food, water, shelter and medicines to all those affected persons. He also assured us that the State Government is taking effective steps for peaceful resettlement of those stranded persons.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

Rape victims (Seven) filed legal document Petition (Criminal) No. 11 of 2014 for defence of their right to life under Article 21. All the petitioners belong to the minority community were viciously gang raped and sexually mistreated by men. It's the assertion of the petitioners during this petition that their homes were destroyed and that they were rendered homeless with no roof over their heads, they lost their earnings and it's become tough for them to require care of their kids and themselves. it's more pleaded that thanks to the stigma hooked up to the victims of sexual violence, the agony of gang rape and looming worry of future assault, the petitioners were unable to promptly report the crime of gang rape committed against them. it's the stand of the petitioners that they would have been displaced from their villages, namely, village Fugana and village hundred thousand, hence, they might not head to the police headquarters to lodge the grievance of gang rape. It absolutely was more submitted that in these circumstances, the delay on the part of the petitioners in lodging FIR is affordable and doesn't, in any way, impact on the truthfulness of their complaints of gang rape. It is more declared by the petitioners that once registration of FIR under Section 154 of the Code of Criminal Procedure, 1973 and recording of statements under Section 161, the law prescribes that under Section 164(5A) of the Code, for all sexual offences as well as crime of rape, the police shall have the statement of the girl against whom the offence has been committed recorded before a Judicial justice as shortly because the commission of offence is dropped at the notice of the police. it's declared that even Petitioner Nos. 1, 3, 4, 5 and 6 had lodged the FIRs in September 2013 and Petitioner No. 2 of had lodged the FIR in early October 2013, the police deliberately and with jugal bonafide intention dragged the investigation. Their statements under Section 164(5A) of the Code were recorded as late as in Gregorian calendar month, 2013 once the delay of just about 3 months. It's additionally highlighted that Section 164A of the Code provides for medical of the rape victim, casts a statutory duty upon the police to send the girl creating the grievance of rape to a registered medical man among twenty-four hours from the time of receiving data relating to the commission of such an offence. Within the case of the petitioners, in direct resistance of this legal provision, the police wittingly delayed their medical. The petitioners are all married ladies having kids; hence, their medical nearly 20-40 days once the incident of gang rape is unlikely to produce any perpetrated proof. It is more recognized that the petitioners were gang raped on September 8, 2013 whereas the medical was conducted between September 29, 2013 to October 18, 2013. Within the case of Petitioner No.7, in spite of specific data,

there's no reason on why FIR wasn't registered. it absolutely was solely throughout the hearing before this Court, on February 13, 2014, once the counsel for Petitioner No.7 two-handed over the copy of the grievance to the counsel for the State, associate degree FIR was registered on February 18, 2014 Further, it's the grievance of the petitioners that FIRs of all the petitioners were registered underneath Section 376D of the Indian Penal Code, 1860 a particular provision concerning gang rape. Though Section 376(2)(g) of the IPC is squarely applicable to the crimes of gang rape that are committed against the petitioners throughout the communal violence in September 2013, the police has specifically omitted to incorporate Section 376(2)(g) of the IPC so as to dilute the case of the petitioners and to exclude the legal presumption that the law raises through Section 114A of the Indian Evidence Act, 1872 in favour of the petitioners. Therefore, the petitioners submitted that biased and driven investigation by the police is obvious and manifest and through with the only real purpose of defending the defendant. it's more submitted that though Petitioner Nos. 1-6 named total twenty-two men as defendant in six FIRs, solely in February 2014, one defendant, namely, Vedpal, United Nations agency was named in FIR No. 120 of 2013 was in remission. Even once lapse of 4 and 5 months, twenty-one named as defendant by the petitioners of the flagitious crime of gang rape throughout communal violence swan free. Neither those persons neither were in remission nor are any proceedings-initiated under Section 83 of the Code. The petitioners claimed within the petition that the defendants are roaming free and enjoying the support of dominant community, Khap panchayat, and political parties and besides owing to their closeness, they're additionally discouraging the victims. Thus, it's the stand of the petitioners that unless the police offer protection to the victims and witnesses, it would not be possible for them to depose against the persons concerned within the gang rape. The petitioners have additionally controversial the claim of the State in disbursing compensation. It absolutely was declared that they weren't paid compensation abundant less the adequate compensation. Further, a prayer was created for transfer of cases of gang rape outside the State of U. P. within the larger interest of the society and so as to confirm honest investigation, prosecution and trial of the cases concerning Petitioner Nos. 1 to 7. Finally, they declared within the petition that if the investigation isn't transferred to take a seat comprising the officers of integrity from the States apart from U.P., there can't be justice for sexual violence suffered by them thanks to inaction on a part of the State of U. P.



## **6. JUDGEMENT IN BRIEF**

After hearing to the arguments and seeing the grievances of the case, the court direct the Union of India, Ministry of Home Affairs and State Government to provide adequate security forces to take all necessary measures to stop the genocide and to prevent further communal violence, To direct the State Government to take stern action against the persons responsible for rape and other heinous offences and also to provide rehabilitation of the victims and to appoint an independent Commission apart from the one constituted by the State Government for impartial inquiry into the incidents and submit a report for prevention of such incidents in future and rehabilitation measures for victims.

Ongoing through various allegations levelled in the writ petitions, the court direct the State of U. P. in association with the Central Government to take immediate steps and take charge of all persons, who are stranded without food and water and set up relief camps providing all required assistance. It is also directed to ensure that all stranded are taken to places of safety.

## **7. COMMENTARY**

As we all know that rape is taken into account as an atrocious crime. It's the foremost distressing crime that affects the mental state of the society. During this case, gang rape was committed on quite ladies that sound frightful. The reason for commission of this act was the communal riots occurring there. According to me, people those were connected with this gang rape ought to be tortured laborious as they had raped the ladies of lower community who wasn't concerned in those riots and who were innocent. This was unfair act to them as simply because they're of lower community, they do not lose their dignity, and rights.

## **8. IMPORTANT CASES REFERRED**

- *Pankaj Kumar and Ors. v. State of U. P. (2017 (4) ADJ 119)*

**CASE NO. 4**  
**MERAJ ALAM AND ORS.**  
**V.**  
**STATE OF BIHAR**  
**[2008 CriLJ 4384]**  
**REASONABLE DOUBT CASE**

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**ABSTRACT**

The following is a case summary of the case of *Meraj Alam and Ors. v. State of Bihar*. The case was heard and decided by the Hon'ble Patna High Court. The case has been filed under 377(1)(b) of the Code of Criminal Procedure, 1973 before the Hon'ble High Court. The present case is of criminal appeal filed against conviction of the Appellant-Accused under Section 376 of IPC and imposition of sentence by Additional Sessions Judge-FTC-IV, Bettiah, West Champaran, Bihar. Appellant-Accused by the means of hint and sign called the Complainant-Afsana Khatoon who was visiting her maternal uncle's place. After a while, the people in the vicinity could hear falter sounds made by Afsana from the closed room. The people in the neighborhood rushed in through the door of the closed room. The Complainant through sign language and gesture expressed and depicted that she was raped by Meraj Alam, the Appellant-Accused herein. A compromise was reached by the Appellant and Complainant whereby they both agreed to marry each other; however, the accused backed out from the said compromise. Hence, the present case was filed.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Crl. Appeal No 194 of 2006
Jurisdiction	:	Patna High Court
Case Filed On	:	2006
Case Decided On	:	May 21, 2008
Judges	:	Justice Subhash Chandra Jha
Legal Provisions Involved	:	Indian Penal Code, 1860, Section 34, 201, 354, 376; Code of Criminal Procedure, 1973- Section 377(1)(b)
Case Summary Prepared By	:	Rishi Raj Symbiosis Law School, Noida

## **2. BRIEF FACTS OF THE CASE**

This case was brought before the Hon'ble Patna High Court in the form of a criminal appeal against the Judgement and Order passed by Learned Additional Sessions Judge-FTC-IV, Bettiah, West Champaran, Bihar whereby the Hon'ble Judge sentenced the Appellant-Accused herein to 10 years of rigorous imprisonment under Section 376 of IPC and imposed a fine of Rs. 5,000/-.

In the present case, Ms. Rina Sinha was appointed as Amicus Curiae for the Appellant herein and the Learned Additional Public Prosecutor has represented the State of Bihar before the Hon'ble High Court.

In the present case, the Appellant-Accused herein through gestures and signs called into his room, Afsana Khatoon a dumb and deaf person. The people in neighborhood heard her sound from behind the closed doors of the room, after a while. When they went inside, they found that Afsana was weeping and her clothes were not in proper order. On questioning, she pointed out through signs and gestures that she was raped by Meeraj Alam alias Tuddu, the Appellant herein. The Appellant Meeraj reached a compromise with the family of the victim Afsana whereby it was decided that they would marry each other. However, the Appellant backed out of the said compromise later on and hence, a complaint was filed by Afsana's father before the Sathi Police Station and hence, Case No. 22/2002 was filed by the Police against the Appellants herein. On completion of investigation and trial before the Additional Sessions Judge-FTC-IV, Bettiah, West Champaran, Bihar the accused was found guilty of offence under Section 376 of Indian Penal Code, 1860 while his father Gausal Azam was charged with Section 201 of Indian Penal Code, 1860.

Hence, the present criminal appeal was filed by the Appellant-Accused herein before the Hon'ble Patna High Court.

The timeline has been as follows-

- XX.XX.2002- Sathi PS Case No. 22 of 2002 was filed in the Sathi Police Station against Appellant-Accused, Meraj Alam alias Tuddu for committing rape against complainant who is a deaf and dumb woman.
- 16.02.2006- After investigation and trial, Learned Additional Sessions Judge-FTC-IV, Bettiah, West Champaran, Bihar found the Appellant-Accused to be guilty under

Section 376 of the Indian Penal Code, 1860 and the punishment given was of rigorous imprisonment for 10 years with a fine of Rs. 5,000/-.

- XX.XX.2006- Aggrieved by the Judgement and Order, the Appellant-Accused filed Crl. Appeal No. 194 of 2006 before the Hon'ble Patna High Court.
- 21.05.2008- Justice Subhash Chandra Jha passed the Judgement and Order in this case.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether Prosecution proved before the Fast track court that the Appellant-Accused herein, committed offence under Section 376 of Indian Penal Code, 1860 against the complainant?
- II. Whether prosecution proved such guilt of Appellant-Accused beyond reasonable doubt?

### **4. LEGAL ASPECTS INVOLVED IN THE CASE**

Many crucial provisions of Criminal law have been used in this case. These provisions have been listed below.

#### Code of Criminal Procedure, 1973-

- Section 377(1)(b) - Appeal before the Hon'ble High Court against order of conviction passed by the lower court.

#### Indian Penal Code, 1860-

- Section 34- Section which adduces common intention
- Section 201- Causing disappearance of evidence
- Section 354-Outraging the modesty of Woman
- Section 376- Punishment of Rape (Rape is defined under Section 375 of IPC)

### **5. JUDGEMENT IN BRIEF**

In the present case, the Hon'ble Patna High Court came to the following conclusions after considering all the material on record.

- The victim, Afsana Khatoon alias Bagari who was deaf and dumb could not adduce through the help of expert witness namely, Sister Molly Chako that rape was committed

on her. As per the statement made by the victim before the Trial Court, the victim was locked in the room and her clothes were untied by the Appellant-Accused herein.

- The prosecution further could not produce any evidence or witness on record proving that there was forceful sexual intercourse.
- The court through its Judgement and Order held that-
  - a) Appellant-Accused, Meraj Alam alias Tuddu has not committed rape however; he was involved in confining the victim herein and untying her clothes. Hence, he is guilty for Section 354 of Indian Penal Code, 1860. This section pertains to outraging the modesty of woman.
  - b) The court set aside the award of sentence against the father and uncle of the accused herein who have been convicted under Section 201 of IPC for destroying evidence.

“There shall be no conviction without proper evidence.”

## 6. COMMENTARY

The present case is a criminal appeal filed by the Appellant-Accused Meraj Alam against his conviction under Section 376 of Indian Penal Code, 1860 by the fast-track court. The present case is a clear enunciation of one of the basic principles of Criminal Law- “Beyond reasonable doubt”. The doctrine or principle states that when an accused is brought before the court, then before sentencing there must not be a single shred or a single piece of doubt in the mind of the judge or that of adjudicating authority. The role of proving an offence to this extent has been assigned to the prosecution and the investigating agency- in the current case- The Police. It is one of the most important tenets of Criminal Law. The principle of ‘Beyond reasonable doubt’ is neither statutory nor constitutional however, it forms a big part of criminal law and it is an undocumented rule which has to be applied prior to any judgement passed in favour or against of the accused and victim. In the case of *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 SC 1563 it is observed: “It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt”. Another landmark case in this regard is that of *K. M. Nanavati v. State of Maharashtra*. In the present case if we apply this test, we can clearly observe that all the essentials of the Section 376 of Indian Penal Code, 1860 has not been adduced yet he has been found guilty under the said section. The Hon’ble High Court through its Judgement and Order has rightly considered the

facts and evidences on record. In the cases of Section 376, as per the Evidence Act, mere statement of the victim is conclusive, however in the present case the victim has not stated through the help of expert witness that rape was committed over her. Her statement regarding the ordeal and chain of events is that she was tied and she was undressed for which the Hon'ble court has rightly convicted the Accused-Appellant under Section 354 of IPC as he has indeed outraged the modesty of the woman in this case. However, as per the material on record and as per the judgement provided, the case under Section 376 is not proved beyond reasonable doubt by the prosecution.

## **7. IMPORTANT CASES REFERRED**

- *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, AIR 1964 SC 1563*
- *K. M. Nanavati v. State of Maharashtra, AIR 1962 SC 605*

**CASE NO. 5**  
**UNION CARBIDE CORPORATION**  
**V.**  
**UNION OF INDIA**  
**[(1989) 1 SCC 674]**  
**BHOPAL GAS LEAK TRAGEDY CASE**

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**ABSTRACT**

Bhopal gas leak tragedy is an infamous incident that took place in Madhya Pradesh whereby a multi-national cooperation (MNC) named Union Carbide Corporation (UCC) through its sister concern used to function in India. It used a dangerous and toxic gas called the Methyl Isocyanate (MIC) which was put in storage tank. But it escaped from there on a chilling night of December 2, 1984 causing mass destruction to the people. The death toll was in thousands while the injuries were so severe and in tens of thousands. By the end of two weeks, the numbers had almost doubled. This was the most unfortunate incident caused by the negligence and lack of due care by the corporation which had long lasting effects on not only the human beings but also the plants and animals. This particular judgement deals with the settlement which was reached between the parties to the dispute for providing immediate and urgent relief to the victims of the disaster and how that settlement impacted further judgements of Bhopal gas leak tragedy and its reasonableness was discussed.

**1. PRIMARY DETAILS OF THE CASE**

Case No	:	Civil Appeal No. 18788 of 1988
Jurisdiction	:	Supreme Court of India
Case Filed on	:	September, 1986
Case Decided on	:	February 14-15, 1989
Judges	:	Justice R. S. Pathak, Justice E. S. Venkataramiah, Justice Ranganath Misra, Justice M. N. Venkatachalliah, Justice N. D. Ojha
Legal Provisions Involved	:	Bhopal Gas Disaster (Processing of Claims) Act, 1985, Section 3
Case Summary Prepared by	:	Arushi Anand, VIPS, New Delhi

## 2. BRIEF FACTS OF THE CASE

The facts of the case are such that UCIL, which is a multi-national corporation (MNC), was operating a chemical plant which manufactured pesticides in Bhopal, Madhya Pradesh. An ingredient of the said chemical plant was the Methyl Isocyanate (MIC) which is considered as the most toxic chemical. On December 2, 1984, the tank in which MIC was being kept and stored, it escaped from there which led to fumes into the huts and caught the plant premise and residents. It also largely affected the plant and animal wildlife (the flora and the fauna), damaging it. Further, around 2600 human beings lost their life immediately while the toll reached 8000 after 14 days and around tens of thousands were affected with serious degrees of health ailments due to the escape of the lethal gas. It was the most unfortunate and adverse situation having long lasting effects in Bhopal affecting even the children in womb.

After that, on March 29, 1985, the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was passed which gave the authority to the Government of India to act as a *parent patriae* (parent for the nation) of the victims and to represent their interests and claim for compensation in a speedy and effective manner for the victims of such an unfortunate disaster. The Union went to the court of US to litigate on the matter cited reasons that Indian legal system had major backlogs as well as is not completely knowledgeable in torts and there is thus, a gap and justice will not be properly given.

Initially, the proceeding for compensation was made before the court of United States of America. Subsequent to the dismissal order in US (on ground of *forum non conveniens*) on May 12, 1986, in September, the Union filed a suit in Bhopal's District Court<sup>3</sup>. It pleaded for damages and compensation for injuries suffered by the people and the deaths which occurred there and all of it amounted to around five lakhs individuals. It also pleaded for a decree to deter the defendant as well as other MNCs from showing disregard towards the safety of the citizens involved in their business activities.

The district court made order for 350 million dollars as the interim compensation against UCC. In appeal, the High Court reduced it to rupees 250 million by modifying the order of the district court of Rupees 350 million. This was challenged in the present case through an appeal since there was already an overall settlement of 470 million US dollars and termination of proceedings – civil and criminal.

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<sup>3</sup> Suit No. 1113 of 1986



### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether the order made by the High Court of Madhya Pradesh<sup>4</sup> is valid which reduced the compensation to Rs. 250 Crores modifying the order of the District Court?

### **4. ARGUMENTS OF THE PARTIES**

#### **Appellant**

The appellant presented that since there were already offers and counter – offers made between the parties to the dispute during the proceedings for settlement of the dispute and to provide effective remedy to the victim by way of settling the matter. It was because of the urgency of the matter that the immediate relief was necessary and the settlement between both the parties were offered by way of overall settlement of dispute which will include payment of compensation and termination of the proceedings.

#### **Respondent**

The respondent presented at the District Court as such that for damages and compensation for injuries suffered by the people and the deaths that happened which all amounted to around five lakhs individuals along with a decree to deter the defendant as well as other MNCs from showing disregard towards the safety of the citizens involved in their business activities. As the matter reached the apex court, due to the urgency and fast remedy to the victims, a settlement was offered by the other party to the dispute in terms of compensation to be paid.

### **5. LEGAL ASPECTS INVOLVED IN THE CASE**

The Bhopal Gas Disaster (Processing of Claims) Act, 1985 is the act which conferred the powers on the Union (Central Government) to secure the rights of the victims of the Bhopal gas tragedy as well as to deal with such claims which arises out of such as disaster or connected or annexed to the gas leak in Bhopal. Furthermore, this power is conferred so as to deal the matter in a speedy and effective manner so that it is benefits the victims of the disaster. It came into force on February 20, 1985 as Act No. 21 of 1985.

Under its Section 3, there is power given to the Central Government to represent the claimants which is an exclusive right given (with exception in Section 4 to allow the claimant to have a legal practitioner of their choice to represent their claim) who is entitled to make a

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<sup>4</sup> C. R. No. 26 of 1988

claim or has made a claim. The powers given include the power to institute a suit or proceeding in India or outside India as well as power to withdraw such a suit. Further, there is power given to enter into a compromise or a settlement by the Central Government. Lastly, it also gave the Central Government the power of a civil court to discharge its function including production of documents, summoning, etc.

## **6. JUDGEMENT IN BRIEF**

The apex court while deciding the matter said that there is an urgent need to provide for immediate relief to the victims of the Bhopal gas leak disaster. They opined that at this point it seems appropriate for an overall settlement after looking at the facts and circumstances as well as the offers and counter – offers made at the procedural stages to give an order for settlement which is equitable and just in nature. What the court cited was the “manifest reasonableness” that is exhibited by such an acceptance of settlement between the parties.

The terms of the settlement dictated as follows that the UCC will make the payment of certain 470 million US dollar in regard to the manner defined as: firstly, 425 million US dollars to be paid to the Central Government by March 23, 1989 by UCC; secondly, 45 million US dollar to be paid by March 23, 1989 by UCIL at the prevailing exchange rate; and lastly, this payment is to the Central Government for all the victims of the tragedy as per the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 but it is not treated as fines or punitive damages. Thus, the purpose of this settlement is for the advantage of the victims and to aid them in that regard.

Reciprocity is to be maintained by the Union of India in the form that, it shall ensure that steps are taken to implement the order as well as to ensure that any future claims are in regard to such a settlement reached as well as the pending civil or criminal claims or suits or proceedings to stand dismissed or quashed as applicable. Furthermore, the order of the district court of the Bhopal is as such discharged along with the revisions and the contempt proceedings against the parties or the advocates will be dropped. These are pursuant to the payment made by the UCC.

Thus, these were the broad terms of the settlement reached in that judgement by the apex court. Along with that it listed that the amount collected will be deposited to the credit of Registrar of the court and in the bank as per the directions. Furthermore, it also gave authority to the Registrar to get the amount credited and transferred which is unutilized and lying with

the Indian Red Cross Society as per their directions for the same. The terms of settlement formed the part of the order. Lastly, the proceedings before the district court of Bhopal are disposed and any such revisions in accordance to the payment by the UCC.

The Supreme Court held that given the human suffering and urgency of the issue to provide compensation to the victims of such a tragedy, a memorandum of settlement is filed before the court directing the UCC to pay 470 million US dollar to the Union of India on or before March 31, 1989 as a full settlement in regard to all the claims, rights and liabilities. Along with that in terms of settlement, all the civil proceedings will be transferred to the apex and will be concluded as well as the criminal proceedings to be quashed, all which are pending.

