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Monetary Damages for Fundamental Rights Breaches: A Study of Nilabati Behera v State of Orissa

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INTRODUCTION

The issue of custodial deaths at the hands of law enforcement officials is a deeply concerning problem for any democratic society. As per the statement made by Nityanand Rai, the Union Minister of State for Home Affairs, it has been reported that an aggregate of 146 cases of custodial death was recorded from 2017 to 2018, followed by 136 cases in 2018-2019, 112 cases in 2019-2021, 100 cases in 2020-2021 and 175 cases in 2021-2022.¹ However, these numbers are not exhaustive as a lot of cases of custodial death go unreported in India every year. Over time, the compensatory jurisprudence established by the Supreme Court is an illustration of the judiciary's creative interpretation and application of the law, as the Constitution does not explicitly address this matter. This legal remedy involves providing compensation to individuals who have suffered a violation of their rights, rather than denying them any form of redress and subjecting them to the potentially arduous and protracted legal process. In those

¹ Mahender Singh Manral, 'At 80, highest no. of custodial deaths reported in Gujarat in last 5 years, Rajya Sabha told' (*The Indian Express*, 14 February 2023) <<https://indianexpress.com/article/india/custodial-deaths-highest-in-gujarat-last-5-years-maharashtra-up-tamil-nadu-bihar-rajya-sabha-8441974/>> accessed 03 April 2023

circumstances, the right to compensation is recognized through various international human rights instruments, such as the Covenant on Civil & Political Rights (ICCPR), 1966. *Nilabati Behera v State of Orissa*² is considered a landmark judgment in this regard as it demarcates the line between the application of sovereign immunity in cases relating to public law and private law. In this case, the three judges tasked with rendering a verdict were Justice A.S. Anand, Justice N. Venkatachala, and Justice Jagdish Sharan Verma.

FACTS

Suman Behera, aged about 22, was accused of theft under Section 378³. On 1st December 1987, he was taken into custody by the police (Sarat Chandra Barik, Assistant Sub-Inspector), at around 8 a.m. from his home in Police Station Bisra which comes under District Sundergarh in Orissa, in connection with a theft case. He was detained at the Police Outpost. The next day, around two in the afternoon on 2nd December 1987, Smt. Nilabati Behera was informed that her child Suman Behera's dead body was discovered on the tracks of the railroad near a bridge, not far from the Jaraikela train station. According to the petitioner's letter dated 14th September 1988, which was considered as a writ petition by the Apex Court under Article 32⁴ of the Constitution, Suman Behera's body showed various wounds and injuries, indicating that his death was not natural but was caused by the injuries he sustained. The petitioner has accused Suman Behera's death as a case of custodial death. It is alleged that Behera sustained multiple injuries while he was in the custody of police for being accused of theft, following which the body of a deceased person was dumped onto the train track. The petitioner has requested an award of compensation for the violation of the Right to Life enshrined under Article 21⁵ of the Constitution. The respondent in their defense denied the allegation of custodial death by stating that on the night between December 1st and 2nd, 1987, Suman Behera escaped from police custody at Police Station Bisra which comes within the jurisdiction of District Sundergarh, where he was being kept and watched by Police Officer named Chhabil Kujur. The following day, his

² *Smt Nilabati Behera Alias Lalit v State Of Orissa & Ors* (1993) AIR 1960

³ Indian Penal Code 1860, s 378

⁴ Constitution of India 1950, art 32

⁵ Constitution of India 1950, art 21

lifeless body was discovered on the track of the railroad, with numerous injuries that suggested he was struck by a passing train after escaping from police custody. As a result, Suman Behera's contention that death is unnatural is likewise rejected. Due to the disputed cause of Suman Behera's death, the Supreme Court issued a directive on March 4th, 1991, ordering Sundergarh's District Judge in Orissa to conduct an investigation and produce a compte rendu on the matter. Following this directive, both parties presented evidence, and on September 4th, 1991, the District Court produced an inquiry report, based on the evidence presented, it can be deduced that Suman Behera met his demise due to the multiple injuries he had sustained while being in the custody of the police at the police station Jeraikela.

