

Vol 4 Issue 8 Sept 2014

ISSN No : 2230-7850

International Multidisciplinary
Research Journal

*Indian Streams
Research Journal*

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RNI MAHMUL/2011/38595

ISSN No.2230-7850

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RIGHT TO GET COMPENSATION

ManSingh Ahirwar

Researcher Law/ Research Scholar Law , Madhya Pradesh Bhoj (Open) University, Bhopal, (M.P.) India .

Abstract:-It is true that a declaration of fundamental rights is meaningless unless there is an effective machinery for the enforcement of the rights. It is remedy which makes the right real. The constitution makers deliberately did not lay down any particular form of proceeding for enforcement of fundamental right nor did they stipulate that such proceeding should conform to any rigid pattern or a strait-jacket formula because they knew that in a country like India where there is so much of poverty, ignorance, illiteracy, deprivation and exploitation, any insistence on a right formula for proceeding for enforcement of fundamental right would become self-defeating.

Keywords:fundamental rights , self-defeating , Judicial Activism .

INTRODUCTION

There is even not a single article of the constitution of suggest that the Court has power to award of monetary compensation for violation of fundamental rights. The Supreme Court has assured this power under Article 32 and 142 in a series of cases. The country needs the Jurisprudence of victimology to take care of victim of offences and their violation of fundamental rights.

The public interest litigation and Judicial Activism have played a dynamic and constructive role in recognizing right to compensation for violation of Fundamental rights. A few leading cases decided by the Supreme Court in this area, are being discussed hereunder.

The issues relating to the public interest litigation are concerned, for the first time in *M.C. Mehta Vs Union of India* 1 a constitution Bench of the Supreme Court speaking through Justice P.N. Bhagwati, has emphatically laid down the principle that the Supreme Court can entertain applications for compensation, on behalf of victim of oleum gas leakage and the Supreme Court awarded remedial relief of compensation in the writ petition itself. The court further propounded that the theory of absolute liability in the place of strict liability, prevailing previously.

In *Bhopal Gas Peedit Mahila Udyog Sanghathan Vs Union of India* 2 a constitution bench of the Supreme Court headed by the then chief Justice R.S. Pathak, heard a matter pertaining to the interim relief measures for the benefit of victims of Bhopal Gas Tragedy, and ordered the payment thereof under Art. 32. More such direction were given in a subsequent Case related to the same disaster in 1990, by the Supreme Court.³

In *Saheli, a Womens' Resource Centre Vs Commissioner of Police Delhi* 4 a Division bench of the Supreme Court, acting on a Public interest litigation filed under Article 32 awarded compensation for causing death of a 9 year old child by beating by police. In this case the Supreme Court directed the Delhi administration to pay 75000/- as exemplary compensation to the mother of child who died due to beating by the police officer.

In *Consumer Education and Research Centre Vs Union of India* 5 a division bench heard by Justice K. RamaSwamy also reiterated the principle that the remedy of award of compensation is available under Article 32 and 226 of the constitution. In this Case the court laid down the following of guidelines to be followed by the all asbestos industries (In the country there are about 74 asbestos industries)

- 1-All asbestos industries must make health insurance of workers employed in industry
- 2-Every worker suffering from occupational health hazards would be entitled for compensation of Rs. 1 Lakh
- 3-All asbestos industries must maintain the health record of every worker upto a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment whichever was later.

Right To Get Compensation

4-"Membrane Filter Test" to detected asbestos fiber should be adopted by all the factories at par with metallicferrous mines regulations, 1961 and Vienna convention.

5-All the factories where covered by the employees' State insurance Act or workmen's compensation Act otherwise, should insure health coverage to every worker

In a number of cases dealing with the environmental protection, the Supreme Court has directed to erring industries to pay compensation to the worker by way of retraining compensation additional compensation by shifting bonus etc. 6

In Arjun Mishra Vs State of Bihar 7 case where an innocent boy aged about 18 years was killed by police firing while police was controlling unruly public mob, the Patna High Court awarded two lakh as compensation under article 21.

In similar, where school going boy bitten by stray dogs, the boy held entitled to compensation of Rs. a 1 Lakh on account of negligence on the part of Municipal Corporation to control menaces of stray dogs.8

In Shakuntala Delhi Vs Delhi Electric Supply undertaking 9 In this case the petitioner's husband died when he came into contact with the live electric wire while returning for the place of his employment and got electrocuted. The live electricity wire was laying open in the field in a rainy season and was not repaired in spite of the many complaints. The court held that the Delhi electric supply undertaking liable for the negligence and awarded compensation of ex-gratia amount to the widow and her minor children.

CONCLUSION

Thus the public interest litigation has given an impetus to the compensatory jurisprudence in writ proceedings there by establishing the principle that any person whose fundamental rights or other statutory rights are violated either by the state action or private persons, the victims can ask for monetary compensation under article 32 and 226

In discharging the duties assigned to protect fundamental rights the Supreme court in the words Patanjali Sastri Judge, has to play a role of a sentinel on the quivivie 10 Again, in Daryao Vs State of UP,11 The supreme court took it as its solemn duty to protect the fundamental right zealously and vigilantly

NOTES AND REFERENCE

1-AIR 1987 SC 1086

2-AIR 1989 SC 1069

3-Charanlal Sahu Vs Union of India AIR 1990 SC 1480

4-AIR 1990 SC 513

5-AIR 1995 SC 922

6-Indian Council for environ-legal Action Vs Union of India (1996) 3 S.CC 212

7-AIR 2010(N.O.C.) 869(PAT)

8-Court on its own motion Vs State of Himachal Pradesh, AIR 2010 (N.O.C.) 866 (H.P.)

9-(1995)2 S.CC 369

10-State of Madras Vs V.G. Row, AIR 1952 SC 196

11-AIR 1961 SC 1957 at page 146



ManSingh Ahirwar

Researcher Law/ Research Scholar Law , Madhya Pradesh Bhoj(Open) University, Bhopal, (M.P.) India .

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