## **7. COMMENTARY**

The thing which came at the forefront was that there is distrust of the Union on the Indian judiciary. It opened the forum of discussion on the fact that the Union filed the case for such a leakage of poisonous gas outside India, completely ignoring or trusting on the judiciary of the country which highlighted the gap that existed. It pointed out the backlogging or pendency of cases in the judiciary and that there will be long time till the victims will get the justice or any relief or compensation for damage caused to them. It also pointed out the lack of development of law of torts in the courts as the reason by the Union. Thus, this was one of the facets which were highlighted through this judgement.

Next, what was further discussed in *Union Carbide Corporation v. Union of India*<sup>5</sup> was the reasonableness of the decision on February 14 and 15 whereby the questions were how did the court reach at the 470 million US dollar amount and why was there lack of legal question to be addressed in regard to liability of the MNCs. As to the first question, the court said that reasonableness and its quantification is “broad and general estimate” which may not involve accuracy. Further, the reasonableness is assured since there was need of immediate payment without any delays whereby the offer made was of 426 million and counter offer of 500 million.

So, the court proceeded *prima facie* by looking at the death tolls and injuries (by persons in the hospital). So, there are broad assumptions when calculating quantum and its justness by looking at disabilities (total and partial) caused, injuries, deaths, etc. The court answering the question said that though these legal questions are significant but they can wait because of

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<sup>5</sup> Civil Appeal No. 3187 and 3188 of 1988 (decided on May 4, 1989)

need of immediate relief but they are solved through due course of judicial proceedings and the power of review and other is not stopped.

Lastly, the settlement in the instant judgement of February 14-15 was challenged in *Union Carbide Corporation v. Union of India (1991)*<sup>6</sup>. The points which were challenged is that the apex court cannot order for withdrawal or disposal of main suits and criminal proceedings while hearing interlocutory orders and that the settlement is void under Order XXIII of the Code of Civil Procedure, 1908 since notice to the victims were not given.

In short, what the court has held was that Article 142 is of significance in the matter of withdrawal of proceedings be it criminal. Thus, the court does have inherent jurisdiction owing to the constitutional provision but it also accepted that in the event of the present situation and tragedy that happened the quashing of criminal proceedings is not a justifiable step. Given the nature of the incident, the withdrawal of prosecution will lead to miscarriage justice and that is set aside. Furthermore, the power to grant immunity from prosecution is not the power of court but a legislative function. The court also said that the settlement is not void because of the reason that the victims were not heard since that right firstly does not arise from the rule of the CPC at the point of settlement and there is curative opportunity of review. Thus, overall, this particular judgement highlighted the lacunas, gaps as well as distrust between the counterparts of the organs of the government.

## 8. IMPORTANT CASES REFERRED

- *Ajarambhai and Muljibhai anr. v. United India Insurance Co. Ltd., AIR 1984 Guj 7*
- *Harbans Singh v. State of U.P. & Others, 1982 AIR 849*
- *Institute of Chartered v. L. K. Ratna & others, 1987 AIR 71*
- *Prem Chand Garg v. Excise Commissioner, U. P., 1963 AIR 996*
- *State of Punjab v. Union of India, AIR 1987 SC 188*

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<sup>6</sup> 1992 AIR 248 (decided on October 3, 1991)

**CASE NO. 6**  
**KHATRI**  
**V.**  
**STATE OF BIHAR**  
**[(1981) 1 SCC 623]**  
**BHAGALPUR BLINDING CASE**

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**ABSTRACT**

The incident revolves around a very brutal incident whereby the police authorities exceeded their power and authority given to them. There were certain undertrial prisoners on whose eyes acid was poured blinding them. This act of pouring the acid was done by the police officials and blinding them forever. This infamous incident led to the petition brought before the apex court for getting compensation and monetary relief in favour of the petitioners because of violation of their right to life under Article 21 of the Constitution of India by the police officials. The incident which took place in Bhagalpur Central Jail of Bihar came to light through an article report by a newspaper journalist which created uproar in the society. It culminated into 4 judgements called *Khatri v. State of Bihar* and its accompanying cases<sup>7</sup> which is popularly known as Bhagalpur Blinding Cases. The apex court held that where there is a violation of the fundamental right and in the present case of Article 21 (Right to Life), there is no denial that the State has to pay for monetary relief in circumstances where the victims were blinded by the brutal act of the police officials.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Writ Petition (Criminal) No. 5670 of 1980
Jurisdiction	:	Supreme Court
Case Filed On	:	October 1980
Case Decided On	:	December 3, 1980
Judges	:	Justice P. N. Bhagwati, Justice E. S. Venkataramaiah
Legal Provisions involved	:	Constitution of India, Article 21

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<sup>7</sup> Khatri (I) v. State of Bihar, (1981) 1 S. C. C. 623; Khatri v. State of Bihar (II), (1981) 2 S. C. R. 408, Khatri (III) v. State of Bihar, (1981) 1 S. C. C. 635; Khatri (IV) v. State of Bihar, (1981) 2 S. C. C. 493.

Case Summary Prepared By	:	Arushi Anand, VIPS, New Delhi
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## **2. BRIEF FACTS OF THE CASE**

The facts of the case revolve around the brutal incident whereby certain undertrial prisoners in the State of Bihar were blinded by the police authorities by pouring acid into their eyes. This incident came as a rude shock as their eyesight was taken away from them forever. The petitioners claimed that while they were arrested and were in the police custody, they were adversely blinded by the police officers exceeding their police authorities and acting not as officials of the State but violating the fundamental right of the individuals arrested of right to life under Article 21 of the Constitution of India. They claimed that since these incidents happened, they are liable to be compensated from such a violation of their rights by the State through the petition brought. The incident is from the Bhagalpur Central Jail in Bihar where this barbaric incident took place by the officials who themselves are enforcers of the law in the country.

The reports in various newspapers were published related to the incident of Bhagalpur blinding which came as a huge shock to everyone. This article was sent before the Supreme Court of India by the advocate and received by Justice P. N. Bhagwati, treating it as a petition (which in later cases is recognized as the epistolary jurisdiction). After that, the petition was moved by the advocate Kapila Hingorani on behalf of certain 10 undertrials for habeas corpus in the present case which were all taken together.

## **3. ISSUES INVOLVED IN THE CASE**

- I. Whether the State of Bihar is under an obligation to grant monetary relief and compensation for the deprivation of life of the undertrial prisoners under Article 21 of the Constitution of India?

## **4. ARGUMENTS OF THE PARTIES**

### **Petitioner**

The arguments advanced by the petitioner are such that the police officials who blinded the petitioners were not acting in their private capacity but were acting as police officers and officials of the authorities. Thus, when the petitioners were arrested and were further

communicated to the police custody, the act which took place was by the officials of the State. So, the State is liable to compensate the petitioners for the violation of the fundamental right under Article 21 for which the petitioners have the right under Article 32 to bring action before the court.

### **Respondent**

The representation from the side of the respondent came at a very late stage and there were certain times when no one from the respondent was present in the hearing. The court expressed displeasure to that regard. One of the arguments advanced by the respondent is such that the State of Bihar is not liable to pay compensation since the State is not constitutionally or legally responsible for the acts done by the police officers who are outside the scope of power or the authority given to them. Also, the argument was that even when there is violation of the petitioner, under Article 21 of the Constitution, there is nothing which talks about liability to pay compensation or monetary terms. Furthermore, the legal services under Article 21 could not be given since they were accused in relation to an offence which was again discredited by the court at the later stage.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

The legal aspect involved is that of Article 21 and 32 of the Constitution of India. Article 21 talks about right to life and personal liberty. The provision says that no one shall be deprived of their right to life and liberty except by the procedure laid down by the law. Thus, this provision means that the very fundamental basic right is that of right to life and this cannot in any situation be curtailed unless there is a specific provision in law in regard to such a curtailment. Right to life in itself includes not only bare right to live but also essential necessities of life like shelter, food, etc along with right to live with dignity in a civilized society. This is ensured by Article 21 of the Constitution as it has been interpreted by apex court in different judgements. Thus, under Article 32, the power is given to bring a petition for constitutional remedies before the Supreme Court of India through the usage of 5 writ petitions, namely, habeas corpus, quo warranto, mandamus, certiorari, and prohibition. The petitioners can approach the appropriate court for the violation of their fundamental rights given under Part III of the Constitution by the State and can claim appropriate remedy by the Supreme Court of India. Along with this, certain ancillary provisions related to Indian Evidence Act, 1872 including Section 162 for production of documents and 172 for

production of police diaries and statements. But mainly, constitutional provisions are dealt with.

## **6. JUDGEMENT IN BRIEF**

The court was presented with the blinded prisoners before them where they saw the uncanny condition of the undertrial prisoners whereby their eyes were burned. There were scars on their eyes and it was completely destroyed and corroded along with the tissues of the eyes completely burned. These were the atrocities expressed on the undertrial prisoners. It was further informed certain undertrial prisoners were even granted bail and is now a victim to such cruel and barbaric condition forever with no ramification from the State. Further the State of Bihar has avoided appearing in certain portion of hearing as well.

Further, the court went further to explain that the concept of the free legal services is necessary element even for the person who is an accused in relation to a certain offence. This element is granted under Article 21 of the Constitution of India. Furthermore, the court said that the element that the arrested person is to be presented before the Magistrate is a very important ingredient as well because this ensures that the police authorities are not exceeding their power and authority given to them and a balance and check is maintained between the officials of the State.

Moving ahead the court said that they had ordered investigation in the particular issue so as not find out the guilt of a particular police officer since that particular aspect will be taken care of under the criminal proceedings. It, thereby, does not bar the present apex court to conduct an inquiry to look at whether the petitioners were blinded by the officials and to decide whether their fundamental right to life under Article 21 is violated or not. For that purpose, it is necessary to further arrive at the compensation that the State is liable to pay. Thus, the investigation proceedings are completely different in the criminal proceedings and that of the writ petition (civil proceedings) and there can be no bar on it.

Furthermore, the court highlighted that there is in fact a violation of the fundamental rights of the petitioners whereby their eyesight was taken away from them intentionally and it violated their right under Article 21. For this violation under Article 21, the State is completely liable to pay appropriate compensation to the petitioners. What the petitioner presented was that the police officials were not acting in their private capacity but were involved as an official of the



State when the arrest was made and then they were in police custody. Thus, the State becomes liable to pay compensation for such a violation.

The court then, answered to the two arguments by the State in negative whereby the court said that it would make the application of Article 21 a mockery and its existence as well in the Constitution if a police officer acting in his official capacity threatens a person of their life without any authority of law and that person cannot even approach this court for injuncting such an officer for violation of the fundamental right and that the State is not even liable. It will be wrong to say that. Moreover, that is a situation of threatening violation of right to life but what if a situation, which exist in present case, that there is already a breach of the fundamental right like the severance of limb of the petitioner, it will be wrong to say that they cannot get remedy from the State under Article 21 of the Constitution of India. To get remedy through Article 32, the petitioner has to establish that there is violation of fundamental right under Article 21 and that they were blinded while being in police custody or arrested by the police officials.

The court decided to pay to each of the undertrial prisoners who have been blinded by the police officials who were not acting in their private capacity in the Bhagalpur Central Jail but in their official capacity, for them the State is liable to pay a certain sum of money i.e. Rs. 500/- each for their treatment in a certain hospital in Delhi and the State to pay certain amount per month i.e. Rs. 300/- each per month, for the purpose of further maintenance for long as they are being treated.

## **7. COMMENTARY**

The judgement was of very much significance as it brought about the important element of approaching the court through its epistolary jurisdiction. This means that the court can act on the letter written to it by the victims and can then, convert it into a petition to formulate it into a case. This is an important aspect because it recognizes the concept of access to justice whereby the victims who have no appropriate means to approach the court with their grievance can now approach it through letters by way of epistolary jurisdiction given to the courts.

Next important point highlighted is in regard to the compensation and monetary value if a victim brings an action under Article 32 of the Constitution of India for the violation of the fundamental rights. The court held that they can in fact get the monetary relief otherwise it

will completely render the provisions non-operational. Thus, the victims like in the present case can get compensation if there is a violation of their fundamental rights by the State through the use of writ petitions, they can bring such claims and get the monetary compensation along with other reliefs.

Further, the court aptly decided a very important point in regard to the obligation of the State to provide for the free legal services by the States even when such people are accused in a particular offence in a case. This does not mean that they will not get representation to defend themselves because it will go against what is implicitly ensured under Article 21 of the Constitution of India. Even if the undertrial prisoners are accused in an offence, they have to be given free legal services to plead in the court and this comes under the obligation of the State. Moreover, the Magistrate or the Sessions Judge has to inform the accused for legal aid services and not to be left up to him otherwise; it will go against the whole purpose of establishing legal aid mechanism. Along with that production of the accused before the Magistrate is necessary procedural step to avoid the cases where detention without any authority is there. Thus, the Supreme Court aptly covered very significant portion and element in regard to detention as well in the second Khatri Judgement (II).

The Supreme Court of India was correct in deciding that the production of the documents in regard to a case where the police officials and their blinding the victims is in question should be necessary. The documents and the reports need to be produced and it cannot be ignored under the reference of public document under the Indian Evidence Act since these reports during the investigations and the statements made all are relevant under the evidence portion and the State government cannot ignore the production of these documents before the court. The court looked at Supreme Court Rules, 1966, Rule 10 which says that under the procedure for Article 32 under writ petition, the court can ask for further evidence by the parties and it will be governed by the Indian Evidence Act. This was held in the Khatri Judgement (IV). Thus, the Supreme Court looked at all the facets while deciding the Bhagalpur Blinding case whereby inhumane treatment was given to undertrial prisoners in Bhagalpur Central Jail in State of Bihar by the police officials.

## **8. IMPORTANT CASES REFERRED**

- *Hussainara Khatoon v. State of Bihar*, (1979) 3 S. C. R. 532

**CASE NO. 7**  
**SAHELI, A WOMEN'S RESOURCES CENTRE,**  
**THROUGH MS. NALINI BHANOT**  
**V.**  
**COMMISSIONER OF POLICE, DELHI POLICE**  
**HEADQUARTERS AND ORS.**  
**[AIR 1990 SC 513]**  
**COMPENSATION FOR POLICE MISCONDUCT**

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**ABSTRACT**

This was one of the first strong precedent cases, allowing for compensation in the event of police misconduct by the lawless Indian Police Force. Petitioner asked the court to order Respondent to pay exemplary damages for the death of Naresh (Petitioner's son). Naresh was beaten and assaulted by an agency of sovereign power acting in breach and excess of power, according to the prosecution. For bodily harm, such as assault, battery, physical injuries, false imprisonment, and death, a damages action is available. Furthermore, the State is liable for the tortious actions of its agents. Additionally, the Petitioner/mother of the boy was entitled to compensation from the Respondent, the Delhi Administration, for the death of her child. As a result, it was held reasonable to order Respondent provide Petitioner compensation for Vicarious Liability.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Writ Petition (Criminal) Nos. 250-53 of 1988
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1988
Case Decided On	:	December 14, 1989
Judges	:	Justice B C Ray, Justice S R Pandian
Legal Provisions Involved	:	Indian Penal Code 1860, Section 34, 120B, 302, 304, 308, 448
Case Summary Prepared By	:	Pooja Lakshmi, Bennett University, Greater Noida

## **2. BRIEF FACTS OF THE CASE**

Kamlesh Kumari and Maya Devi shared a house but lived in separate rooms with their children and spouses, who were not usually at home as they were truck drivers. Puran Chand and his sons Shambu Dayal and Prakash Chand were the third generation of owners to claim ownership of the property after it changed hands twice. They illegally evicted tenants, however, Kamlesh and Maya did not leave. Kamlesh received a court stay order against her forceful eviction and continued to live there as a result, the so-called landlord turned off the water and electricity in October 1987. Lal Singh, the Station House Officer of Anand Parbat Police Station, called Kamlesh Kumari on the 2nd, 4th, and 12th of November 1987 and instructed her to leave the premises. Maya Devi was thrown out of the house and Kamlesh Kumari's children were taken away by the Sub Inspector of Anand Parbat Police Station on November 13 while she was trying to consult her lawyer. Her child had been locked up within that time, even though she was able to release them with the help of her lawyer. Later, at night Shambu Dayal. attacked Kamlesh, and on November 14, Shambu Dayal, Prakash Chand, Lal Singh and Sham Lal beat Kamlesh, tore off her clothes and molested her. Further, Naresh who had clung to his mother, but Lal Singh threw him to the ground, injuring him. Kamlesh was taken to the police station and charged with criminal trespass, after which she was sent to Tihar Jail. Two days after the victim was depicted as the wrongdoer, she was eventually released after 2 days. On November 18, 1987, Naresh was admitted to Ram Manohar Lohia Hospital on the instructions of medical doctors and later died due to his injuries and the resulting fever and pneumonitis. The autopsy doctor concluded that the injuries were ante-mortem and that the suspected injuries were insufficient to cause death. The cause of death was pneumonitis, which was diagnosed clinically. The nature of the injuries on the child's left leg was later determined to be serious.

Puran Singh, Inspector, Crime Branch Delhi, stated in his report stated that the entire incident was part of an elevated conspiracy to force the tenants out of the residence. On behalf of Kamlesh Kumari and Maya Devi, the petitioner filed a Public Interest Litigation. The writ petitions in this case have been brought to the Supreme Court. Exemplary damages were demanded for Naresh's death

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether the Delhi Administration can be held vicariously liable for the tortious acts of the Delhi Police?

### **4. ARGUMENTS OF THE PARTIES**

#### **Plaintiff**

The plaintiff argued that the death of Naresh (Kamlesh Kumari's son) was due to his injuries caused by police officers and the court has the authority to provide justice to Kamlesh Kumari.

#### **Defendant**

The defendants argued that the death was not due to the injuries as injuries caused were insufficient to cause death.

### **5. LEGAL ASPECTS INVOLVED IN THE CASE**

#### **Indian Penal Code 1860 (IPC) –**

- Section 34 - Acts done by several persons in furtherance of common intention have equal liability.
- Section 120B - Punishment of criminal conspiracy.
- Section 302 - Punishment for murder.
- Section 304 - Punishment for culpable homicide not amounting to murder.
- Section 308 - Attempt to commit culpable homicide.
- Section 448 - Punishment for house-trespass.

### **6. JUDGEMENT IN BRIEF**

State shall be liable to pay compensation for wrongful act of its servant during course of his employment.

The judges on the bench, Justice B. C. Ray and Justice Ratnavel Pandian, determined that the State is liable for the tortious conduct of its workers and as a result, the Delhi Administration is liable for the S.H.O. Lal Singh's lawbreaking. This decision mirrored the Supreme Court's decisions in *Joginder Kaur v. Punjab State*, and *State of Rajasthan v. Vidhyawati* wherein the Court held the state to be legally accountable for the wrongful acts of its workers and ordered

them to pay damages as per the case, In *People's Union of Democratic Rights v. Police Commissioner, Delhi Headquarters*, where court awarded Rs. 50,000/- in compensation to the family of a laborer who was beaten by Delhi Police officers. The Delhi Administration was asked to pay Kamlesh Kumari Rs. 75,000/- in exemplary damages for battery, assault, false imprisonment, physical injury, and death.

The damages for assault, battery, and wrongful detention, according to the Court, are primarily for mental agony, distress, indignity, loss of rights, and death. The Delhi Administration was also given the right to sue the officials who were found to be liable for the damages. Further, the Court ruled that no observation in the case could be considered in the criminal case against the policemen because the officers were not present before the bench.

## **7. COMMENTARY**

This case demonstrates that, even when administrative and law enforcement officials fail to perform their duties or intentionally abuse their power, the courts will take notice and grant the necessary redress to those who have been wronged. Court should be free, and must find it easy to declare that the State is just as liable for tort as any other individual for a tortious act performed by its worker while in the course of his employment and functioning as such. It is to be noted that only with the assistance of an NGO that filed a writ case to obtain justice for a mother was the reason Naresh's mother got justice and the wrongdoers came to light. Many other individuals out there suffer and it is the duty of every individual to voice out for justice and bring justice to the world. It is past time for the police to properly carry out their duties for which they were appointed; otherwise, people will lose faith in this government body and begin to take issues into their own hands. Wrong is always wrong, no matter who does it, and it is our responsibility as citizens to stand up for what is right.

## **8. IMPORTANT CASES REFERRED**

- *Joginder Kaur v. Punjab State*, 1969 ACJ 28.
- *Peoples Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters*, 1990 ACJ 192.
- *State of Rajasthan v. Vidhyawati*, AIR 1962 SC 933.

**CASE NO. 8**  
**CHAMARU RAM**  
**V.**  
**STATE OF H. P.**  
**[2005 CRILJ 1943]**  
**RATIONALE AND CONSEQUENCE OF**  
**DELAY IN FILING FIR**

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**ABSTRACT**

This case is about an alleged sexual assault and showcases the importance of lodging an FIR at prompt since there is no universal definition of what constitutes a reasonable delay; it varies depending on the context and circumstances of each case. However, if the informant can provide sufficient justification for failing to register the FIR sooner, the delay will have no influence on the outcome of the case. Justifications for any delays should be included in the FIR. It showcased how delays in the submission of the FIR have a substantial impact on its credibility. Further, it dealt with material contradiction with the statement recorded under Section 154 of the Code of Criminal Procedure, where Omissions and inconsistencies are terms that allude to contradictory claims given by a witness. The failing to state something from a previous comment is referred to as omission. The phrase "contradiction" refers to a statement that is diametrically opposed to the one that comes before it. When reviewing witness testimony, each court officer must analyse the reasons for, and, more crucially, the consequences of such "something missing" and "something different."