LEGAL ISSUES

- Could it be established whether the petitioner's claim of custodial death in this matter is valid and substantiated by evidence?
- What rule governs the State's responsibility for paying damages when it is at fault, and how does this responsibility vary from the private law responsibility for paying damages in a tort action?
- Despite the doctrine of sovereign immunity, are the constitutional courts of India authorized to award monetary damages as a form of compensation for breaches of fundamental rights?

DECISION

The petitioner is granted compensation for her son's death while in the care of the police, as per the court's decision and there is no rationale behind questioning the veracity of the evidence, which the District Judge recorded and confirms that the deceased, Suman Behera, was twenty-two years old and had a monthly salary ranging from one thousand two hundred rupees to one thousand five hundred rupees. The respondent, the State of Orissa, has been ordered to pay Smt. Nilabati Behera a sum of One Lakh Fifty Thousand rupees as suitable compensation, together with an additional Ten Thousand rupees to the committee named Supreme Court Legal Aid.

It is pertinent to note that compensation awarded by this court under Article 32 or the High Court under Article 226⁶ in such proceedings, is a public law remedy based on strict liability for the violation of fundamental rights (as in this case Article 21⁷). Unlike in private law, where sovereign immunity may serve as a defense in tort cases, sovereign immunity does not apply in public law compensation cases. This distinction between the two types of remedies must be taken into account, as it also sheds light on the basis for awarding compensation in such proceedings.⁸

ANALYSIS

The analysis shall be bifurcated into two segments. First, we will briefly discuss the arguments put forward by both parties and the court's view on the same. Secondly, we will discuss how the court cited different cases to explain the principle on which the State's liability arises concerning the violation of fundamental rights as well as the distinction between public law remedy of reimbursement for the contravention of fundamental rights from conventional private law remedies like civil suits. The respondent claimed that the deceased had run off from police custody by biting through the rope that bound him. However, the following morning, Suman Behera's dead body was discovered on the tracks of a railroad with numerous injuries that suggested he had been hit by a running train. However, the Regional Forensic Science Laboratory produced a report that contradicted the respondent's assertion, stating that the physical characteristics of the two cut ends did not match, thereby discrediting the notion of the deceased's escape. A joint inquiry was also conducted by the Circle Inspector of Police along with the Executive Magistrate under Section 176 CrPC⁹ which stated that on December 2, 1987, at about 3 a.m., Suman Behera ran off from police custody and passed away in a railway disaster due to injuries sustained therein but the court stated that the inquiry made under S. 176 cannot be made be relied on as a statutory report based on death, since when the conduct of the police officer is the subject of investigation, the report has to be evaluated independently. Supreme

⁶ Constitution of India 1950, art 226

⁷ Constitution of India 1950, art 21

⁸ *Smt Nilabati Behera Alias Lalit v State Of Orissa And Ors* (1993) AIR 1960

⁹ Code of Criminal Procedure 1973, s 176

Court had directed the district court to conduct an inquiry relating to the controversy over Suman Behera’s death. Accordingly, the District Court issued its findings, noting that the deceased died as a result of various injuries sustained while he was in the custody of the police. The accuracy of this finding and report of the District Judge was challenged by the respondent, thus the matter was re-examined by the Supreme Court but the conclusion provided by the district court was upheld by the supreme court of India i.e., Suman Behera died while he was in the custody of the police at the Jeraikela Police Station, as a result of numerous injuries that were deliberately inflicted upon him, making it a case of custodial death.