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Crl. Appeal No. 58 of 2004
Jurisdiction	:	Himachal Pradesh High Court
Case Decided On	:	January, 2005
Judges	:	Justice K. C. Sood
Legal Provisions Involved	:	Indian Penal Code, 1860, Section 376, 506; CrPC, 1973 Section 154, 161; Indian Evidence Act, 1872, Section 118

Case Summary Prepared By	:	Dhaval Bothra, Symbiosis Law School, Pune
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## **2. BRIEF FACTS OF THE CASE**

- 'S' (P.W. 1) was over the age of seventeen at the time of the incident. She suffers from a mental illness. At 12 p.m. on September 11, 2002, she was heading home after harvesting a pumpkin from the fields when she was approached by the accused. He yanked the pumpkin from her grip and flung it on the ground. He threw her to the ground, snapped the string on her salwar, and coerced her into forcible sexual contact behind the house. She bled, but she washed it away with faucet water. Additionally, she washed her pyjamas. She raised the alarm, but no one was nearby. Chamaru Ram threatened her that if she informed her parents or his wife about the affair, "he would see her." She returned to her home. She notified her mother, Premi Devi, of the incident just after 9.00 p.m. Both her father and brother were absent. They'd both gone in search of work. They returned on September 17, 2002, and on September 19, 2002, the report was presented to the Pangna Police Post's in-charge. On the basis of this information, a complaint was filed against the accused under Sections 376 and 506 of the IPC.
- The offender was said to have violated Sections 376 and 506 of the 1860 IPC. He was cleared of the offence punishable under Section 506 of the IPC but convicted of the offence punishable under Section 376. The incensed defendant has filed an appeal. The State did not appeal the accused's acquittal for violating Section 506 of the IPC.

## **3. ISSUES INVOLVED IN THE CASE**

- I. Whether there is a material contradiction with the statement recorded under Section 154 of the Code of Criminal Procedure?
- II. Whether inordinate delay in lodging First Information Report is a result of deliberations or concoction?



## **4. ARGUMENTS OF THE PARTIES**

### **Plaintiff**

- 'S' is incompetent as a witness since she has been mentally retarded since birth, and her testimony will not suffice to convict the accused, particularly given that neither the doctor who tested her nor the Court has determined her mental age.
- 'S' evidence is neither trustworthy nor persuasive. With the statement recorded pursuant to Section 154 of the Code of Criminal Procedure, she has severely contradicted herself.
- Medical records contradict 'S's description of events.
- Her parents tutored the prosecutrix, and she presented her case in court with a tutored version.
- Due to disagreements and concoctions, the filing of the First Information Report has been severely delayed.
- Due to the parties' hatred, 'S' falsely implicated the defendant while being educated by her parents.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

- All persons are competent to testify under Section 118 of the Evidence Act, unless the Court determines that they are unable to understand or provide rational replies to the questions posed to them due to their infancy, extreme old age, physical or mental illness, or any other equivalent cause. According to the Section 118 explanation, a lunatic is not competent to testify until his insanity prevents him from comprehending and replying to the questions posed to him.
- Any statement made by a mentally disabled witness must be treated with extreme caution and weighed against the rest of the case's factual evidence. In other words, the Court must determine whether the testimony of such a witness can be substantiated.

Page 217 of Mekelvey's Evidence papers:

"A person is incompetent if he is mentally ill to the point of being unable to comprehend the subject to which he has been summoned as a witness." Individuals who are naturally incapable of testifying are not permitted to do so. This policy has always been in place and will continue to be so. The judge is responsible for determining whether or not a witness has the mental capacity to testify, and he may hear testimony and interrogate the witness personally."

- It is critical to file the FIR as soon as possible in criminal matters. *Thulia Kali v. The State of Tamil Nadu*<sup>8</sup>, the Supreme Court held that a delay in filing a FIR resulted in embellishment, which is the result of afterthought. Their Lordships were treated as follows (para 12):

"As a result of the delay, the report loses not only its spontaneity, but also the possibility of including a coloured version, exaggerated account, or invented tale as a result of thought and consultation." As a result, any delay in completing the First Information Report must be explained carefully."

## 6. JUDGEMENT IN BRIEF

- In this case, the First Information Report was filed with an unusual delay of more than eight days. The possibility of a coloured version being introduced after consultation cannot be ruled out, particularly in light of the untrustworthy and unbelievable testimony of 'S,' her mother Premi Devi, and her father Nant Ram, and especially in light of the admitted animosity between the accused's parents and the accused's admission of claiming damages for falsely accusing her of rape.
- It is worth noting that in the instance of 'S's mother and father, Panchayat was summoned. Surprisingly, no member of such a Panchayat has been charged with raping 'S.
- It is true that if a rape victim's testimony is determined to be adequate and reliable, it can be utilized to get a conviction without the need for additional evidence. As previously stated, 'S' evidence is untrustworthy since it is the product of parental coaching, and conviction cannot be relied only on her testimony.
- To summarise, there is no credible or admissible evidence to convict the accused. It is difficult to rule out the possibility that an accused person was falsely implicated out of animosity. The prosecution has not established beyond a reasonable doubt that the charge is true. On the basis of the facts on record, the learned trial judge erred in convicting the accused.

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<sup>8</sup> (1972) 3 SCC 393; AIR 1973 SC 501; (1972 Cri LJ 1296),

## **7. COMMENTARY**

The truth version is described as the timely filing of information regarding a cognizable offence at the earliest feasible opportunity, without embellishment, exaggeration, or falsification. Historically, various impediments to presenting a case existed, such as the distance between the police station and the site of the crime, transportation, and transmission media, but many of these concerns have been overcome with the passage of time. There is no time limit set by the government or the courts for reporting a crime to the police. However, it has been stressed that the FIR must be submitted within a reasonable time frame. In each circumstance, the issue of what constitutes reasonable time is left to the court's discretion. As a result, simply postponing filing the FIR with the police does not protect you from prosecution. Regardless of the validity of the rationale offered for the delay, the consequence of such a delay must be considered in light of all of the facts and circumstances of the case. Even a lengthy delay in filing a murder FIR is allowable if the witnesses have no intention of incriminating the defendant and have provided adequate justification for the delay. The consequences of a delayed FIR might be regarded in a variety of ways, depending on the type and nature of the offence. A delay in registering a rape FIR with the police is not deemed deadly in rape cases since, due to the country's societal conditions, a delay in filing a rape FIR with the police may occur.

## **8. IMPORTANT CASES REFERRED**

- *Thulia Kali v. The State of Tamil Nadu*, (1972) 3 SCC 393 : AIR 1973 SC 501 : (1972 Cri LJ 1296)

**CASE NO. 9**  
**SHRI BODHISATTWA GAUTAM**  
**V.**  
**MISS SUBHRA CHAKRABORTY**  
**[(1996) 1 SCC 490]**  
**PAYMENT OF INTERIM COMPENSATION TO**  
**RAPE VICTIMS**

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**ABSTRACT**

The present case refers to *suo motu* action taken by the Supreme Court of India. This case is a classic example of “damned by one’s own deed” whereby the respondent filed a Special Leave Petition against a criminal complaint filed by the petitioner against him which was dismissed by the court but on the facts of the same, a *suo motu* cognizance of “rape” being violative of Article 21 was taken by the court and the respondent was hence ordered to pay interim compensation to the petitioner who alleged that the said respondent has committed various offences such as causing miscarriage, cheating, cruelty and other offences relating to marriage such as cohabitation by deceit, etc. against her in her criminal complaint. In the current case, the court has also discussed the plight of the rape victims and held that taking *suo motu* cognizance of violation of any fundamental right falls under the jurisdiction of the court under Article 32.

**1. PRIMARY DETAILS OF THE CASE**

Case Citation.	:	(1996) 1 SCC 490
Jurisdiction	:	Supreme Court of India
Case Decided On	:	December 15, 1995
Judges	:	Justice Ahmad Saghir S., Justice Kuldeep Singh
Legal Provisions Involved	:	Constitution of India, Article 21, 32
Case Summary Prepared By	:	Rakshita Shah, V. T. Choksi Sarvajanic Law College, Surat

## **2. BRIEF FACTS OF THE CASE**

The petitioner filed a criminal complaint against the respondent in the Court of JMFC, Kohima, Nagaland. The facts of the said complaints in brief are as follows:

The current petitioner was a student of the Baptist College, Kohima whereby respondent was a lecturer. The respondent visited the petitioner's residence for the first time on June 10, 1989 and after that he often visited the petitioner's residence. Once in the month of November, 1989, respondent voluntarily told petitioner that he was in love with her and thus developed their love affair. The respondent with malafide intention gave false assurance of marriage to the petitioner and dishonestly procured sexual intercourse with her. On several occasions, the petitioner approached the respondent to get married to her but the latter deferred the same sometimes asking to cooperate till he gets a government job and sometimes saying that he was waiting for a formal consent from his parents.

During the course of their continuous affair, the petitioner got pregnant twice, once in September, 1993 and then in April, 1994. Being worried about such pregnancy, the petitioner pressurized respondent to get married to her, however the latter deferred the same since he was waiting for his parent's permission. This resulted in quarrel between the two whereby the respondent opined for secret marriage to which the petitioner agreed and thus they got secretly married as on September 20, 1993. The respondent fraudulently convinced the petitioner to abort the child and the petitioner underwent an operation in the Putonou Clinic, Kohima and aborted in October 1993. The complainant was forced to undergo abortion even second time in the month of April 1994 in the Carewell Nursing Home at Dimapur. Noticeably, the respondent even furnished a false name to the said nursing home and signed the consent form in the name of Bikash Gautam of which the petitioner gained knowledge in 2<sup>nd</sup> week of February, 1995 while obtaining a certified copy of the same. On February 4, 1995 the respondent joined as a lecturer in Government College named Cachar College and refused to accept the petitioner as his wife and abandoned her procuring the reason that his parents are not ready to accept the petitioner as their daughter-in-law. Eventually the petitioner filed a Criminal Case No. 1 of 95 u/s 312, 420, 493, 496, 498-A of IPC for grave cruel act of the respondent for dishonestly making the petitioner believe that their marriage was a valid marriage and compelled her for abortion, twice.

The respondent filed a petition u/s 482 of CrPC in the Gauhati High Court for quashing the complaints and the proceedings initiated on the grounds of the said allegations contending that there was no prima facie case made on such allegations. The High Court in its order dated May 12, 1995 dismissed the petition compelling the respondent to approach Supreme Court of India by way of Special Leave Petition (Criminal) No. 2675 of 95 which was dismissed by the order dated October 20, 1995.

The Supreme Court of India dismissed the said petition as mentioned above. However, it took *suo motu* notice of the facts of the said case and issued a show cause notice to the respondent to pay reasonable maintenance per month to the petitioner during the pendency of the prosecution proceedings against him.

The respondent filed an affidavit stating that the allegations were made only to harass and humiliate him and since he was unemployed there was no case of him paying any maintenance. However, the court rejected such contention and ordered the respondent to pay interim compensation of Rs. 1,000/- per month to the petitioner during the pendency of the Criminal Case No. 1 of 95 in the court of JMFC, Kohima, Nagaland.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether Supreme Court of India being the highest court of the country has the jurisdiction to compel the respondent to pay maintenance to the petitioner during the pendency of the criminal case?

### **4. ARGUMENTS OF THE PARTIES**

#### **Petitioner**

Since it is a *Suo Motu* petition there were no arguments presented by the petitioner.

#### **Respondent**

The respondent filed an affidavit stating that the allegations were made only to harass and humiliate him and since he was unemployed there was no case of him paying any maintenance.

### **5. LEGAL ASPECTS INVOLVED IN THE CASE**

#### **Constitution of India**

**Article 32:** Remedies for enforcement of rights conferred by Part III of Constitution of India.

This Article confers 4 rights namely;

- i. Right to move the Supreme Court for the enforcement of the fundamental rights,
- ii. Power of Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, for the enforcement of any of the fundamental rights,
- iii. Power to any other court to exercise above powers conferred to Supreme Court within its local limits through law made by the Parliament,
- iv. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

In the current petition the Supreme Court of India took *suo motu* cognizance under Article 32.

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**Article 21: Protection of life and personal liberty** No person shall be deprived of his life or personal liberty except according to procedure established by law.

The Supreme Court of India in the current petition discusses Article 21 and the right conferred through it as- "*Right to Life*" does not merely mean animal existence but means something more, namely, the right to live with human dignity and elaborates on how Rape is crime against basic human rights and is also violative of the victim's most cherished Fundamental Rights, namely, the Right to Life and Personal Liberty contained in Article 21.

## **6. JUDGEMENT IN BRIEF**

The court in this *suo motu* petition ordered the respondent to pay interim compensation of Rs.1000/- every month to the petitioner during the pendency of the Criminal Case No. 1/95 in the court of JMFC, Kohima, Nagaland.

The Court, in detail, discussed various landmark precedents regarding Article 21 and also discussed the relaxation of the rule of corroboration of evidence of prosecutrix in an offence of rape u/s 376 of IPC and opined that by the virtue of Article 32, the Supreme Court of India has the jurisdiction to take *suo motu* action especially when it is related to Article 21 and other fundamental rights. The court held that the courts had inherent jurisdiction to award interim as well as final compensation for violation of fundamental rights.

The court held that taking suo motu action against violation of fundamental rights is covered under Article 32 of Constitution of India whereby a wide jurisdiction is offered to courts under writ jurisdiction.

That the offence of rape or sexual assault is an infringement of Right to Life and Personal Liberty as guaranteed under Article 21.

## **7. COMMENTARY**

In the current case, the Supreme Court of India has condemned the offence of Rape as not only a crime against woman but necessarily a crime against society and the insensitivity of the criminal justice system. Ever since many reforms and amendments had been introduced however even after 25 years of it, a lot is left to be done. Even today, the definition of rape completely ignores the mental trauma and harassment and takes into consideration only and only the physical aspects. The approach of society rather seems the same. Rape brings shame to the victim and her family and not the offender who still (sometimes) enjoy various privileges.<sup>9</sup> The only ray of hope is the one that is offered by higher courts by way of their judicial activism and sensitivity in handling such cases but being said that we cannot ignore the fact that we have a long way to go. It is high time that the rape stops to be seen as crime by man against woman and the definition of rape starts acknowledging the premature issue of male rape victims.

## **8. IMPORTANT CASES REFERRED**

- *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty*, (1996 AIR 922)

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<sup>9</sup> Various incidents such as the verdict of Lower Court in Bhanwari Devi case which led to famous Vishakha Guidelines as laid down in Vishaka and ors. V. State of Rajasthan and ors. (AIR 1997 SC 3011), the insensitivity of the police officials in the current Hathras incident of 2020, the whole momentum of “me too movement” where many famous names were alleged to have committed one or other sort of sexual crime. This list seems quite unending.



**CASE NO. 10**  
**LAXMI**  
**V.**  
**UNION OF INDIA**  
**[(2014) 2 SCC 427]**  
**ACID ATTACK CASE**

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**ABSTRACT**

Present case was the very famous acid attack case by Laxmi. The case was not the first one to come in line of acid attack victims. However, the bravery of Laxmi cannot be denied. The Supreme court decision forced limitations on the offer of Acid and give remuneration to the person in question The Criminal Law Amendment Act of 2013 passed a few new rules after the proposals made by the equity J. S. Verma Commission after the 2012 assault and murder of a physiotherapy understudy, that corrosive brutality is a different offense and will currently convey discipline of life detainment and fine. Before this decision of Supreme court there was no prohibition marked down of corrosive on counters just as the pay given by the public authority was not adequate. A corrosive assault survivor has drawn out impact of such a demonstration which incorporates interminable torment, lasting harm and different issues for the remainder of her life. Their carrying on with life becomes like a wreck; survivors become humiliated and damaged to leave their home and complete basic undertakings. Regardless of whether they will carry on with an ordinary life, there is no assurance that society will regard them as typical people in light of their appearance and incapacities after an assault. Thus, to limit such corrosive assaults on ladies the state should give repentant discipline to the miscreants. Prior the corrosive assaults were not announced however after the Laxmi's' case commencement numerous cases came into light.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Criminal Writ Petition No. 129 of 2006
Jurisdiction	:	Supreme Court of India
Case Filed On	:	2013
Case Decided On	:	April 10, 2015
Judges	:	Justice Madan B. Lokur, Justice Uday Umesh Lalit

Legal Provisions Involved	:	Constitution of India, Article 14, 15, 21, 32; Poisons Act, 1919, Section 2; Indian Penal Code, 1860, Section 320A, 320B, 326A, 326B; Code of Criminal Procedure, Section 357-A; Indian Evidence Act, 1872, Section 114B
Case Summary Prepared By	:	Himanshi S. Sharma, Maharashtra National Law University, Aurangabad

## 2. BRIEF FACTS OF THE CASE

A young lady named Laxmi who was going to her office from her house was called by somebody. When she thought back, she saw individuals on a bicycle known to her. One of them was a kid with whom she got proposition for marriage however she denied, yet before she gets anything corrosive was tossed to her. She was then taken to the Ram Manohar Lohiya Hospital, wherein the medical aid therapy was controlled to her. According to the clinical report, the casualty had gotten around 25% corrosive consumes over the face, eyes, chest region and lower arm, her chest area was completely annihilated and she confronted a great deal of mental injury just as actual torment because of this. Later on, when she recaptured her awareness, expressed to the police that the guilty parties were Naeem Khan (Guddu) and Rakhi (his sister-in-law). She said that Naeem Khan, who had been a family companion, asked her for marriage which she obviously rejected. After numerous medical procedures even, she could get her face and looks back. Trauma and pain suffered by her was unimaginable.

The Sessions Court in Delhi, sentenced the denounced and co-blamed under Section 307 (Attempt to Murder) read with area 120B (Punishment for criminal scheme) of the Indian Penal Code.

The blamed then documented an allure in the Delhi High Court, scrutinizing the choice given by the Sessions Court. The High Court maintained the choice given by the lower court. Moreover, guided the blamed to pay a total for Rs. 3 lakhs as remuneration to the casualty under Section 357(1)(b) of Criminal Procedure Code.

The individuals who were indicted by the Delhi's area court later got bail from the High court. This prompted an astonishment to the casualty as conceding of bail was not fitting for such agony she has endured.

This drove of recording a public interest suit by the casualty which focused on at the simple accessibility of corrosive, no legitimate arrangement identified with corrosive assault cases, including costs, medical procedures and recovery for corrosive assault survivors.

In 2013, Laxmi, recorded a PIL in the Supreme Court to carry light to the whose and sufferings of the corrosive assault casualties. There have been various explanations behind corrosive assault, nonetheless, refusal of marriage, dismissal of lewd gestures, settlement conflicts shape the basic causes. The principal reason for documenting this PIL was to have total restriction on the offer of corrosive, stricter laws with respect to corrosive assaults and better pay conspire.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether to make an extensive revision in the Indian Penal Code,1860 and Criminal Procedure code, 1973 identifying with Acid assaults?
- II. Whether a total restriction on the offer of corrosive and its different structures likewise such acids ought not be accessible over the counter?
- III. Whether the treatment Arraignment of corrosive hurlers just as the recovery of corrosive assault casualty can be included just as pay?

### **4. ARGUMENTS OF THE PARTIES**

#### **Plaintiff**

- The applicant raised her voice against the appropriation of acids in the business sectors at the tip of your fingers.
- She likewise expressed how her corrosive assault had caused her psychological, passionate and actual injury.
- She mentioned recovery from the public authority.
- She expressed that she needed stricter and rigid laws towards individuals who carried out these offensive wrongdoings in light of the fact that the essential laws regarded corrosive assaults as a summed up happening instead of giving it a different area.
- She mentioned with the expectation of complimentary treatment and remuneration for the corrosive assault survivors.

## **Defendant**

- The learned specialist general expressed that the Central Government will place the model principles into impact.
- The model guidelines comprised the guideline of offer of corrosive and some other destructive substances which go under the Poisons Act, 1919 to all the total state governments and association regions which will be followed inside seven days from today.
- The additionally held that the model principles would also include, among other things, the types and types of acids (fluid and solidified) that can be stored and sold, the issuance of licences, and the acquisition by persons. Foundations for education or research, emergency clinics, ventures, branch governments, and public area division endeavours are just a few examples. They acknowledge the prior accommodation made by the highly regarded specialised general.
- The Hon'ble counsel for the province of Tamandu expressed that inside two months from today legitimate and exacting laws will be regularized to hold under wraps the offer of corrosive and other destructive substances.
- The state and association domains governments held that they will make the offenses under Poisons Act, 1919 totally non cognizable and non bailable.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

### **Constitution of India**

#### **Article 14**

Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

#### **Article 15**

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

#### **Article 21**

Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

## **Article 32**

Remedies for enforcement of rights conferred by this 3<sup>rd</sup> Part.

## **Poisons Act, 1919**

### **Section 2**

Power of the State Government to regulate possession for sale and sale of any poison.

## **Indian Penal Code, 1860**

### **Section 320A**

Grievous hurt for emasculation

### **Section 320B**

Grievous hurt for permanent privation of the sight of either eye.

### **Section 326A**

Voluntarily causing grievous hurt by use of acid etc.

### **Section 326B**

Voluntarily causing grievous hurt by dangerous weapons or means.

## **Code of Criminal Procedure, 1973**

### **Section 357-A**

Order to pay compensation.