“The old doctrine of only relegating the aggrieved to the remedies available to the civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens”¹⁰. *Khatri v State of Bihar*¹¹, alternatively called the “Bhagalpur blinding” case in which for the very first time the right to seek compensation through writ petition i.e., habeas corpus was recognized. The courts have wide powers under Article 32, which itself is a fundamental right, and “put a constitutional obligation to forge new tools and devise new remedies for meaningful enforcement of the right to like, else the right would be reduced to a mere rope of sand”.¹² The Supreme Court's power under Article 142 is likewise an enabling provision in this respect. This provision confers wide discretionary powers to the Supreme Court by allowing it to issue any necessary decree or order to achieve complete justice in any pending case or matter within its jurisdiction.

The court cited that in *Rudul Shah*¹³ which states that although it was established that compensation might be provided under Article 32 for violations of a fundamental right, it was also stated that “the petitioner could have been relegated to the ordinary remedy of a suit if his compensation claim was factually controversial”¹⁴. This observation leads to create doubt that the remedy under Article 32 could be denied. It is imperative to ascertain the exact character of the remedy obtainable under Article 32, which is separate and supplementary to the remedies

¹⁰ *Smt Nilabati Behera Alias Lalit v State Of Orissa & Ors* (1993) AIR 1960

¹¹ *Khatri And Others v State Of Bihar & Ors* (1981) AIR 1068

¹² *Ibid*

¹³ *Rudul Sah v State Of Bihar* (1983) AIR 1086

¹⁴ *Ibid*

provided by the regular processes, particularly in matters about the violation of fundamental rights. Court had referred to several cases in the same line such as *Sebastian Hongray v Union of India*¹⁵, exemplary costs were granted by the court in response to the inability of the detention authorities to deliver the missing people, based on the finding that they had all died and had suffered an unnatural demise. *Bhim Singh v State of J&K*¹⁶, “wherein the court observed that in such cases of illegal detention, the illegality could not be ‘washed away or wished away’ merely by freeing the person”, the Court further ordered the State to pay the petitioner money as to compensate him for violation of his fundamental right.

The court also took reference from the case *Kasturilal Ralia v State of U.P.*¹⁷ wherein sovereign immunity (According to the legal idea of sovereign immunity, the state and its instrumentalities and officials are exempted from being sued in court or prosecuted for breaking the law.) was upheld in the case of vicarious liability of the State for the tort of its employees. By distinguishing all the other cases mentioned above relating to the award of compensation for breaches of rights mentioned in Part III of the constitution, in constitutional remedy under Articles 32 and 226 of the Indian Constitution whereas in *Kasturilal*, the value of goods that were confiscated but not returned to the owner because of the misconduct of the officials of the government, then the claim would be for damages resulting from the tort of conversion under normal legal procedures. This claim would not be for compensation related to the violation of fundamental rights. Therefore, the ruling in the case of *Kasturilal* is not applicable in this particular context and can be differentiated from the current situation.

CONCLUSION

This case marks the first instance in which the Supreme Court differentiated between compensation as a remedy in private law proceedings and public law proceedings. Before this judgment, compensation was awarded on a case-by-case basis, lacking any standardized formulation. By issuing its verdict in 1993, The highest court in the nation established this

¹⁵ *Sebastian M Hongray v Union of India & Ors* (1984) AIR 1026

¹⁶ *Bhim Singh, Mla v State of J&K & Ors* (1985) 4 SCC 677

¹⁷ *Kasturilal Ralia Ram Jain v The State of Uttar Pradesh* (1965) AIR 1039

remedy as a formalized rule of law. In its ruling, the court also urged the development of a “new principle of liability to address an unusual situation that has arisen and is likely to arise in the future”.¹⁸ The court emphasized that the court should not hesitate in creating such principles of liability.

Established in 2000 by the government of Atal Behari Vajpayee, the National Commission proposed that an amendment should be done to Article 21 so that it would guarantee "an enforceable right to compensation" for those who have been unlawfully deprived of their life and liberty.¹⁹ Although amending the Right to life could potentially facilitate the universalization of the right to seek compensation, the current necessity is to enact legislation that establishes clear guidelines for granting compensation.

¹⁸ *Union Carbide Corporation Etc v Union Of India Etc* (1989) SCC 2 540

¹⁹ Constitution of India 1950, art 21