## **Indian Evidence Act, 1872**

### **Section 114B**

That an accomplice is unworthy of credit, unless he is corroborated in material particulars

## **6. JUDGEMENT IN BRIEF**

The Supreme Court found a way a fast way to control the exchanging of corrosive by giving the resulting rules:

**Rules for the merchant and the Buyer:**

No corrosive could be offered to an individual beneath the age of 18 years, further the purchaser needs to create photograph character card and notice the reason for such buy. The vender needs to advance this data to the closest police headquarters inside 3 days.

The dealer needs to present the report of the loads of corrosive to the Sub-divisional judge inside fifteen days.

The Sub-divisional officer has the ability to seize the unreported supplies of corrosive and can force the fine to the degree of Rs. 50,000/-.

**Rules for examination, scholarly and other institutional purposes:**

The utilization, reason, amount and different qualifications must be recorded in a register that will be submitted to the Sub-divisional justice.

There ought to be an approved individual for the protected treatment of corrosive.

The capacity of corrosive will be under a microscope of an individual. Passage and exit of each individual will be recorded.

Contemplating the subsequent arguing, the Court embedded the accompanying segments in the Indian Penal Code, Criminal Procedure Code and India Evidence Act through the Criminal Law (Amendment Act), 2013

**Indian Penal Code, 1860**

Section 320A and 320B sets down discipline for corrosive assaults and endeavor to corrosive assault individually.

Section 320A: Imprisonment for a very long time which may stretch out to life detainment and fine.

Section 326B: Imprisonment for a very long time which may stretch out to 7 years and will likewise be at risk to pay fine.

**Code of Criminal Procedure, 1973**

The accompanying areas were embedded under CrPC.

Section 357A under sub-section (1) gives that the State Government as a team with the Central Government will plan remuneration conspire for casualty or his dependents.

In sub-section (2), on proposal of the Court, the State or District Legal Services Authority will choose the quantum of pay to be given to the casualty under the plan.

Under sub-section (3), if the Court is of the assessment that the pay given under segment 357 of CrPC is lacking or when the wrongdoer is absolved, then, at that point the court may make suggestions with respect to something similar.

Sub-clause (4), casualty or his dependents can move application to the State or District Legal Services Authority for granting pay, if there should arise an occurrence of non-ID of the guilty party.

Under sub-section (5), the State or District Legal Services Authority, on receipt of utilization under sub-section (4), direct an enquiry inside two months from the date of use and grant fitting remuneration to the person in question.

Sub-section (6) the State or District Legal Services Authority can likewise pass the request with the expectation of complimentary clinical guide to the casualty because of the authentication gave by the official in charge of the police headquarters or the concerned judge.

Section 357B gives that the pay payable by the State Government under section 357A will be notwithstanding the installment of fine to the casualty under segment 326A or section 376D of the IPC.

### **Indian Evidence Act, 1872**

In Section 114B, whoever tosses or controls corrosive to someone else, will be said to have such expectation and information as is probably going to have under area 326A of IPC.

### **Appropriate to the third arguing the Apex Court made the accompanying arrangements:**

- A base pay of Rs. 3 lakh ought to be given to the person in question.
- Clinics can't deny treatment of the casualty by virtue of absence of particular offices.
- The State Governments and the Central Government will put forth attempts to bring private clinics for following the rules gave under the matter.
- Medical aid therapy ought to be offered promptly to the person in question.
- No emergency clinic or facility can deny treatment to the person in question and in the event that it does as such, will be made at risk under segment 357C of CrPC.

- The casualty will be given be a clinical testament by a clinic where the underlying treatment was given and the equivalent can be utilized by the casualty for additional treatment.

## **7. COMMENTARY**

Laxmi, today is caught up with affecting countries and people the same with her inspirational story and her indispensable coarseness and assurance to look for equity through all chances which prompted the renewal of a law in light of a legitimate concern for ladies. In spite of the fact that men are additionally exposed to corrosive assaults yet genuinely talking the sex inclination is very pervasive with regards to these grievous wrongdoings.

Laxmi's case is a shocker that shows us how these contemptuous and angry wrongdoings happen out of trivial issues and how there is a need to put tough and severe solutions for control these violations and their proclivities alongside related assaults.

Laxmi's case gave her another voice as well as roused a large number of others to stand firm and set forward their position and their conclusions. Her progression towards this issue changed the manner in which we view at casualties as they are not casualties but rather victors who notwithstanding the entirety of their issues and challenges don't stop for a second to approach and tell the world about their accounts for the sole reason for rousing others and spreading mindfulness.

## **8. IMPORTANT CASES REFERRED**

- *Laxmi v. Union of India, Criminal, Writ Petition No. 129/2006.*
- *Yakub Razak Memon v. State of Maharashtra THR. STF., CBI, Mumbai, Review Petition (Crl.) No.474 OF 2013*



**CASE NO. 11**  
**VIJAY VALIA**  
**V.**  
**STATE OF MAHARASHTRA**  
**[1987 MAH LJ 49]**

**VICTIM'S RIGHT TO TAKE PART IN CRIMINAL  
PROCEEDINGS**

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**ABSTRACT**

The case to be discussed happened in the year of 1984, Vijay Valia is still regarded as benchmark in regards to the discussion of right to be heard and represented by the complainant who basically is the victim. In this particular case the rights of the accused, victim and the powers of the Court and the roles of the prosecution are well established and discussed in detail. The judgement reiterates simple concepts such as the active participation of the court in proceedings and the role of prosecution not be a mere instrument of acquittal but the pursuer of justice and the guardian of the interests of both the complainant and the accused. The case discusses the powers and procedures of Sections 24(8), 25(1), Criminal Procedure Code and the framework of conducting a prosecution unbiased which aims at achieving justice. The judgement also reiterates the importance of the vindication by the victim or the complainant through him the state as whole.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Writ Petition No. 527 of 1986
Jurisdiction	:	Bombay High Court
Case Decided On	:	July 2, 1986
Judges	:	Justice P. B. Sawant, Justice H. H. Kantharia
Legal Provisions Involved	:	Constitution of India, Article 14; Criminal Procedure Code 1973, Sections 24(8), 25(1)
Case Summary Prepared By	:	R. Gireeshvaran School of Excellence in Law, TNDALU, Chennai

## **2. BRIEF FACTS OF THE CASE**

The case is presented before the Hon'ble High Court of Bombay. The parties being petitioner, Vijay Valia. The petitioner questioned the validity of Section 24(8) and 25(1) of the Criminal Procedure Code and whether the same violates the Article 14 of the Indian Constitution. The question of equality before law is raised by the petitioner. The other party being the State of Maharashtra and the office of prosecution. The court also combined several other pending cases with the same issue and question of law for which stay had been granted earlier and vacated the cases by this judgment.

The petitioner Vijay Valia, challenged the Validity of Section 24(8) and 25(1) of the Criminal Procedure Code, 1973 contending that there are no guidelines as to when Special Public Prosecutor/Assistant Public Prosecutor should be appointed and to that extent there was an excessive delegation of power and the power conferred under the said sections was arbitrary and violative of Article 14 of the Constitution. It was further contended that the appointment of a Special Public Prosecutor/Assistant Public Prosecutor at the instance of the complainant and paid for by him was bound to act to the prejudice of the accused because the prosecutor so appointed will be inclined in favour of the complainant and against the accused and will therefore not conduct the prosecution impartially. He may not act impartially under Section 321 of the Code in exercising his power to withdraw the prosecution. The writ petition was taken up by the High Court to answer the said question of law. The court also strung several other cases which were in stay as they bore the same question.

## **3. ISSUES INVOLVED IN THE CASE**

- I. Whether there exists arbitrariness in the Sections 24(8) and 25(1) of Criminal Procedure Code, with no guidelines which violates Article 14 of the Indian Constitution?
- II. Whether the said prosecutor specially appointed bound by the complainant to be prejudiced against the accused?

## **4. ARGUMENTS OF THE PARTIES**

### **Petitioner**

- There is excessive delegation of power for the court to appoint Special Public Prosecutor or Assistant Public Prosecutor as the sections 24(8) and 25(1) of Criminal Procedure

Code does not lay down any guidelines for the appointment for the said posts thereby violating the Article 14 of the Indian Constitution.

- The Special Public Prosecutor or Assistant Public Prosecutor being paid by the complainant results the post holder to act in prejudice against the accused Because:
  - The prosecution will be conducted impartially as the prosecutor will be inclined in favour of the complainant.
  - The prosecution will not act impartially under Section 321 of CrPC in exercising the withdrawal from the case. There also may be conflict of interests in his duty to the State as an officer of the Government and as an advocate for the complainant who engages him.
  - The prosecutor may not act independently in issuing his/ her certificate under Section 308 of the CrPC.
  - The Prosecution may not render impartial advice on appealing under Section 378(1) of the CrPC to the State Government.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

### **Constitution of India**

**Article 14 Equality before law.** - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Every person, who lives within territory of India, has the equal right before the law.

### **Code of Criminal Procedure, 1973**

**Section 24(8)** The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor. At court's discretion the victim/complainant may engage the said prosecutor of his/her choice.

**Section 25(1)** The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

**Section 308(1)** Where, in regard to a person who has accepted a tender of pardon made under Section 306 or 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have

been guilty in connection with the same matter, and also for the offence of giving false evidence, with some provisions.

**Section 321** of the Criminal Procedure Code enables the Public Prosecutor or the Assistant Public Prosecutor to withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried. For doing so, consent of the Court is necessary.

**Section 378(1)** empowers the State Government to direct the public prosecutor to present an appeal to the High Court from an original or appellate order passed by any Court other than High Court, or passed by the Court of Session in revision.

**Rules of the Conduct of the Legal Affairs of Government**, provides for procedural rules about conduction of advocacy inside the State of Maharashtra.

**Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules**, provides for legal services appointed by the state government.

## **6. JUDGEMENT IN BRIEF**

- The court ruled that the mere contention of Section 24(8) and 25(1) cannot be raised by the accused. Further it is to vindicate the rights and grievance of the complainant through him the state's that the prosecution is launched.
- It is the duty of the prosecutor to deliver justice and safeguard the interests of both the complainant and accused. Any prosecutor who fails in and neglects this duty is doing disservice to the judicial administration. The court is no silent spectator but active participant of the proceedings and this does not vary from prosecution to prosecution.
- There are 3 modes of addition of a prosecutor which are appointed and paid by state; appointed by complainant and paid by state; appointed and paid by complainant; rules of the conduct lay down the procedure for appointment. Any addition to the prosecution party will be in detail viewed such as nature of the case, evidences, circumstances, number of days the hearing is carried, name and fees of the special prosecutor. These procedures laid down nullifies any type of said prejudice brought in by the prosecutor or the arbitrariness claimed by the accused.
- As regarding the usage of the power of public prosecutor to withdraw under section 321, i.e., withdrawal from prosecution the court ruled that there is no 'untrammelled' power given to prosecution to withdraw. Any such withdrawal first needs the

acceptance from home department through district magistrate or commissioner of police whichever the case maybe and further the consent of court is required.

- The certificate under section 308(1) which has to be given by the prosecutor procedurally by which tender of pardon weighs on cannot be altered as per the wish of prosecutor as proper justification has to be given for the action took by the prosecutor.
- Section 378(1) is strongly substantiated by the procedures laid down in the conduct rules. The decision to file an appeal/revision is not entirely at the discretion of the prosecutor as he has to send this proposal to deputy secretary or district magistrate as per the case.
- The court ruled that any of the contentions and circumstances as questioned by the petitioner be a problem in the process of justice as irrespective the appointment of the special prosecutor or the assistant prosecutor the court, the procedure, and the framework hold the system unflawed.
- The court disagreed the judgements of *Narayanankutty v. State of Kerala* and ruled that the conduction of prosecution appointed and paid by the complainant does not change his capacity and ability in performing the role of Public Prosecutor.
- The court ruled that *Babu v. State of Kerala* deals with Section 302 of the code and does not involve the provisions of sections 24(8) and 25(1). Thereby the court refused to agree that an advocate engaged by the private person cannot be a de facto complainant and stressed upon its earlier view of giving the right to represent and right to be heard to the complainant.
- The case further cited *Ajay Kumar v. State*, Delhi High Court which ruled out a similar judgement as this one.
- Contention if any can only be raised by the complainant if the court rejects his choice and the accused has no right to choose the prosecutor.
- The argument of an unfair trial because of the fact that the prosecution is being done by an advocate appointed by the state/complainant is based on an erroneous concept.

## 7. COMMENTARY

The purpose of laws in a land is to serve justice and equity. The substantive and procedural laws are the tools to achieve the said purpose. At the outset the substantive law may seem to be the ultimate authority which helps in pursuing the purpose. But procedural law decides the enforceability of any statute. Therefore, it is very important to be understood and used. There

enters the conundrum, as much as it's important, these procedurals necessitate precision. Even slightest amount of arbitrariness will be used to its exploitation by multiple interpretations thereby using it as a loophole eventually defeating the purpose of its enactment. The said case deals with one of the instances wherein the Section of 24(8) and 25(1) of the Criminal Procedure Code was petitioned to be arbitrary and violating the backbone of the fundamental rights, Article 14. The contention of over delegation of power to the court through absence of legislature is also a point to be noted. In criminal jurisdiction the victim's (turned into the complainant) plight is turned into a state's plight and is prosecuted by its own mechanism against the person in question. Section 24(8) and 25(1) encompasses one of the most important rights given to a victim/complainant. As the case discussed the right to be heard and represented by the victim is also vested in the said provision. It also talks the importance of the vindication which is often under discussed and shredded off. The case also discusses and reiterates one of the most important aspects which decides the functioning of criminal justice in India, the role of the prosecution. The prosecution purpose is more than acquittal or implementing the state's desire. The judgement texts read the purpose to be guardian of interests of both the complainant and accused. The number of citation and authoritative value of the case sums up the importance of the judgement delivered.

## **8. IMPORTANT CASES REFERRED**

- *Ajay Kumar v. State, 1986 Cri. L.J. 932*
- *Babu v. State of Kerala, 1984 Cri. L.J. 499*
- *Narayanankutty v. State of Kerala, 1982 Cri. L.J. 2085*

**CASE NO. 12**  
**ANKUSH SHIVAJI GAIKWAD**  
**V.**  
**STATE OF MAHARASHTRA**  
**[CRL. APPEAL NO. 689 OF 2013, SC]**

**COMPENSATORY ALLOWANCE TO THE VICTIMS**

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**ABSTRACT**

Society is the victim as the society suffers because of the violation of laws. The very principles of victimology have their foundation from the Indian Constitution and the provisions of the Indian Constitution form an embankment when it comes to the concept of social and economic justice of the natives of the country. The present case arose from Criminal Appeal No. 359 that was filed in 2008 by the Appellant in the lower court and throws a limelight on the plight of victims<sup>10</sup> in the country. The case highlights the coded and limited implication of Section 357 of the Criminal Procedure Code tracing many loopholes leading to a lag between the coded use and the practical implication of the same. Section 357 of the CrPC empowers the courts to order the accused to pay “compensation” to the victim, which is in Indian criminal law incorporates powers only to the criminal court that too in a limited manner. A few of the aspects that may lead to such a loophole includes:

- Absence of any uniform head under which the compensation should be granted by the lower courts.
- No mechanism to calculate the amount of compensation/paying capacity of the accused.
- Absence of sentencing guidelines hindering the application of the section.

As per the Indian trend of justice, it needs an immediate review and expansion of the mindset of the judicial bodies to not only limit the compensation to fines or penalties imposed on the accused but the principle to provide fund assistance to the victims out of its own funds.

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<sup>10</sup> “Victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal them

## 1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal No. 689 of 2013 (Arising out of S.L.P. (Crl.) No. 6287 of 2011)
Jurisdiction	:	Supreme Court of India
Case Filed On	:	October 8, 2010
Case Decided On	:	May 3, 2013
Judges	:	Justice T. S. Thakur, Justice Gyan Sudha Misra
Legal Provisions Involved	:	Indian Penal Code, 1860, Section 300, 302, 304; Criminal Procedure Code, 1973, Section 357
Case Summary Prepared By	:	Aashna Arora, Lloyd Law College, Greater Noida

## 2. BRIEF FACTS OF THE CASE

The accused and his co-accused were held guilty of the offense of murder and were tried under Section 302 read with 34 IPC followed by a sentence of life imprisonment a fine of Rs. 2,000/- each. The incident occurred without any premeditation and an unpredicted outbreak which arose from the heat of situation. Ankush Shivaji Gaikwad along with his other two friends namely Madhav Shivaji Gaikwad and Shivaji Bhivaji Gaikwad were passing through the field of the deceased. During that time, the dog of the deceased person started barking towards the appellant and his friend and to defend them from the dog the deceased and his friends used a lathi to hit the dog. All this chaotic situation, lead to a word war by medium of abusive words used by both the parties.

This exchange of abusive words led to a situation of fight where the Appellant - Ankush Gaikwad had hit the farmer with iron rod pipe on this head. The witness of the incident- the farmer's wife named Mangalbai and the owner of the neighbourhood field named Ramesh Ganpati Pawar carried the deceased to the hospital.

The wife of the deceased filed a complaint against the accused persons under Section 323, 326 and 504 read with Section 34 of the I.P.C was registered by the police. Post-mortem reports revealed the following injuries were detected his right ear, on the right arm and some internal injuries on his head and fractures on the skull, blood clots in his brain tissue that may



lead to death of the person. And as a result, the appellant filed a petition before the high court.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether the accused is liable for lesser offence i.e., culpable homicide not amounting to murder punishable u/s. 304 Part I or II of IPC?
- II. Whether the courts should be responsible to consider the question of awarding compensation to the victim?
- III. Whether courts should be held accountable to cite the reasons while granting or refusing compensation to them?
- IV. Whether compensation should be awarded as per the terms of section 357 Cr.P.C.?

### **4. ARGUMENTS OF THE PARTIES**

#### **Appellant**

The learned counsels for the appellants had wisely highlighted the facts with an open-minded broad base arguing that there was no intention to fight or harm the deceased and there was no prior stated enmity between the deceased and the appellant; it was the heat of the situation which unfortunately led to the incident of fighting. It was pleaded that the case must fall in the ambit of Section 300 exception 4 of the Indian Penal Code.

#### **Respondent**

The respondents had been confined and relied to the nature of the offence committed by the appellant but did not deeply categorise the nitigrities of the murder being committed and the situation in which murder was committed. The trial court and the high court had relied on the discretion of the learned counsels for respondents.

### **5. LEGAL ASPECTS INVOLVED IN THE CASE**

#### **Indian Penal Code, 1860**

Determining the nature of injury inflicted on the deceased and the understanding the heat of situation due to sudden quarrel stemming over barking of dog lead to scuffle between the parties and as a result appellant had hit the deceased with the iron rod which resultingly caused fatal injuries. The lower court in its initial decision held the appellant liable Under Section 302 of the Indian Penal Code, 1860. Appeal being considered thoroughly with the facts; it was concluded that the accused carried no life-threatening weapon and there was no

prior enmity stated between the appellant and deceased. Hence, the Appellate tribunal came upon the decision to alter the punishment under the ambit of Culpable Homicide not Amounting to Murder i.e. Section 300 exception 4 and the sentence of Rigorous imprisonment for life was to one year under Section 304 Pt.II.

### **Victimology- Award of Compensation u/s 357 CrPC.**

Section 357 CrPC confers powers coupled up with the duty on the court to mandatorily apply its reasonability of the mind while awarding the compensation in a criminal case. Additionally, the court must wisely state the reasons for awarding/refusing grant of compensation. Award compensation to the victim(s) or victim's family of crime depends on certain factors including the Capacity of the accused to pay. The very objective of Section 357 would be defeated if the courts choose to ignore since the main intention of this section is to reassure the victims that they are not forgotten by the criminal justice system.

### **Interpretation of Statutes**

A basic rule known as **Heydon's Rule or mischief rule** which means to prevent the misuse of the provisions of the statute. If an attempt is made to add mischief in any statute the same may be prevented by mischief rule. Jurisprudence says that the mischief rule can encroach upon the literal and grammatical interpretation of statute. Also, the supporting rule of interpretation that comes into the fundamentals of understanding of laws is the basic rule of statutory interpretation that the words of the statute may be read in their content and in their grammatical and ordinary sense with the motive to fulfil the scheme of the act and intent of the legislature.

## **6. JUDGEMENT IN BRIEF**

In the following case, the Supreme Court kept in highlights the material facts that:

1. Distinction between Motive, Intention and Knowledge in the Judgement.
2. The court has the power to grant or reject compensation but it is the duty of the court to apply a mindful decision with the reasonable conclusion to provide justice.
3. Considering the nature of Crime and restudying the facts of the case which included some observations like:

Applicability of Mind of Judiciary:

The Hon'ble Coram remarked in the term applicability in turn can be best understood as disclosure of thoughts of one's mind which may reasonable be expressed only by citing reasons in support of the order. Stating the reasons for a decision is an essential attribute of judicious disposal of matter and an indication to know the manner and quality if assessment undertaken by the judicial bodies.

The appeal was allowed to the extent of convicting the appellant being amount to be convicted under Culpable Homicide not amounting to murder punishable under Section 304 Part II of the Indian Penal Code. The fine imposed upon the appellant and the rigorous punishment remained unchanged upon the appellant. The senior judiciary placed a remark on the applicability of the mind of judiciary.

## **7. COMMENTARY**

Studying the entire facts and circumstances of the case, it becomes clear that the Court are undermining their duty to grant or reject compensation by not stating the valid reasons that may vary from case to case. It is an understood inherited duty of the court to look into the financial aura of the accused before granting the compensation but the court totally ignores the Section 357 of the Cr.P.C before granting the compensation. Also, it comes onto very unethical behaviour of the lower judiciary to consider the case under the ambit of Murder whereby it was clearly understood by the facts of the case that the entire incident was just the result of the heat created by the both the parties quarrelling by the use of abusive language.

## **8. IMPORTANT CASES REFERRED**

- *Ghapoo Yadav v. State of MP*, 2003 3 SCC 528
- *Hindustan Times Ltd. v. Union of India*, (1998) 2SCC 242: 1998 SCC (L&S) 481
- *Mahesh v. State of MP*, 1996 10 S C 668
- *Shankar Diwal Wadu v. State of Maharashtra*, 2007 12 SCC 518
- *Sukhbir Singh v. State of Haryana*, 2002 3 SCC 327
- *Swantraj v. State of Maharashtra*, (1975) 3 SCC 322: 1974 SCC (cri) 1284
- *Vadla Chandraiah v. State of AP*, 2006 13 SCC 587

**CASE NO. 13**

**ABDUL RASHID**

**V.**

**STATE OF ODISHA**

**[2014 I ILT CUT. 202]**

**INDEPENDENT INQUIRY INTO THE DEATH OF A  
CHILD LABOUR BEATEN TO DEATH**

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**ABSTRACT**

The following is the case summary of *Abdul Rashid v. State of Odisha* where Rajunu Khan was working in a Bidi Company was beaten to death by the owner and died on the spot; the same was published in the daily newspaper “The Samaj”. The Magistrate conducted the enquiry and found that dead body was buried by the owner of the Bidi Company without informing the parents of the victim. On post-mortem being conducted, the case was found to be homicidal death as the injuries were ante mortem and could have been caused by blunt force trauma. A counter affidavit was filed on behalf of the State of Odisha by the Inspector-in-charge. After the investigation, 03 accused were sent up for trial but were acquitted. The learned Government Advocate submitted that the investigation was proper and the State was not guilty of failure of its duty and thus, no compensation was payable.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	O. J. C. No. 13765 of 1996
Jurisdiction	:	High Court of Orissa
Case Filed On	:	November 1996
Case Decided On	:	December 11, 2013
Judges	:	Justice Adarsh Kumar Goel, Justice Dr. Akshaya Kumar Rath
Legal Provisions Involved	:	Constitution of India, 1949, Article 21; Code of Criminal Procedure, 1973, Section 125, 126, 357, 357A
Case Summary Prepared By	:	Varnika Verma Chanakya Law College, Kumaun University, Nainital

## 2. BRIEF FACTS OF THE CASE

- The case of the petitioner is that on of November 14, 1996 a worker named Rajunu Khan was working in a Bidi Company in Sheikh Bazar was beaten by the owner of the Bidi Company and died on the spot. The same matter was published in a local newspaper named “The Samaj” after 04 days of the incident i.e. November 18, 1996.
- The parents of the deceased come from a poor family so they did not take remedies. The Magistrate conducted the enquiry and got the dead body from the grave and found injuries on the dead body.
- The owner buried the dead body and did not inform the victim’s parents. When the body was sent for the post-mortem, it was found that the case is of Homicidal Death.
- Inspector-in-charge of Lalbag Police Station filed the counter affidavit on behalf of the State of Odisha. According to the said affidavit, on November 15, 1996, the Inspector-in-charge started inquiry and found that Nanda @ Rajunu Khan, s/o Mohammad Khan of Sheikhbazar, aged about 15 years was working in Tarabidi Company at Seikhbazar and expired on November 14, 1996 was buried at Idga Kabarstan by his kith and kin and others.
- The case was registered and inquisition was done in front of the Magistrate. The body of the deceased was recovered from the grave and then it was sent for post-mortem. According to post-mortem report, the injuries were ante mortem and could have been caused by blunt force trauma.
- The injuries on the body were lethal to cause death. Deceased’s brother stated that his brother died after falling from the top of the building to the watchman at the burial ground.
- The matter has been pending for the last 17 years. In the meanwhile, after investigation, 03 accused were sent up for trial, but the witnesses examined by the prosecution did not support the prosecution version and stated that they did not have any direct knowledge. Accordingly, the accused who were sent up for trial were acquitted vide judgment dated July 17, 2002 in Sessions Trial No. 218 of 2001 (*State v. Apu @ Md. Afsar*) rendered by Addl. Sessions Judge, Fast Track No.1, Cuttack.
- No one appeared for the petitioner, learned Government Advocate submitted that the investigation was proper and the State was not guilty of failure of its duty and thus, no compensation was payable.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether the responsibility of the State comes to an end after registering a case, or conducting investigation or the State has more responsibility towards the victim and whether the Court has duty to provide compensation to the victim irrespective of conviction or acquittal or not?
- II. Whether the abundance of power conferred in the Courts under Section 357 and 357A of CrPC, notwithstanding, Courts can disregard the provisions or exercise of a power that is primarily meant to be exercised to benefit the victims of the crime. In other words, whether the Courts have a legal duty to refer to the question of awarding compensation to the victim and record reasons while granting relief or refusing the same to them?

### **4. ARGUMENTS OF THE PARTIES**

#### **Petitioner**

- When compensation is not available from the accused, the State is bound to provide financial compensation to victims or to their family and as per Article 21; the State shall not only compensate when the State itself is guilty of an offence but also compensate when the State is not guilty of any offence.
- As per Section 357 and 357A of CrPC and “The Odisha Victim Compensation Scheme, 2012”, compensation is payable to victim in every case whether of conviction or acquittal.
- When the State fails to identify the accused or fails to collect and present evidence to punish the accused, the duty to award compensation still exists. Victim of the crime and his family expect that the State will definitely punish the accused and compensate the victim or victim’s family.
- According to Section 357A of CrPC, “the Court has the power to direct the State to pay compensation to victims in all such cases where the compensation awarded under Section 357 is not adequate, or where the case ends with acquittal”. Under this provision, the victim has the right to request the District of State Legal Services Authority to award him/her compensation.

## **Respondent**

- The respondent argued that no one appeared for the petitioner, and submitted that the investigation was proper and the State was not guilty of failure of its duty and thus, no compensation was payable.
- It was also mentioned that although there is provision for compensation under Section 357 of CrPC but that too it subjected to certain limitations as it can only invoked upon conviction and that also at the discretion of the Judge. The amount of compensation also depends upon the capacity of the accused, for which the evidence is required that becomes a difficult task. Further, victims are unable to ask Court for legal aid or otherwise.
- This above-mentioned statement makes it clear that why Courts even in case of conviction rarely press upon this provision. The rate of conviction being low, competence of investigation; witnesses and need of proof are required to make sure that innocent is not being punished; the said provision becomes hard to address the need of victims.
- Emphasizing on the case, the respondent also stated that “principle of compensating the victims has been recognized by the way of law but only as a token of relief and not the part of a punishment”. When fine is imposed as a punishment, the whole or part of it may be directed to be given to the victim of the crime as per Section 357 of CrPC. Compensation can be awarded only when the accused has been convicted.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

The present case revolves around Sections 125, 126, 357, 357A of Code of Criminal Procedure, 1973 and Articles 21 of Constitution of India.

### **Code of Criminal Procedure, 1973**

#### **Section 125: Order for maintenance of wives, children and parents.**

“If any person having sufficient means neglects or refuses to maintain his wife or other family members, a Magistrate of first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or other family

members, at such monthly rate as the Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct”.

### **Section 126: Procedure**

(2) “All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases”.

### **Section 357: Order to pay Compensation.**

(1) “When a Court imposes a sentence of fine or a sentence 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 of properly incurred in the prosecution.

(b) in the payment to any person of compensation for any loss or injury caused by the offence.

(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”.

### **Section 357A: Victim compensation scheme**

“Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation”.

### **Constitution of India**

#### **Article 21: Protection of life and personal liberty.**

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.



## **6. JUDGMENT IN BRIEF**

- Hon'ble Court held that compensation need to be paid at the earliest as the immediate need of victim has to be met and for determining the interim compensation, the Court may rely to the facts and circumstances of the case, loss that has been suffered and the basic requirement of the deceased family.
- On passing the interim order by the Court, the available funds of the District/State Legal Services Authorities may be disbursed to the deceased family in the manner as directed by the Hon'ble Court and to be adjusted at the later stage in appropriate proceedings.
- It was evident that crime had taken place admittedly so the petitioner is entitled to get interim compensation without prejudice to claim for final compensation, if any, being preferred at the appropriate platform.
- Accordingly, the Court directed for the payment of interim compensation of Rs. 50,000/- to the petitioner, who is the father of the deceased by way of Bank Draft. The payment could be made within 2 months from the date of receipt of a copy of this order which will be the responsibility of the Home Secretary to the State of Odisha.

## **7. COMMENTARY**

In the present case, there are certain points to be noted as there has been gross violation of fundamental rights and human rights of the victim and victim's family. Their basic right to bury their children was taken away from them, then when they tried to seek compensation from the accused; it took 17 years to get their compensation, even when there is a right to get compensation under Article 21 of Constitution of India. The UN General Assembly also recognized the right of victims to receive compensation by passing a resolution in 1985. It also stated that "when compensation is not fully available from the offender, the State should provide financial compensation to the victim or to the victim's family". Keeping all these in view, it can be said that the humanitarian rights of the petitioner were totally vanished. Though, the case would not be fighting on the issue of compensation, if the initial investigation was correctly done; if the witnesses could have supported the case, but the situation was vice versa and it took 17 years to give justice to the deceased family.

However, it could not be denied that the Magistrate *suo-moto* considered the case because of which the dead body was recovered and we got to know that the case is of homicidal death and the High Court of Orissa with great understanding of the limits of Section 357 and 357A of CrPC and its discretionary power, submitted that the compensation is to be paid at the earliest so that immediate need of victim can be met.

Therefore, it can be concluded that Judiciary has time to time upgraded the laws as per the demand of the situation, there have been certain amendments in CrPC from 1898 to 1970 to 1973 and then to 2008, which clearly shows that Judiciary is trying its best to deal with the situation in the best manner and here as well in this case the Judicial System did its best, the only loophole was with the investigation, if it would have been done correctly the matter would have solved years ago.

## **8. IMPORTANT CASES REFERRED**

- *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770
- *Chairman, Rly. Board v. Chandrima Das*, (2000) 2 SCC 465.
- *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14
- *Hari Kishan and State of Haryana v. Sikhbir Singh*, AIR 1998 SC 2127
- *Kewal Pati v. State of U.P.*, (1995) 3 SCC 600.
- *Khatri (I) v. State of Bihar*, (1981) 1 SCC 623
- *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746
- *Rohtash @ Pappu v. State of Haryana*, (Crl. A No. 250 of 1999)
- *Savitri w/o Govind Singh Rawat v. Govind Singh Rawat*, (1985) 4 SCC 337
- *Shail Kumari Devi v. Krishan Bhagwan Pathak*, (2008) 9 SCC 632
- *State of Gujarat v. Hon'ble High Court of Gujarat*, (1998) 7 SCC 392
- *Supreme Court Legal Aid Committee v. State of Bihar*, (1991) 3 SCC 482.
- *Union Carbide Corporation v. Union of India*, (1989) 1 SCC 674

**CASE NO. 14**

**NIRMAL SINGH KAHLON**

**V.**

**STATE OF PUNJAB AND OTHERS**

**[2009 SCC 1 441]**

**VICTIM'S RIGHT TO A FAIR INVESTIGATION**

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**ABSTRACT**

The following is the case analysis of *Nirmal Singh Kahlon v. the State of Punjab*. The judgment was delivered by a two-judge division bench of the Supreme Court and a number of important issues of law were addressed. In this case, a former minister was accused of allegedly abusing his power in the appointment of panchayat secretaries. The High Court directed the Central Bureau of Investigation to undertake further investigation of the case and a second FIR was subsequently lodged. The main contention that was raised was whether the High Court of Punjab has the authority to hand over the investigation of the case to the Central Bureau of Investigation and whether the orders of reinvestigation and lodging of a second FIR are maintainable. The court analysed the facts and contentions in great detail and gave a very appreciable decision. However, the main highlight of the case is the Supreme Court's view that a victim of a crime also has an equal right to a fair investigation as per Article 21 of the Indian Constitution just as an accused has a fundamental right to a fair trial under the Article.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Civil Appeals Nos. 6198-99 of 2008
Jurisdiction	:	Supreme Court of India
Case Filed On	:	October 2008
Case Decided On	:	October 22, 2008
Judges	:	Justice S. B. Sinha, Justice Aftab Alam
Legal Provisions Involved	:	Constitution of India, Article 21; Code of Criminal Procedure, 1973, Section 36, Section 173(8); Police Act, 1861, Section 3; Delhi Special Police Establishment Act, 1946, Section 6
Case Summary Prepared By	:	Aditya Chib, National Law Institute University, Bhopal

## **2. BRIEF FACTS OF THE CASE**

- On June 14, 2002, FIR was lodged against the appellant Nirmal Singh Kahlon (ex-minister in the Punjab Government) for committing offences under Section 420, 467, 468, 120-B of the Penal Code and Section 13(1)(d) (e) and 13(2) of the Prevention of Corruption Act, 1998
- He was alleged to have misused his power to make wrong appointments to underserving candidates for his personal gains for the post of Panchayat Secretaries.
- High Court directed the government to take *Suo Motu* cognizance of the matter of making any further investigation and directed the CBI to probe the entire scandal. CBI expressed its inability to take up the investigation on the grounds of a deficiency of manpower and infrastructure.
- On May 2, 2003 the State Government issued a notification under Section 6 of the Delhi Special Police Establishment Act, 1946 and directed the director of CBI to conduct a probe by requesting the central government for more funds.
- The Central Bureau of Investigation sent a special team for an investigation into the matter and on June 26, 2003 registered a first information report.
- The appellants filed then filed an application praying for recalling the order April 30, 2003 and May 7, 2003 which resulted in the State Government handing over the case to the Central Bureau of Investigation and the second FIR but these prayers were dismissed by the court.

## **3. ISSUES INVOLVED IN THE CASE**

- I. Whether the High Court of Punjab has the authority to hand over the investigation of the case to the Central Bureau of Investigation?
- II. Whether the orders of reinvestigation and lodging of a second FIR is maintainable in the present case?

## **4. ARGUMENTS OF THE PARTIES**

### **Petitioner**

- The counsel on the behalf of the petitioner contended that the High Court of Punjab acted illegally in directing the investigation to the CBI as such an action was outside its jurisdiction.

- It was contended that the Delhi Special Police Establishment Act, 1946 do not provide for the state government to give consent for an investigation by the Central Bureau of Investigation in respect of an offence for which investigation has been completed and the charge sheet is filed and submitted.
- It was contended that the Section 173(8) of the Code of Criminal Procedure does not provide for any further investigation by any central agency after the charge sheet has been filed and that in such an event only the Magistrate has the authority to issue orders for further investigation.
- The counsel present on behalf of the petitioner also contended since a first-hand report was already lodged by the Vigilance department, a second FIR and a further investigation in the matter by the CBI is impermissible in law.
- It was further contended that in the Section 36 of CrPC on which reliance has been put by the State is inapplicable because the term ‘superior police officer’ is meant for an officer superior in the same hierarchy i.e., in the State Police and not an officer from the Central Bureau of Investigation.

### **Respondent**

- It was contended that the High Court did have the concurrent jurisdiction along with the state government to direct the investigation in the hands of an agency.
- It was contended that the term “rank” as used in Section 36 of the Code of Criminal Procedure is not confined to the same agency but can also mean the investigating agency.
- It was also argued that according to the terms of Section 6 of Delhi Special Police Establishment Act, 1946, the state has the ultimate authority to hand over the investigation to the Central Bureau of Investigation.
- It was also contended that the earlier FIR was general in character but the second one was specific and was in respect to the scam in context to the appointment of panchayat secretaries. Thus, it will be permissible.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

### **Constitution of India**

**Article 21**

“No person shall be deprived of his life or personal liberty except according to procedure established by law”

**Code of Criminal Procedure****Section 36**

“Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.”

**Section 173(8)**

“Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).”

**Section 3 of the Police Act, 1861**

“The superintendence of the police throughout a general police-district shall vest in and shall be exercised by the State Government to which such district is subordinate; and except as authorised under the provisions of this Act, no person, officer, or Court shall be empowered by the State Government to supersede, or control any police functionary.”

**Section 6 of the Delhi Special Police Establishment Act, 1946**

“Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area, without the consent of the Government of that State.”

## **6. JUDGEMENT IN BRIEF**

The Court held that law and order as being a state subject, the Central Bureau of Investigation can derive its jurisdiction only when consent for it is given by the statute (i.e., The Delhi Special Police Establishment Act, 1946). The Court further said that both High Court and Supreme Court can also refer investigation by CBI and the same is also recognised by the Union Government under the provisions of the CBI manual. The Court also stated that according to Section 3 of the Police Act, 1861, State has the final say in the supervision of the investigation. According to the court, Section 36 CrPC should be read in conjunction with Section 3 of the Police Act, and the words "in rank" in Section 36 should be given a purposive construction.

Further, it was stated that an accused has the right to a fair trial under Article 21 of the Indian Constitution but the state is also responsible for maintaining public order, law and order and maintaining peace and harmony in the society. Therefore, as a result, a victim also has an equal right to a fair investigation. On the issue of the second FIR, the court held that the same would be maintainable as a discovery was made in the investigation under factual grounds. The supreme court stated that if one aspect of the matter is left out in an investigation and when that aspect of the matter comes to light which is distinct from the one for which the FIR was lodged, the state can order further investigation. Further, the court said that section 173(8) of the Code of Criminal Provision which refers to the further investigation, is an enabling provision. It is only after the cognizance of the offence has been taken, the magistrate can have a say. The Court stated that "it is one thing to say that the court will have supervisory jurisdiction in order to have fair investigation, but it is another thing to say that the investigating officer will have no jurisdiction to make further investigation without the permission of the magistrate." The Court further held that the state has ultimate jurisdiction over the investigation and it may hand over the investigation even after filing the charge sheet if it wants to do so. The State has two different jurisdictions in the Police Act and CrPC. The power of the state vested under Section 3 is absolute and can't be restricted by Section 36 or otherwise. The court also stated that if, while conducting a preliminary investigation under the authority vested in it by the state government's notification, the CBI discovers the commission of further offences by a larger number of people involving a wider conspiracy that was not previously investigated by the local police before, a second FIR can be filed.

Therefore, the Court held that there was no merit in the appeal and the appeal was consequently dismissed.

## **7. COMMENTARY**

The Supreme Court analysed and examined the facts of the case and contentions from both the parties in detail, discussed the disputed provisions of the case at length and gave a very appreciable decision in this case. The Supreme Court held that a second FIR is maintainable when a significant discovery is made on factual foundations. This is vital because sometimes a larger conspiracy emerges that was previously overlooked, and in such cases, a second investigation and filing of an FIR should be permissible. Further, The Court said that a victim of a crime also has an equal right to a fair investigation as per Article 21 of the Indian Constitution just as an accused has a fundamental right of a fair trial under the Article. This is a very substantial observation made by the Supreme Court concerning Article 21 of the constitution and the concept of a fair investigation. Overall, it is a very important judgement and the court's decision, in this case, has aided in a better understanding of the relevant provisions of the law and has provided much clarity on some important questions of law.

## **8. IMPORTANT CASES REFERRED**

- *Divine Retreat Centre v. State of Kerala and Others*, (2008) 3 SCC 542
- *H.N. Rishbud and Inder Singh v. The State of Delhi*, 1955 (1) SCR 1150
- *Ram Lal Narang v. State (Delhi Administration)*, 1971 2 SCC 322
- *Sakiri Vasu v. State of Uttar Pradesh and Others*, (2008) 2 SCC 409
- *State of A.P. v. A. S. Peter*, (2008) 2 SCC 383
- *State of W. B. v. Committee for Protection of Domestic Rights W.B. and other*, (2006) 12 SCC 534
- *Union of India v. Sushil Kumar Modi*, (1998) 8 SCC 661
- *Upkar Singh v. Ved Prakash and Others*, (2004) 13 SCC 292
- *Vineet Narain v. Union of India*, (1998) 1 SCC 226



**CASE NO. 15**  
**KARAN SINGH**  
**V.**  
**STATE N.C.T. OF DELHI**  
**[CRL. APPEAL 352 & 353 OF 2020, HIGH COURT OF DELHI]**  
**VICTIM'S RIGHT TO RESTITUTION**

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**ABSTRACT**

The following is the case summary of a landmark judgement in *Karan Singh v. State N.C.T. of Delhi* in which the Delhi High Court acquired the right to restitution for victims of crime. The relationship between an aggrieved person and an offender by examining the cause and the nature of the consequent suffering is known as Victimology. Most often, in a criminal case, the focus always lies on the accused rather than the aggrieved person. A case does not reach justice when an accused is charged with the commission of offence. The victim who is affected by the crime needs to receive adequate compensation. In this case, the Court highlights the importance of victim compensation and gives emphasis and mandates on Victim Impact Report that helps determines compensation to the victim of crime.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Crl. A. 352/2020 & Crl. A. 353/ 2020
Jurisdiction	:	High Court of Delhi
Case Decided On	:	November 27, 2020
Judges	:	Justice J. R. Midha, Justice Rajnish Bhatnagar, Justice Brijesh Sethi
Legal Provisions Involved	:	Indian Penal Code, 1860, Section 34, 302; Criminal Procedure Code, 1973, Section 357 (3), 375
Case Summary Prepared By	:	Akanksha Bhattarai, Symbiosis Law School, Pune

**2. BRIEF FACTS OF THE CASE**

On June 15, 2017, the appellants (Karan, Sunny and MB), juvenile drags the victim (Gulfam) out of his house and stabs in with a knife. Gulfam is left with fatal injuries. On March 6,

2020. the appellants were charged for the offences under Section 302/34 of Indian Penal Code and the judgement was reserved in March while the Judge was being posted at Karkardooma Courts. On March 13, 2020, the Session Judge got transferred from Karkardooma Courts to Rohini Courts. On July 9, 2020, the impugned judgement was pronounced. The impugned judgement was challenged on grounds firstly being after transfer Judge lacked jurisdiction with respect to Karkardooma Courts matters. Secondly, Note 2 which was attached to the transferred order and it empowered judges to pronounce judgement in reserved matters was invalid. In July, 2020, an appeal was filed before the Division Bench of High Court which was considered by the DB thus appointed an *amicus curiae*. In *Gokaraju Rangaraju v State of Andhra Pradesh*, the Supreme Court held that judgment given by Session Judge is valid and legal even when appointment of such judge is held to be invalid emphasising on Article 233A of the Indian Constitution which protects judgements by judges notwithstanding that their appointment, posting, promotion or transfer was not valid.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether awarding compensation u/s 357 (3) Cr.PC. is mandatory in nature?

### **4. LEGAL ASPECTS INVOLVED IN THE CASE**

#### **Indian Penal Code, 1860**

##### **Section 302**

Punishment for murder

##### **Section 34**

Acts done by several persons in furtherance of common intention.

#### **Code of Criminal Procedure, 1973**

##### **Section 357(3)**

357. Order to pay compensation.

(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

## **Section 375**

No Appeal in certain cases when accused pleads guilty. Notwithstanding anything contained in Section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,-

(a) if the conviction is by a High Court; or

(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

## **5. JUDGEMENT IN BRIEF**

The Delhi High Court made an essential advancement in the criminal justice system of restitution procedure. The court ordered the perpetrator to file an affidavit after their conviction, exhibiting their income, assets, liabilities and expenditures in order for the trial courts to make an accurate approximation of the restitutive amount to be paid to the victim or their family in the event of the victim's death for which it was state that "The Court has to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace." Furthermore, Section 257(3) directs the court to award compensation to the person who has suffered the consequences of the acts of the accused.

The court concluded that Section 357(3) of CrPC is compulsory because the term "may" mean "must". The Court cited Supreme Court's decision in *Hari Singh v Sukhbir Singh*, in which the bench criticized the Indian Courts for failing to compensate victims of crime. Furthermore, in the case of *Ankush Shivaji Gaikwad v. State of Maharashtra*, it was held that courts must be considerate of Section 357 of CrPC in every criminal case and if a court refuses to make a compensation order, it must be justified with a valid reasoning. In the light of this, the court further ordered that a just and reasonable compensation be determined by taking into account all of the victim's expenses, including any money spent on counselling, medical treatment, legal fees, lost wages, property damage, funeral expenses and so on.

In regards with quantum of compensation, the court stated that quantum of compensation is to be decided on the basis of gravity of offence, the severity of mental and physical harm inflicted on the victim, damages/losses to victims and capacity of the offender to pay. Further, current occupation and income of the perpetrator was to be determined so that

monthly compensation could be directed to pay to the victim. After the conviction of an accused, he/she is mandated to file an affidavit stating his/her income and assets. Victim Impact Report was also mandated by the Delhi State Legal Service Authority after every conviction in order to disclose the impact of crime inflicted on victim.

The High Court ordered to pay the agreed-upon amount to the Delhi State Legal Services Authority (DSLISA), which will then distribute it to the victims. However, if the accused does not have the financial means to pay the decided amount, the victim will be compensated according to the rules set forth in Section 375A of CrPC; the 2018 compensation model-DSLISA will pay compensation from the Victim Compensation Fund. The bench closed the decision by emphasizing that victimology and the criminal justice system are inextricable linked hence stated “The object of the Section 357(3) of CrPC is to provide compensation to the victims who have suffered loss or injury by reason of the act of the accused. Mere punishment of the offender cannot give much solace to the family of the victim – civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread earner of the family”

## **6. COMMENTARY**

Whilst determining the eventual restitutive amount to be given to the victim, the Delhi High Court has taken a fairly progressive approach by directing a liberal exercise of power under Section 357 of the CrPC. In European countries, Victim Impact Reports are a familiar idea, however, in India, the Criminal Justice System leans towards accused-centric, and victims are frequently marginalized. Hence, we must not forget about victims in the process of criminal justice delivery and consider factors like physical injuries, mental trauma, other expenses which determining an adequate compensation.

## **7. IMPORTANT CASES REFERRED**

- *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.
- *Hari Singh v Sukhbir Singh*, (1988) 4 SCC 551.

**CASE NO. 16**  
**SRI LAKSHMI AGENCIES**  
**V.**  
**GOVERNMENT OF ANDHRA PRADESH**  
**[(1994) 1 ANDH LT 341]**  
**DECLINED RESTITUTION AND VICTIM COMPENSATION**

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**ABSTRACT**

The following is the case summary of *Sri Lakshmi Agencies v. Government of Andhra Pradesh* in which the High Court of Andhra Pradesh declined restitution and victim compensation. In this case, the court refused to accept the prayer for compensation to the loss of life, injury, destruction and loss of property as a result of the violence that followed the murder of a sitting member of the legislative assembly. The then Government deemed fit to grant some immediate relief measures to rehabilitate the aggrieved persons to the extent possible. That was in the shape of interest free loans, rebuilding of the houses or repairs, as the situation demanded for weaker sections and for others ex-gratia payments. It can be noted that the right of a victim to restitution has not yet merited statutory recognition. Courts in India usually are inclined to examine the plea of victims for the purpose of redressal of the losses suffered during violent incidents including rioting. The principle of ‘culpable inaction’ is evoked under which the state as well as its agencies are all expected to anticipate the damages to public and private property in various situations, especially the ones over which the potential victims have no control. Furthermore, the courts have also gone out of their way to find the state liable only in cases where a definite failure on its part has resulted in the loss. This is one such area that is still evolving and in which the courts in India are usually seen to be treading cautiously.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	W. P. No. 17715 of 1990
Jurisdiction	:	High Court of Andhra Pradesh
Case Decided On	:	January 19, 1994
Judges	:	Justice B. Subhashan Reddy
Legal Provisions Involved	:	Constitution of India, Article 14, 19(e), 19(g), 21, 300A

Case Summary Prepared By	:	Ishikaa Seth, USLLS, GGSIPU, New Delhi
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## **2. BRIEF FACTS OF THE CASE**

The aspects of culpable action and culpable inaction, located within the border doctrine of sovereign immunity, were applied by B S Reddy in this case. In the eruption of violence which followed the murder of a sitting member of the Andhra Pradesh State Legislative Assemble (MLA), acts of arson and looting were committed by private individuals/miscreants. In this situation, a curfew was immediately imposed, and the situation was brought under control by the police, but the violence had taken its toll and there was loss of life, injury, destruction and loss of property, as well as the disruption of livelihood.

A writ petition was filed under Article 226 of the Indian Constitution, in order to seek compensation for the heavy damages that were suffered by the petitioners in terms of their properties as well as their businesses. In this regard, the petitioners had alleged negligence on the part of the state and its officers which had resulted in violation of the petitioners' fundamental rights under Article 14, 19(e) and (g), 21 as well as the constitutional guarantee provided under article 300A.

This plea was controverted by the respondents by filing a counter affidavit in this regard claiming that no vicarious liability arises in this case.

## **3. ISSUES INVOLVED IN THE CASE**

- I. Are public law remedies available for the tortious acts of private individuals and whether or not the State is liable to pay compensation for such tortious acts of private individuals?

## **4. ARGUMENTS OF THE PARTIES**

### **Petitioner**

E. Manohar appearing for the petitioners had strenuously contended that the deceased MLA had long been fasting unto death and had demanded police protection for his life. It was claimed that the state could have easily anticipated this turn of events in order to have taken preventative measures but had willfully failed to do so. The failure of the state in taking preventative measures allowed miscreants to indulge in large-scale looting and arson. The

violent act also specifically targeted specific individuals belonging to a particular caste and in this regard the State as well as its officers are liable to compensate the victims for said losses and damages.

In the plea, Article 14, 19(e) and (g) were also mentioned as grounds and so are the Directive Principles of State Policy, but the only argument that was put forward was on the touch-stone of Article 21 of the Indian Constitution.

## **Respondents**

Mr. S. Venkat Reddy, the learned Advocate General appearing for the respondents countering the arguments of the learned counsel for the petitioners, submitted that in no way are the respondents related with the violence erupted by private individuals. It was also claimed that there was no negligence of their part and that the petitioners only suffered damage due to the involvement of unsocial elements of the society on account of arson and looting. The respondents also claimed that due care and precaution was taken at their end in the shape of curfew and that the situation was brought under control. The respondents contended that they are not liable as no vicarious liability arises in case private individuals indulge themselves in violence and arson and that the respondents cannot be mulcted with any liability to pay compensation to the petitioners.

It was also submitted that there is a material differentiation between acts committed by state servants who are traceable to sovereign powers and the acts committed by public servants who are not referable to such sovereign powers. And that even if a wrong committed on the part of the public servant in the first category is proved, the State is immune from liability.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

### **Constitution of India**

**Article 14 – ‘Equality before law’:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

**Article 19(e) and (g) – ‘Protection of certain rights regarding freedom of speech etc.’:**  
(e) to reside and settle in any part of the territory of India; and, (g) to practise any profession, or to carry on any occupation, trade or business.

**Article 21 – ‘Protection of life and personal liberty’:** No person shall be deprived of his life or personal liberty except according to procedure established by law.

- Article 21 was deemed inapplicable in this particular case by Justice B S Reddy on the grounds that a direct nexus for the loss/damage suffered on account of the State’s action was found to be missing.

**Article 300A – ‘Right to Property’:** No person shall be deprived of his property save by the authority of law.

It is no longer a fundamental right, rather it is a constitutional right. Therefore, this article strived to protect an individual from interference by the State as well as disposes a person of their property in case it not in accordance with the procedure established by law.

In this particular matter of Sri Lakshmi Agencies and Ors., this law deems inapplicable since it was concluded that there is no negligence on the part of the State and its officers.

## **6. JUDGEMENT IN BRIEF**

It was observed that in this particular case, the indulgence in violence by miscreants was not at the instance of the respondents and neither did the respondents simply watch this occurrence as silent spectators. It would be too far-fetched to say that simply because the deceased MLA was fasting unto death for police protection, the respondents ought to have anticipated the turn of events and that preventative measures ought to have been employed and had the said measures been taken, then the violence would have been prevented, is an argument that is based on hypothetical facts.

In this regard, no negligence can be attributed on that hypothetical basis and hence no liability can be fastened on the State. It is doubtless that the tackling and protection of law and order is the State’s primary duty. But it is only when the State fails to perform such duty, will it be held liable. The State could have been held liable in case it failed to take necessary steps upon the eruption of violence but it cannot be held liable for not being able to visualize the eruption of violence.

It would be too far-fetched to argue that the State and its officers’ ought to have anticipated the MLA’s death and the violence that would occur as a consequence as a result of which the



petitioners would likely sustain losses/damages. The right under Article 21 of the Indian Constitution cannot be stretched that far in this regard.

It was further stated that in case private vandalism is involved then the State and its officers cannot be held liable under Article 21 or any other Articles of the Indian Constitution. The article is only deemed to be applicable in case of a positive State action violating the fundamental right to life or personal liberty. Even by stretching its purview, it can only be established up to mulcting the State for the wilful negligence of its servants in discharge of their duties which is not applicable to this particular case.

It was held that, no presumption arises of the failure of the State machinery in order to protect life and personal liberty of individuals in all cases of loss of life or property and that such a sweeping principle of law can never be laid. If such a principle is accepted then for any and every criminal or illegal act done by private individuals in their own free capacity including every action of erring individual directed against another individual, would entrust the State with liability and not just for any positive criminal or illegal State action or culpable inaction.

The State can only be held liable to pay damages in cases where the officers of the State do any act positively or have failed to act in a manner that is expected under law, leading to culpable inaction.

It was also held that, there should be a direct nexus for the loss/damage suffered on account of the State's action and in case that is missing, then Article 21 of the Indian Constitution would deem inapplicable.

Consequently, public law remedy under Article 226 of the Indian Constitution would also deem inapplicable to this case and hence unavailable to the petitioners. In this regard, their remedy lies in invoking the private law remedy in a common law court against the miscreants.

And in view of the above discussed facts and circumstances, the writ petitioned were dismissed.

The High Court in this regard observed that even in case where there is no negligence on the part of the government and as a goodwill gesture, takes a sympathetic view in the matter and in exercise of its executive function grants ex-gratia relief, then such a gesture would not amount to an admission of guilt on their part, either directly or indirectly. Moreover, the

government providing ex-gratia relief for immediate help as well as rehabilitation fixing sums does not raise any claim as of right to the victims. In fact, such a gesture on the part of the government should be appreciated and commended.

## **7. COMMENTARY**

The issue of restitution and victim compensation becomes a little complicated to absolve in cases where a public remedy is sought in account of negligence on the part of the State and its officers. Moreover, statutory immunity also becomes a little hard to define in cases where a direct nexus between the act or omission and the actual loss/damage cannot be traced. In this particular case where the petitioners alleged negligence on the part of the respondents for being unable to visualise the turn of events that would take place as an aftermath of the MLA's death is completely far-fetched and does not fall within the ambit of Article 21 of the Indian Constitution or any of its various interpretations. It is true that any direct or indirect activity that is criminal or illegal cannot be attributed as negligence on the part of the State. The State indeed, can only be held liable in cases of culpable action leading to negligence or in cases of culpable inaction. The criminal or illegal activity of individuals against other individuals or their properties, if attributed as negligence on the part of the State would be unfair. The State and its officers cannot be expected to constantly monitor the actions of unsocial beings in the society but can be expected to take necessary actions in order to curb such anti-social activity, which is one of the State's primary duties. It is crucial to define the ambit of both public and private remedy and then critically analyse the alternative which would be more suitable for a particular situation.

## **8. IMPORTANT CASES REFERRED**

- *Bhim Singh, MLA v. State of J & K and Ors.*, (1985) 4 SCC 677
- *Challa Ramkonda Reddy and Ors. v. State of Andhra Pradesh*, AIR 1989 AP 235
- *Charanlal Sahu v. Union of India*, AIR 1990 SC 1480
- *Ega Venkaiah v. Government of Andhra Pradesh*, 1992 (3) ALT 193
- *Home Office v. Dorset Yacht Co. Ltd.*
- *Kasturilal Ralia Ram Jain v. The State of Uttar Pradesh*, 1965 AIR 1039
- *Kishen v. State of Orissa*, AIR 1989 SC 677
- *Laxmi Raj Shetty v. State of Tamil Nadu*, AIR 1988 SC 1274

- *M. C. Mehta v. Union of India*, AIR 1987 SC 1086
- *P.D. Shamdasani v. Central Bank of India*, AIR 1952 SC 59
- *Punjab Istri Sabha and Ors. v. Shri Surjit Singh Barnala*, 1990 ACJ 1064
- *R. Gandhi v. Union of India & Anr.*
- *Rudul Sah v. State of Bihar and Anr*, 1983 AIR 1086
- *Shyam Sunder and Ors. v. The State of Rajasthan*, 1974 AIR 890
- *Sebastian M. Hongray v. Union of India*, AIR 1984 SC 1026
- *State of Himachal Pradesh & Anr. v. Umed Ram Sharma & Ors.*, 1986 AIR 847
- *Union of India v. Ranganayakulu*, AIR 1964 A.P. 477
- *Vidya Verma v. Shiv Narain*, AIR 1956 SC 108

**CASE NO. 17**  
**NILABATI BEHERA**  
**V.**  
**STATE OF ORISSA**  
**[(1993) 2 SCC 746]**

**MONETARY COMPENSATION IN CASE OF  
VIOLATION OF FUNDAMENTAL RIGHT**

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**ABSTRACT**

The torture in police arrests has become regular routine and been considered as lawful practice by them. The Right to Life and Liberty guaranteed under Article 21 is a fundamental right and it should not be denied to convicts, under-trials or other prisoners in custody, except according to procedure established by law. If the state machinery infringes the fundamental right guaranteed under the constitution, then the victim should have a right to seek redressal under Article 32 of the Constitution. There is no express provision in the Constitution, which empower the Courts to award monetary compensation, in the case of fundamental right violation; the Courts will be rendered helpless. In order to overcome this situation, the Supreme Court for the first time in *Nilabati Behera v. State of Orrisa*, held that compensation can be demanded against the state in the case of human right violation.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Writ Petition (Civil) No. 488 of 1988
Jurisdiction	:	Supreme Court of India
Case Filed On	:	September 14, 1988
Case Decided On	:	March 24, 1993
Judges	:	Justice J. S. Verma, Justice Dr. A. S. Anand, Justice N. Venkatachala
Legal Provisions Involved	:	Constitution of India, Article 21, 32, 142, 226; Criminal Procedure Code 1973, Section 6, 176
Case Summary Prepared By	:	G. Dhianeshwar School of Excellence in Law, TNDALU, Chennai

## **2. BRIEF FACTS OF THE CASE**

The Case was heard before Supreme Court of India. The Petitioner of this case is Nilabati Behera. The Petitioner approached the Hon'ble Court for the deprivation of "Right to Life" which was guaranteed under Article 21 of Indian Constitution along with other provisions of Human Rights. The Respondent of the case was State of Orissa.

The Petitioner's son Suman Behera, 22 years old was taken into the police custody on December 1, 1987 around 8 pm by Assistant Sub-Inspector of Police for the investigation of an offence of theft. On December 2, 1987 also he was confined in the Police Outpost. At about 2 p.m. on the same day petitioner came to know that the corpse of her son was found on the railway track, there have been multiple injuries on the body and she realised that his son's death was unnatural and the reason behind the death was the injuries on his body. The petitioner alleged that it was the case of custodial death since her son died as a result of the multiple injuries inflicted to him while he was in police custody and thereafter his body was thrown away on the railway track. This was written in her letter dated September 14, 1988 to Hon'ble Supreme Court of India, which was treated as a writ petition under Article 32 of the Constitution. It had been prayed in the petition that award of compensation should be made to her, for contravention of the elemental of "right to life" guaranteed under Article 21 of the Indian Constitution. The argument of the respondents was that the petitioner's son managed to escape from police custody at about 3 a.m. on December 2, 1987 from the police outpost where he was detained and thereafter, he couldn't be found in spite of a research. After a brief search his corpse was found on the railway track on December 2, 1987 with multiple injuries, which indicated that he was run over by a train. The respondents denied all allegations of the custodial death and their responsibility for the unnatural death of the petitioner's son. On March 4, 1991, the Hon'ble Supreme Court directed the District Judge to carry an inquiry into the matter and to submit a report. After hearing to both the parties and going through their set of evidences the District Judge submitted the Inquiry Report on September 4, 1991. The District Judge found that the petitioner's son died because of the multiple injuries inflicted upon him while he was in the police custody. The correctness of the finding of the District Judge in his report was criticized during this Court. The respondents stated that the petitioner's son managed to escape from police custody at about 3 a.m. on December 2, 1987 and he was run over by a passing train and hence he sustained the fatal injuries. They also stated that that the responsibility of the respondents for his safety seized at

the instant he escaped from the police custody. This was the factual foundation for State's liability for payment of compensation for violation of the elemental right to life under Article 21.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether Supreme Court and High Court while exercising their Jurisdiction under Article 32 and Article 226 can grant the remedy of monetary compensation for violation of fundamental rights in relation to the principle of "Sovereign Immunity"?

### **4. ARGUMENTS OF THE PARTIES**

#### **Petitioner**

The petitioner's counsel argued that the District Judge's findings on the present case cannot be rejected, and there was immense evidence to prove that a petitioner's son was in custody of the police and he was inflicted with the injuries by them which caused his death. It was further argued that the petitioner's son's right to life under Article 21 of the Indian Constitution has been deprived by the police, so then the compensation was claimed.

#### **Respondent**

The respondents' counsel, the Additional Solicitor General argued that the petitioner's son had escaped the police custody at around 3 a.m., on the morning of December 2, 1987. He was couldn't be found in spite of the police having searched for him. In addition to that, he claimed that the petitioner's son reached near the railway station soon after his escape from the police, and was hit by a train. And argued that it was those injuries that has caused the death of the petitioner's son. He claimed that this was not a case of custodial death, as the petitioner's son has escaped the police custody, and also denied the District Court's evidence.

### **5. LEGAL ASPECTS INVOLVED IN THE CASE**

#### **Constitution of India**

##### **Article 21**

Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

## **Article 32**

Remedies for enforcement of rights conferred by this Part III of Indian Constitution

- The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

## **Article 142**

Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc

- The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
- Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

## **Article 226**

Power of High Courts to issue certain writs

Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or

writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

The power conferred by clause

(1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.

### **The Code of Criminal Procedure, 1973**

#### **Section 6,**

Classes Criminal Courts. Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:-

(i) Courts of Session;



- (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;
- (iii) Judicial Magistrates of the second class; and
- (iv) Executive Magistrates.

## **Section 176**

Inquiry by Magistrate into cause of death.

(1) When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub- section (3) of Section 174 the nearest Magistrate-empowered to hold inquests shall, and in any other case mentioned in sub- section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.<sup>11</sup>

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

Explanation.- In this section, expression "relative" means parents, children, brothers, sisters and spouse.

## **6. JUDGMENT IN BRIEF**

The Hon'ble Apex Court held that State of Orissa (Respondent) has to pay a sum of Rs.1,50,000/- to Mrs. Nilabati Behera and also a sum of Rs. 10,000/- has to be paid to the Supreme Court Legal Aid Committee. It was held that the evidence cited during the inquiry doesn't support the defence of respondents and there's no reason to reject the finding of the

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<sup>11</sup> Subs. by Act 46 of 1983, S. 3  
2. Subs. by s. 4, *ibid*.

learned District Judge that Suman Behera died in police custody as a result of the injuries inflicted upon him.

It is very clear that there's no evidence of any search made by the police to arrest Suman Behera if the defence of his getaway police custody is true. Contrary to which the invention of the body on the railway track within the morning by some railway men, it had been much later within the day that the police reached the spot to require charge of the body. This conduct of the concerned officials, is additionally a major circumstance to assess the credibility of the defence version.

It had been stated by the doctor that all the injuries couldn't be caused in train accident, it had been possible to cause all the injuries by lathi blows. There is a difference between the liability of the state public law and therefore the liability of the state in private law for payment of compensation in action on tort. It is mentioned that award of compensation in a every proceeding under Article 32 by this court or by the state supreme court under Article 226 of the Constitution may be a remedy available public law, supported strict liability for contravention of fundamental rights to which the principle of exemption doesn't apply, while it's going to be available as a defence in private law in an action supported tort. The court isn't helpless and therefore, the wide powers given to the current Court by Article 32, which itself may be a fundamental right, imposes a constitutional obligation on this Court to create such new tools, which can be necessary for doing complete justice and enforcing the fundamental rights guaranteed within the Constitution, which enable the award of monetary compensation in appropriate cases, where that's the only mode of redress available. The ability available to the current Court under Article 142 is additionally an enabling provision during this behalf.

There was concurring opinion given by Justice Dr. Anand said that it is the duty of the state to make sure that the rights of the people are not infringed in accordance with law when any person is its custody. The valuable right guaranteed by Article 21 of the Constitution of India cannot be denied to accused and convicts, under trials or other prisoners in custody, except per procedure established by law. There's a good responsibility on the police or prison authorities to make sure that the citizen in its custody isn't deprived of his right to life. His liberty is within the very nature of things restricted by the actual fact of his confinement and thus his interest within the limited liberty left to him is very precious. On the part of the State, the duty of care is strict and has no exceptions.

The wrongdoer is accountable and therefore the State is responsible if the person in custody of the police is deprived of his life except as per the procedure established by law.

## **7. COMMENTARY**

From the Article 21 of the Indian Constitution, it is evident from this particular law that no one can seize away the right to life of a person. Not unless the Law states, which happens in the rarest of the rarest cases; it was not just culpable homicides and murders, but custodial deaths were also frequent and in fact, increased in the 1980s. In addition, most of the times, they could not be proved. In a Country where its Constitution even talks about the rights of the persons detained, it is apparent that the rights that they are vested to already cannot be taken away. This case is undoubtedly one of the landmark judgments, where the court stated in its judgment that compensation can be claimed in case of a custodial death. It will definitely stand as a testimony to the fact that in spite of all the drawbacks of the system of the Government of this country, there is still a hope for justice.

## **8. IMPORTANT CASES REFERRED**

- *Bhim Singh v. State of Jammu & Kashmir, 1984 (Supp) SCC 504*
- *Rudul Shah v. State of Bihar, AIR 1983 SC 1086*
- *Sebastian M. Hongray v. Union of India and Others, AIR 1984 SC 1026*
- *State Of Maharashtra and Ors. v. Ravikant S. Patil, (1991) 2 SCC 373*

**CASE NO. 18**  
**RUDUL SAH**  
**V.**  
**STATE OF BIHAR**  
**[AIR 1983 SC 1086]**

**ILLEGAL DETENTION AND COMPENSATION**

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**ABSTRACT**

Rudul Shah was arrested in 1953 on charges of killing his better half. He was vindicated by an Additional Sessions Judge, in 1968, who coordinated his delivery from prison, awaiting additional orders. Rudul Shah moped in prison for a considerable length of time later his vindication, until his predicament was featured in the media in 1982 and prompted the documenting of the PIL for his benefit. When the PIL came ready for hearing in Court, Rudul Sah had been delivered. Notwithstanding, he looked for auxiliary help including instalment for his restoration, future clinical costs brought about, and pay for his unlawful detainment from the State. The Court guided the State to show make for the candidate's detainment in connection his auxiliary cases, and got a much-postponed reaction with regards to the imprisonment from a state jailor. The Court saw the State reaction as a hard untimely idea with no evident premise indeed and accordingly held that the solicitor's detainment was completely uncalled-for. Then, the Court inspected whether, under its therapeutic powers it could mediate the solicitor's cases for subordinate alleviation. The Court contemplated that Article 21's assurance of the right to life and individual freedom would be deprived of its huge substance assuming the Court was restricted to passing requests delivering people illicitly kept. The Court held that the "right to remuneration is some palliative for the unlawful demonstrations of instrumentalities which act in the name of public interest and which present for their security the powers of the State as a safeguard. Accordingly, the Court requested the State to pay Rs. 30,000/- to the applicant as a break measure, notwithstanding the Rs. 5,000/- currently paid, noticing that the judgment didn't block the candidate from bringing future claims against the State and its authorities for fitting harms identifying with his unlawful detainment.

## 1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal No. 1987 of 1982
Jurisdiction	:	Supreme Court of India
Case Decided On	:	August 1, 1983
Judges	:	Justice Y. V. Chandrachud, Justice A. N. Sen, Justice R. B. Mishra
Legal Provisions Involved	:	Constitution of India, Article 21, 32
Case Summary Prepared by	:	Srishti Mukherjee, Indore Institute of Law, Indore

## 2. BRIEF FACTS OF THE CASE

Rudul Shah was arrested for the murder of his wife in 1953. He was acquitted in 1968 by the court of sessions, Muzaffarpur, Bihar, but was ordered to be detained in prison till further order of the State Government or the IG of Prisons. He was detained for more than 14 years in the prison. As a result, the prisoner filed a habeas corpus petition under Article 32 of the Constitution praying for his release on the ground that his detention in the jail was unlawful. He also asked for other reliefs including compensation for his illegal detention and rehabilitation costs. When the petition came up for the hearing the court was informed by the respondent state that the petitioner had already been released from the jail but the court sent a show-cause notice to the state insisted for the petitioner's detention in relation to his ancillary claims, and received a much-delayed response in defence of the incarceration from a state jailor stating that the petitioner was of unsound mind.

## 3. ISSUES INVOLVED IN THE CASE

- I. Does Supreme court have the power to accept the prayer of compensation under its jurisdiction and award compensation under Article 32 of the Constitution of India?
- II. Whether Article 21 covers the right to compensation on the ground of violation of fundamental rights?

## **4. ARGUMENTS OF THE PARTIES**

### **Petitioner**

The counsel from the petitioner's side argued that, he was unlawfully confined in prison in any event, when he was absolved by the court. He was made to stand by 14 years to get free. This was in direct infringement of the key right of the candidate of right to life and individual freedom, which has been expressed in the Article 21 of the Constitution of India. The Solicitor requested to get the cost structure the State of Bihar for the clinical treatment he was to get. He additionally requested a pay for the unlawful confinement and an ex-gratia instalment for his recovery.

### **Respondent**

The counsel for the sake of the respondent contended that, the applicant was kept in prison as per the request for the specialists passed by the Additional Sessions Judge which expressed that his delivery ought to be authorized solely after there's an authorization from the State Government and Inspector General of Prisons. The respondent additionally battled that applicant was proclaimed of unstable psyche however was subsequently delivered when a Civil specialist guaranteed him to be typical in consistence with the law division's letter.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

### **Constitution of India**

#### **Article 21**

Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

#### **Article 32**

Remedies for enforcement of rights conferred by this Part III of Indian Constitution

- The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local

limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

- The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

## **6. JUDGEMENT IN BRIEF**

The applicant who was kept in jail for north of 14 years later his absolution documented a habeas corpus request under Article 32 of the Constitution petitioning God for his delivery on the ground that his confinement in the prison was unlawful. He likewise requested specific different reliefs including pay for his unlawful detainment. At the point when the request came okay with hearing the Court was educated by the respondent State that the solicitor had effectively been let out of the prison. Permitting the appeal, the court held that the solicitor's confinement in the jail later his exoneration was entirely inappropriate. Article 32 presents power on the Supreme Court to give bearings or arranges or suitable writs for the implementation of any of the privileges gave by Part III of the Constitution. Article 21 which ensures the right to life and freedom will be stripped of its huge substance assuming that the force of this Court was restricted to passing requests of delivery from unlawful confinement. One of the telling manners by which the infringement of that right can sensibly be forestalled and due consistence with the command of Article 21 got, is to mulct it is a violator in the installment of financial pay. The right to remuneration is some palliative for the unlawful demonstrations of instrumentalities which act for the sake of public interest and which present for their security the powers of the State as a safeguard. Regard for the freedoms of people is the genuine stronghold of majority rule government. Consequently, the State should fix the harm done by its officials to their privileges. In the conditions of the moment case the refusal to pass a request for remuneration for the applicant will do simple empty talk to his basic right to freedom which the State Government has so terribly abused. Subsequently, as a between time measure the State should pay to the applicant a further amount of Rs. 30,000/- notwithstanding the amount of Rs. 5,000/- currently paid by it. This request won't block the solicitor from carrying a suit to recuperate proper harms from the State and its failing authorities.

## 7. COMMENTARY

Rudul Sah's case is a milestone case in the field of state risk. It is viewed as especially significant on the grounds that it prompted the development of compensatory law for infringement of essential privileges under the Constitution. For this situation, it is critical that the Indian Constitution doesn't plainly accommodate the honor of pay and that the judgment depends on the court 's understanding of the extent of its entitlement to cure. This is the principal case since the foundation of the Supreme Court, which paid somebody money related pay for disregarding the fundamental freedoms ensured by the Constitution. Casualties reserve the privilege to guarantee harms in the common law of misdeeds, which is correlative to financial pay and not rejected. It underlines the failure of the individual answerable for the life and opportunity of the residents he has vowed to serve, and this shortcoming harms the person as well as the establishment of the vote-based government. This case features the destiny of an individual. Rudul Sah was rebuffed for something he didn't do, but since the framework he depended on made him come up short in the absolute worst manner.

The public authority will start to act such that they know about the infringement of Rudul Sah's privileges and make a reasonable and brief move. They don't keep the law however submit to the standards of the law. They adopt an objective and thoughtful strategy, rather than an absolutely efficient methodology. They didn't stop for a second to get down on the public authority on what they, appropriately, thought was a grave premature delivery of equity. They got down on the public authority of Bihar on their hard and harsh reaction to the situation of the candidate during his preliminary. They additionally scrutinized the manner in which the public authority blamed everything on the Jailor and assumed no liability for their own behavior.

Additionally, there was an idea of an arrangement of balanced governance that could forestall the reiteration of such episodes. This was explicitly for the territory of Bihar since it had been in strife over the wreck that was its prison framework around then. Be that as it may, it would work well for all states to take on and further expand on the Courts proposition to forestall the reiteration of such horrendous occurrences.

Additionally, I think the pay gave is very low. The sum Rs. 30,000 notwithstanding the generally paid Rs. 5,000/- is only a joke of equity. This sum isn't sufficient to compensate for the deficiency of 14 years and the subsequent actual injury and mental agony caused to the person in question. However, as indicated by the court this is only a palliative measure. The



court ought to have gone to some appropriate lengths while investigating such episodes as simple pay can't resolve the harms looked by the applicant and this on account of their lead which caused this immense unsuccessful labor of equity. Additionally, the court ought to have requested a legitimate request for this situation so appropriate equity might have been conveyed. As there is an adage "Equity ought not exclusively be done, however it ought to be believed to be finished".

## **8. IMPORTANT CASES REFERRED**

- *D. K. Basu v. State of West Bengal, AIR 1997 SC 610*
- *Hazur Singh v. Bihari Lal, AIR 1993 Raj 51*
- *Kasturilal Raliaram v. State of U. P, AIR 1965 SC 1039*
- *Khatri & Ors. v. State of Bihar, (1981) 1 SCC 627*
- *M. C. Mehta v. Union of India, (1987) 1 SCC 395*
- *N. Nagendra Rao & Co. v. State of Andhra Pradesh, AIR 1994 SC 2663*
- *P. & O. Steam Navigation Company v. Secretary of State for India, (1851) 5Bom HC*
- *Paschim Banga Khet Samity v. State of West Bengal, (1996 SCC (4)37)*
- *Registered Society v. Union of India, AIR 1999 SC 2979*
- *State of Gujarat v. Memon Mohd, AIR 1967 SC 1885*

**CASE NO. 19**  
**D. K. BASU**  
**V**  
**STATE OF WEST BENGAL**  
**[(1997) 1 SCC 416]**  
**RIGHTS OF AN ARRESTED PERSON**

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**ABSTRACT**

The current case raised as a Criminal Writ Petition due to the custodial violence in police custody and lock-ups strikes a blow to rule of law and also is a violation of a human right. In this case, Executive Chairman of Legal Aid Services of West Bengal addressed the Chief Justice of India to draw his heed on the certain news items published in the Telegraph regarding the custodial deaths, deaths in police custody and lock-ups. Therefore, the letter was treated as the PIL which raised many questions with the respect to the custodial deaths and also a classical example of judicial activism, Custodial torture is a naked violation of human dignity and degradation with destroys, to a very large extent, the individual personality and is a calculated assault on human dignity.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Writ Petition (Criminal) No. 539 of 1986
Jurisdiction	:	Supreme Court of India
Case filed On	:	1986
Case decided On	:	December 18, 1996
Judges	:	Justice Kuldeep Singh, Justice A S Anand
Legal Provisions Involved	:	Constitution of India, Article 20, 21, 22; Indian Penal Code, 1860, Section 220, 330, 331, 342, 348; Code of Criminal Procedure, 1973, Section 41, 46, 49, 50, 56, 57, 167, 176 Indian Evidence Act 1872
Case Summary Prepared By	:	Sakshi Mehta, Symbiosis Law School, Noida

**2. BRIEF FACTS OF THE CASE**

In the present case, the parties are D. K. Basu as the petitioner and State of West Bengal is

the respondent in this case. The Executive Chairman of Legal Aid Services, West Bengal, a non-political organization, wrote a letter to the Chief Justice of India, drawing his attention to certain newspaper reports about deaths in police custody and lock-ups. It was prayed that the Court takes cognizance of the issue of custodial violence and formulate guidelines for the grant of compensation to the victims or their kin and develop a mechanism to hold police officers accountable.

The letter was treated as a writ petition. A subsequent letter about custodial torture by Mr. Ashok Johri was also treated as a writ petition and was listed with Mr. D. K. Basu's. Notice was issued by the SC to all State Governments and the Law Commission of India to file suggestions. Affidavits were filed by some State Governments and the Law Commission forwarded a copy of its 113<sup>th</sup> Report.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether monetary compensation should be granted for established violation of the fundamental rights guaranteed by Article 21 and 22 enshrined in the Constitution?
- II. Whether there is arbitrariness while a police officer is arresting the person?
- III. Can a person's right to life be overshadowed when arrested?
- IV. How do we check the manipulation and misuse of power by the police officer?
- V. Whether the sovereign immunity is there in the case of tortious act and contravention of fundamental rights in the case of Human Rights.
- VI. Is constitutional remedy being available under Article 32 and 226 for the flouting of fundamental rights?

### **4. ARGUMENTS OF THE PARTIES**

- From the petitioner side's: In all custodial crimes what is of real concern is not only for infliction of body pain, but the mental agony which a person undergoes within the four walls of the police station or lock-ups – whether it is a physical assault or rape in police custody, the extent of trauma, person experience's is beyond the preview of law.
- Despite, having the pious declaration, the crime continues unabated through every civilized nation shows its concern and takes steps for its eradication.
- On behalf of the respondent, they contended that the police were no hushing up any matter of lock-up death and that where even police personnel were found to be

responsible for such death, the action was being initiated against them.

- It characterized the writ petition as misconceived, misleading, and untenable in law and that everything was well, within their respective states.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

### **Constitution of India**

- **Article 21** enshrined in the constitution includes the “right to live with human dignity, thus it would also include a guarantee against torture or assault by the state or its functionaries. No person shall be deprived of his life or personal liberty except according to procedure established by law”.
- **Article 22** talks about ensuring the protection against detention and arrest in certain cases and also proclaims that no person which is arrested and detained in custody without informing about the grounds of arrest and shall not be denied the right to consult a legal representative and defend himself of his choice.
- Clause (2) of proviso 22 directs that within 24 hours after such detention, the person arrested and detained in custody is produced before the nearest Magistrate without any time from the place of arrest to the Court of the Magistrate.
- **Article 20(3)** of the Constitution stipulates that a witness against himself must not be forced to be the person charged with an offense. These are some of the constitutional safeguards offered to an individual to protect his or her freedom from unjustifiable State attacks. Several statutory provisions also aim to promote the personal freedom, dignity, and basic human rights of citizens, together with the constitutional guarantee.

### **Indian Penal Code, 1860**

- **Sections 330, 331, 342, and 348** of the IPC have ostensibly been designed to deter a police officer, who is empowered to arrest a person and to interrogate him during an investigation of an offense from resorting to third-degree methods causing ‘torture.
- The punishment for an officer or authority who detain or contain a person for a corrupt or malicious reason as provided in Section 220.
- **Sections 330 and 331** provide the sanction to extort confession or information on the commission of an offense for those who are inflicting injury to a person by causing grievous hurt.

### **Code Of Criminal Procedure, 1973**

- **Section 41**, CrPC gives any police officer the authority to arrest a person under the circumstances specified without a judge's order or warrant.
- The method and manner of arrest are set out in Section 46. No formality is required under this section when a person is arrested
- The police shall not be permitted to use more restrictions per Section 49 than is necessary to allow more restraint to prevent the person's escape.
- **Section 50** requires each police officer arresting a person without a warrant to inform him/her of all the details of his/her arrest and the reasons why he/she has been arrested. The police officer is also instructed to inform the arrested person of his or her right to be released on bail and to arrange for guarantees for a non-living offense in the event of his or her arrest.
- **Section 56** does provide for the mandatory arrest of the police officer without a warrant for the arrested person to be brought before the Magistrate without undue delay and **Section 57** echoes **Article 22(2)** of the Constitution of India. **Article 22**. There are other provisions, such as Sections 53, 54, and 167, which seek to provide a person detained by police with procedural safeguards. Section 176 requires the Magistrate to hold and investigate the cause of death when an individual dies in custody of the police.

### **Indian Evidence Act, 1872**

In its 113<sup>th</sup> Report, the Law Commission recommended that in the case of a police officer who was prosecuting an alleged offense of causing a person bodily injury if it was evident that the damage was being caused during the time the person was in police custody the Court could presume that the injury was caused by the custody of the individual during this period. The Commission further recommended that the Court consider all applicable circumstances, including the victim's custody declaration, the medical evidence, and the evidence of the magistrate, while also considering the question of presumption.

## **6. JUDGEMENT IN BRIEF**

The Hon'ble Court observed that on custodial violence and human rights. Any form of torture or cruel, inhuman, or degrading treatment would be violative of Article 21 of the Constitution of India regardless of whether it occurs during investigation, interrogation, or otherwise. The

right under Article 21 is interrogable even for convicts, undertrials, and other prisoners in custody, except according to reasonable restrictions imposed by the law. Even in cases of terrorism, torture or third-degree methods cannot be used to extract information as it would be offensive to Article 21.

It is carried out by those people who are supposed to be the guardians of the citizens. Additionally, the court also observed that it is committed under the shield of uniform and authority in the four walls of a police station or lockup, where the victim is up the creek.

The Court found that in the Constitution or other criminal law, the term "torture" was not defined. The Court affirmed that "Torture by another human being of an individual is an essential tool for imposing the will of the 'strong on the 'weak' through suffering. Today's word torture is synonymous with the dark side of human culture."

If the functionaries of the government become lawbreakers it's bound to breed contempt for law and would encourage lawlessness and every man would tend to become a law unto himself thereby leading to anarchy.

The Supreme Court as custodians and protector of the fundamental human rights of citizens cannot wish away the problems

In quoting Article 21 of the Indian Constitution, the Hon'ble Court observed that "the fundamental rights of the Indian Constitution take a place of pride." The Court observed that personal freedom under the Constitution of India is a sacred and cherished right. The word 'life or personal freedom' includes the right to live with human dignity, as well as a guarantee against torture and assault on the part of the State or its officials.

The right to interrogate the detenu's, culprits, or arrestees in the interest of the nation, must take precedence over individual rights to personal liberty. The Latin maxim *Salus Populi Suprema Lex* (the safety of the people is a supreme law) and *Salus republicae suprema lex* (safety of the state is the supreme law) co-exist and are not only important and relevant but lie at the heart of doctrine that the welfare of an individual must yield to that of community.

Police is, no doubt, obligated by a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offense but the law does not permit the use of third-degree methods or torture of the accused in custody during interrogation and investigation to solve the crime. The end cannot justify the means. The interrogation and investigation into a crime should be in a true sense purposeful to make the investigation

effective. By torturing a person and using third-degree methods, the police would be accomplishing behind closed doors what the demands of our legal order forbid. No society can permit it.

In the case of death of Sawinder Singh (1995) relied on these requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

The Court observed that No arrest can be carried out only because it is lawful at the judgment of *Joginder Kumar v. State*. The Court held that one thing is the power of arrest, which is quite another justification. The court also noted that the denial of the freedom of the individual is a serious matter.

The court opined that custodial death is perhaps one of the worst crimes in a civilized society governed by the Rule of Law. No civilized society can permit to do so. Furthermore, the court also observed that any form of torture or cruel, inhuman, or degrading treatment would fall within the inhibition of Article 21 of the Constitution

The Court goes so far as to observe in harsh words that the Custodial Death is generally not shown in the lock-up records and that every effort is taken to clear the body or make a case that the person who was arrested died after release. The Court also found the criminals are encouraged and society suffers when the crime goes unpunished. The victims of crime or their friends and kids are frustrated and the law is disregarded.

In connection with the first issue, should monetary compensation be given for established violations of fundamental rights guaranteed by Articles 21 and 22 of the Indian Constitution or not? The Court of Hon'ble pointed out that the offender's mere punishment cannot give the family solace. The court observed that the violation of the citizens' unfeasible right to life is thus a useful and sometimes only effective remedy in the treatment of damage by the departed victim's families who may have won the family's bread.

In the case of *State of M. P. v. Shyamsunder Trivedi*: “On Evidence, The Court observed that the ground reality in cases of custodial violence is the lack of ocular evidence establishing the complicity of an accused police officer. Generally, only police personnel would be in a position to explain the circumstances in which a person in

their custody would have died. Very often, police officials remain silent to protect their colleagues as they are “bound by the brotherhood.”

The Hon’ble Court cited the judgment of *Maharaj v. Attorney General of Trinidad and Tobago* and remarked that the:

“In sum, it is now well accepted in many jurisdictions that monetary or pecuniary compensation is an adequate and effective and, at times, perhaps the sole appropriate way in which public officials and the State can rectify the established infringement of the basic right to the life of a citizen. The citizen's claim is based on the principle of strict responsibility, which does not allow the defense of sovereign immunity, and the citizen must get the amount of compensation from a state that is entitled to be repaired by the wrongdoer.”

In addition, the Court noted that the focus should be on the compensatory element and not the punitive one. The goal is to treat injuries with salt and not punish the offender or the transgressor.

For the second and third issue, a citizen has withdrawn his fundamental right to life as soon as he is arrested by a police officer, and Can a citizen's right to life be alerted when he is arrested? The Hon'ble Court pointed out in the Negative that, except in the procedure established by the law by making the reasonable restrictions that are permissible by law, the priceless right guaranteed by Article 21 of the Constitution of India shall not be denied to convicts, detainers, and other detainees in custody under trials.

In the case *Nilabati Behara v State of Orissa* – the court pointed out that the prisoners and detenues 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 of the arrestees and detenues.

The issue in *Miranda v Arizona* is instructive –the court said: A recurrent argument made in those cases is that society’s need for interrogation outweighs the privilege. In *Chambers v Florida*- the whole thrust of one foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government. When it provided in the fifth amendment that an individual cannot be abridged.



Furthermore, the Hon'ble court while answering the issue raised on 'How do we check the abuse of police power', Hon'ble Court observed that the Transparency of action and accountability are two possible safeguards which this Court must insist upon.

In addition, the Court noted that the force should be inspired by fundamental human values and sensitive to the constitutional ethos. The Court noted that the efforts should be made to alter the attitude and approach of police investigations to prevent them from sacrificing fundamental human values and recourse to questionable forms of interrogation. The Court observed that the presence of the arrest man's counsel at one stage in the interrogation may prevent the police from using 3rd-grade methods while they are interrogated to ensure transparency.

Moreover, while responding that "whether sovereign immunity may be enforced in the event of a breach of the fundamental right or basic human rights, the Court pointed out that for the torture of public officials and the established violation of the rights guaranteed by Article 21 of the Constitution, the defense of sovereign immunity cannot be made available to the State."

Furthermore, the court issued the following guidelines which must be followed in all cases of arrest or detention :

- Police arresting and interrogating suspects should wear "accurate, visible and clear" identification and name tags, and details of interrogating police officers should be recorded in a register.
- A memo of arrest must be prepared at the time of the arrest. This should: Have the time and date of arrest, be attested by at least one witness who may either be a family member of the person arrested or a respectable person of the locality where the arrest was made, and be counter-signed by the person arrested.
- The person arrested, detained, or being interrogated has a right to have a relative, friend or well-wisher informed as soon as practicable, of the arrest and the place of detention or custody. If the person to be informed has signed the arrest memo as a witness this is not required.
- Where the friend or relative of the person arrested lives outside the district, the time and place of arrest and venue of custody must be notified by police within 8 to 12 hours after arrest
- The person arrested should be told of the right to have someone informed of the

arrest, as soon as the arrest or detention is made.

- An entry must be made in the diary at the place of detention about the arrest, the name of the person informed and the name and particulars of the police officers in whose custody the person arrested are.
- The person being arrested can request a physical examination at the time of the arrest. Minor and major injuries if any should be recorded. The "Inspection Memo" should be signed by the person arrested as well as the arresting police officer. A copy of this memo must be given to the person arrested.
- The person arrested must have a medical examination by a qualified doctor every 48 hours during detention. This should be done by a doctor who is on the panel, which must be constituted by the Director of Health Services of every State.
- Copies of all documents including the arrest memo have to be sent to the Area Magistrate (*ilaqa* Magistrate) for his record.
- The person arrested has a right to meet a lawyer during the interrogation, although not for the whole time.
- There should be a police control room in every District and State headquarters where information regarding the arrest and the place of custody of the person arrested must be sent by the arresting officer. This must be done within 12 hours of the arrest.

It is stated by the Hon'ble Court that the failure to respect the Directives will be punished for contempt of the court and the disdain proceedings and the disdain proceedings may be opened at any High Court of the country with territories.

## **7. COMMENTARY**

“Power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority; still, more when you superadd the tendency of the certainty of corruption by authority.”- Lord Action

It is rightly said that the absolute powers corrupt absolutely, looking in this case scenario police officials and authorities have the power to take control of everything, sometimes they take it so much in control that they become the lawbreakers without holding any accountability

One of the major epidemics in the still lay in this country is the atrocities against the disadvantaged communities especially the detainee and prisoners kept incarcerated. In

cinemas and series. When a lead actor as a villain or does a violent activity or does a fake encounter, we as watchers encourage and promote such activity, and consider them as heroes. However, in actuality, it is considered a major hurdle and a gross violation of the rights of an individual, against whom such abuse act has taken place.

The hypocritical slice is that the police play a pivotal role in a country, they are also the frontline officers that are working and safeguarding and protecting the public. Nonetheless on the other hand we see the same officers going against the law and order and violating the norms, and inflicts the same abuse on the men for no reason, by snatching away the rights of a common individual.

As per the reports of NCRB, 2,83,559, complaints of abuse and violation of human rights by the police were registered during 2009-13 of these departmental inquiries were initiated in around one lakh complaints magisterial inquiry conducted in only 818 complaints and judicial inquiries completed in 1,902 complaints. Out of the total registered complaints of human rights abuse by the police during 2009-2021, 1,45,539 complaints or more than half of the total complaints were rejected, whereas administrative action was initiated in 40,603 cases (7%) and chargesheets were filed or trial initiated in only 5,030 cases (less than 2%).

This verdict is in the interest of natural justice and protects the prisoners' interests. It does not mean a person has lost his basic dignity simply because he or she committed a crime or because it is police custody. Although the Hon'ble Court of Human Rights has pronounced this judgment, it is not yet properly applied.

There's something else in the report of the National Crime Record Bureau (NCRB). In 2017-19, 255 people were killed in the custody of the police. In contrast, during this period, only 3 police officials were subject to conviction. The report makes clear that the judge rule is not properly applied.

Even after more than seven decades of independence from British rule, the government of India still follows the old police act and has neither made a single amendment nor implemented any recommendation given by the police commission. The motive behind the government turning a deaf ear to the public is very clear. It is due to the politicians and other powerful people do not want to lose their control over the police and want to use them for their personal and political gains.

## **8. IMPORTANT CASES REFERRED**

- *Chambers v. Florida*, 309 U.S. 227 (1940)
- *D.K. Basu v. State of West Bengal*, Writ Petition (Crl) No. 539 of 1986
- *Joginder Kumar v. State*, 1994 CriLJ 1981
- *Maharaj v. Attorney General of Trinidad and Tobago*, (1978) 2 ALL E.R. 670.
- *Miranda v. Arizona*, 384 U.S. 436 (1966)
- *Neelabati Bahera v. State of Orissa*, 1993 CriLJ 2899
- *State of M. P. v. Shyamsunder Trivedi*, (1995) 4 SCC 262

**CASE NO. 20**  
**THE STATE OF GUJARAT AND ANOTHER**  
**V.**  
**HON'BLE HIGH COURT OF GUJARAT**  
**[CIVIL APPEAL NO 308 OF 1986, SC]**  
**WAGES FOR PRISONERS**

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**ABSTRACT**

The following is the case summary of the case *State of Gujarat and Another v. Hon'ble High Court of Gujarat* in which various appeals were filed before the Hon'ble Supreme Court by respective state governments against the decisions passed by various high courts regarding the concept of wages where the court laid down that it must be treated with the provisions of Minimum Wages Act, 1948 and even dismissed the request made by the state government to deduct the cost of providing the food and clothes from the wages of the prisoners. The case explains the difference between the nature of work that the prisoner is entitled to do if he is in an undertrial or if he is convicted. The case also clarifies that whether Article 23 and Article 24 of the Constitution are invoked when the jail authorities impose hard labor on the prisoners or not. It further, talks about the ineffectiveness of Section 357 of the Code of Criminal Procedure where many persons who are sentenced to long-term imprisonment do not pay the compensation and instead choose to continue in jail in default thereof. It is only when fine alone is the sentence that the convicts invariably choose to remit the fine. But those are cases in which the harm inflicted on the victims would have been far less serious. Thus, the restorative and reparative theories are not translated into real benefits to the victims.

**1. PRIMARY DETAILS OF THE CASE**

Case No.	:	Civil Appeal No 308 of 1986
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1983
Case Decided On	:	September 24, 1998
Judges	:	Justice M. M. Punchhi, Justice D. P. Wadhwa, Justice K.T. Thomas
Legal Provisions Involved	:	Constitution of India, Article 19, 21, 23, 24, 300-A; Prisons Act, 1950;

		Indian Penal Code, 1860, Section 53, 60; Criminal Procedure Code, 1973, Section 357;; Kerala Prisons Rules; Minimum Wages Act, 1948; Minimum Wages (Central) Rules, Article 4 para (3)(a); Indian Prisons Bill, 1996
Case Summary Prepared by	:	Hrithik Manchanda, Manav Rachna University, Faridabad

## 2. BRIEF FACTS OF THE CASE

Hon'ble High court of Kerela in its decision on the matter of prison reform enhancement of wages of prisoners suggested to give wages to the prisoners as per the provisions of the Minimum Wages Act and also rejected the request of deducting the cost of food and clothes from the wages that are provided to the prisoners. The court directed the State Government to design a fair wage structure for the prisons who were employed as labor, and in the meanwhile were asked to pay them Rs. 8 per day until the Government is able to decide the appropriate wages to be paid to such prisoners.

Meanwhile, A Singh Judge of Rajasthan High Court suggested that the State Government shall appoint a Commission to go into the entire wage Structure for the convicted prisoners. The Hon'ble court also directed the State to pay to the prisoners at the rates tentatively fixed by the learned Judge.

A Division Bench of the High Court of Himachal Pradesh, in a case, directed the State Government to undertake comprehensive jail reforms and appoint a high-powered committee within a year to look into the various aspects including payment of reasonable minimum wages to the prisoners.

Afterward, the Gujarat High Court adopted the same stand as the Division Bench of Kerala in the above-mentioned case law. The judgment was rendered by a Division Bench headed by P Subramaniam Poti, CJ, and the reasons averted in the decision of the Kerela High Court were reiterated.

In this case, various appeals by the respective state governments and two writ petitions by the prisoners were filed challenging the judgments rendered by respective high courts which in

principle upheld the contention that denial of wages at such rates would fringe on infringement of the constitutional protection against the execution of forced labor and enhance the wages of the prisoners.

various appeals were filed by various state governments before the Supreme Court for challenging the judgment rendered by the respective high courts so the court heard Mr. Rajeev Dhawan who appeared from the side of the National Human Rights Commission (NHRC) which feverous the principle that prisoners should be paid wages at the rates prescribed under the Minimum Wages law. The Hon'ble Court also heard Mr. Kapil Sibal as the Amicus Curiae and Mr. Soli J. Sorabji who discussed the same principles as was discussed by the counsel for NHRC.

### **3. ISSUES INVOLVED IN THE CASE**

- I. Whether the prisoners, who are required to do labor as part of their punishment, should necessarily be paid wages for such work at the rates prescribed under Minimum Wages law. whether any deduction should be made from the earnings of a prison related to the cost of clothes and essentials.
- II. Whether the victim is entitled to any kind of compensation or relief from the earning of the accused in prison or not?
- III. Whether compulsory labor can be considered can be justified by testing it on the touchstone of the public purpose?

### **4. ARGUMENTS OF THE PARTIES**

#### **Appellant**

the appellant, in this case, contended the decision given by various high courts and was of the view that prisoners should be paid wages and mentioned that the present rates of wages paid to them were too meagre and hence they must be enhanced. The State of Kerala (Appellant) in the appeal expressed some objection to paying the prisoners at the rates fixed as per Minimum Wages laws. But during arguments, the State submitted that the Government is willing to pay the prisoners wages at the said rates after deducting a certain percentage therefrom which represents the amount needed for the food and clothes supplied to the prisoners.

## **Respondent**

The respondents in its submissions submitted that it is the obligation of the state government to provide food and clothes to the prisoners as it is the inherent obligation of the State on account of the very fact of their internment in prisons. Further, the high court in its judgment mentioned the undertrials and the liability of the state government to feed and provide clothes to them.

## **5. LEGAL ASPECTS INVOLVED IN THE CASE**

### **Constitution of India**

#### **Article 23**

This respective case was presented before the Hon'ble Supreme Court where one of the main issues that were found out to be was whether the imposition of the hard labor on the prisoners who are convicted in prison invokes Article 23 or not. while discussing this issue the Court referred to the case of *Democratic Rights v. Union of India* where the court observed that forced labor may arise in several ways, it may be physical fore, it may be the force exerted through a legal provision such as the provision for imprisonment or fine in case the employee fails to provide labor or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as a force. The Supreme Court from the judgment made the observation that where a person provided labor or service to another or remuneration which is less than minimum wage, the labor or service provided by him clearly falls within the scope and ambit of the words "forced labor" under Article 23.

The Hon'ble Supreme Court further addressed the issue of whether compulsory labor is justified by testing on the touchstone of the 'public purpose' the court observed that hard labor imposed on the proved offenders would have a deterrent effect against others from committing crimes and thus society would, to that extent, be protected from perpetration of criminal offenses by others. So, the court concluded that it is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labor whether he consents to do it or not and it is open to the jail officials to permit other prisoners also to do any work which they choose to do provide such prisoners make a request for that purpose.



### **The nature of punishments and hard labor**

The Hon'ble Court mentioned the two principal categories of the prisoners i.e (1) under-trial prisoners and (2) convicted prisoners (Besides them there are those detained as a preventive measure, and those undergoing detention for default of payment of fine) and mentioned that in the first category cannot be required to do any labor while they remain in jail, but they far outnumber all the remaining categories put together. As per Section 53 of the Indian Penal Code, the term "punishments" has been further subdivided into two subcategories as "rigorous" and "simple". Rigorous imprisonment is imprisonment where hard labor is imposed on the Convicts.

### **Section 357 of CrPC and the victim compensation**

Section 357 of the Criminal Procedure Code, 1973 provides some reliefs to the victims as the court is empowered to direct payment of compensation to any person for any loss or injury caused by the offense. But in practice, the said provision has not proved to be of much effectiveness. Many persons who are sentenced to long-term imprisonment do not pay the compensation and instead, they choose to continue in jail in default thereof. It is only when fine alone is the sentence that the convicts invariably choose to remit the fine. But those are cases in which the harm inflicted on the victims would have been far less serious. Thus, the restorative and reparative theories are not translated into real benefits to the victims. Although, it is constructive thinking for the State to make appropriate law for diverting some portion of the income earned by the prisoner when he is in jail to be paid to deserving victims. In the absence of any law for that purpose, the Hon'ble Court prevented from issuing a direction to set apart any portion of the prisoner's earned wages for payment to the victims because of the interdict contained in Article 300A the Constitution.

## **6. JUDGEMENT IN BRIEF**

The judgment is based on three angles that were considered by the Hon'ble Court where it mentioned that it is the obligation of the state government to bear the expenses needed for providing food, clothes, or the other amenities that are required by the prisoners but it needs to be looked with other sides as well which are as follows-

1. The first angle was if wages at the rates fixed under MW Act are paid to a prisoner without making any such deduction its net effect would be that he gets wages apparently more than the emoluments of a workman who does the

same type of work outside the jail. This is because the latter has to meet his expenses for food and clothes from the minimum wages paid to him.

2. The second angle is, the Government which has to pay wages to the prisoner has the additional liability to supply clothes and food to him because the government has the duty to keep a convicted person in prison during such a term as the Court sentences him to imprisonment. It is taxpayer's money which the Government is expending for keeping the prisoners inside the jail by providing him food and clothes and other amenities.
3. The third angle describes the Minimum Wages Act permits the employer to make deductions of certain kinds from the wages of an employed person. Section 12 of the Act permits him to make such deductions as may be authorized and subject to such conditions as may be prescribed by rules. Minimum Wages (Central) Rules contain the items of such deductions which are permissible. Among such items the following two are pertinent: (1) deductions for house accommodation supplied by the employer (2) deductions for such amenities and services supplied by the employer as the government may authorize. This deduction of the cost of clothes and food supplied to an employee from his wages is not inconsistent with legislative policy.

### **Dicta**

The Hon'ble Court in the entire judgment referred the various points-

It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labor whether he consents to do it or not.

It is open to the jail officials to permit other prisoners also to do any work which they choose to do provide such prisoners make a request for that purpose.

It is imperative that the prisoner should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners, the State concerned shall constitute a wage fixation body for making recommendations. We direct each State to do so as early as possible.

Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose, we direct all the State Government to fix the rate of such interim wages within six weeks from today and report to this Court of compliance with this direction.

We recommend to the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offense the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

### **Dissent**

The Hon'ble Court agreed to the contentions of the appellant (State government) and allowed them to deduct the expenses incurred for food and clothes of the prisoners from the minimum wages rates is a reasonable request. The court further also directed the state government to make appropriate law for diverting some portion of the income earned by the prisoner when he is in jail to be paid to deserving victims. In the absence of any law for that purpose, we are prevented from issuing a direction to set apart any portion of the prisoner's earned wages for payment to the victims because of the interdict contained in Article 300A of the Constitution.

## **7. COMMENTARY**

In my view decision of the Hon'ble Supreme Court on this matter was fair, balanced, and acceptable for a number of reasons. The court while delivering the judgment and allowing the appeal focused on the Restorative and Reparative theories which the court clarified that these theories are not of punishment rather focuses on the restitution and reparation of the offender. The main aim is to restore the harm done to the victim. Restorative theories are therefore victim-centered. although in some versions they encompass the notion of reparation to the community for the effects of crime. They envisage less resort to custody, with onerous community-based sanctions requiring offenders to work in order to compensate victims and also contemplating support and counselling for offenders to reintegrate them into the community. Such theories, therefore, tend to act on a behavioral premise similar to rehabilitation, but their political premise is that compensation for victims should be recognized as more important than notions of just punishment on behalf of the State.

Legal systems based on a restorative rationale are rare, but the increasing tendency to insert victim orientated measures such as compensation orders into sentencing systems structured to impose punishment provides a fine example of Garland's observation that institutions are the scenes of particular conflicts as well as being means to a variety of ends, so it is no surprise to find that each particular institution combines a number of often incompatible objectives, and organizes the relations of often antagonistic interest groups.

## **8. IMPORTANT CASES REFERRED**

- *Gurdev Singh v. State*, (AIR 1976 HP 76)
- *G.V. Godse v. State*, AIR 1961 SC 600,
- *Naib Singh v. State of Punjab*, AIR 1983 SC
- *The State of Gujarat and Another v. Hon'ble High Court of Gujarat*

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## About ProBono India

Founded in October 2016 with an aim to integrate legal aid and awareness initiatives – ProBono India has ventured into different avenues viz. legal aid, legal awareness, legal intervention, legal journalism, legal activism etc. – all with the underlying objective of contributing to the positive development of the society with a strong socio-legal approach.

The activities at ProBono India include an active dissemination of legal information via the medium of its official website, rolling internship programmes for law students to help them develop a holistic personality with a socio-legal approach to their professional personality, interviews with eminent personalities working at the ground-level offering insights into their successful projects, providing a platform to promote and publish the art of research and legal writing, amongst many others.

The team of ProBono India works to promote legal activism as we believe that law and society are two sides of the same coin. Law and society are so inextricably interdependent that to both need to be equally improved in order to lead the world into the desired new order. We at ProBono India believe in a better and brighter tomorrow. We believe not just in being passengers on this drive to change – rather, we aim to drive towards the change.

## Vision

Integrate Legal Aid and Legal Awareness Initiatives.

## Mission

To provide the legal aid, conduct legal awareness activities, disseminate legal aid, legal awareness activities of various organizations of the world and conduct research on overall aspects of legal aid and legal awareness.



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