

The Advent of Compensatory Jurisprudence as a Consequence of Judicial Activism: An Analysis of Its Development in India

Parnika Singh¹, Dr. Aparna Singh²

¹Department of Law, Lucknow University

²Department of Science, National P.G. College

ABSTRACT: This paper examines the proposition that the emergence of compensatory jurisprudence in India is largely a byproduct of judicial activism. Drawing from the constitutional framework, particularly Articles 21, 32, and 226 of the Indian Constitution, it argues that the judiciary's proactive interpretation and expansion of fundamental rights have necessitated compensatory remedies as a tool for restorative justice. Through an analysis of landmark cases, historical evolution, and scholarly discourse, the paper concurs to a significant extent with this view, while acknowledging limitations such as potential overreach into legislative domains. The discussion traces the development from post-Emergency judicial assertiveness to recent statutory reinforcements under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

KEYWORDS: Judicial Activism, Compensatory Jurisprudence, Article 21, Public Interest Litigation, Fundamental Rights.

I. INTRODUCTION

The Indian Constitution, adopted in 1950, enshrines a robust framework for the protection of fundamental rights, particularly under Part III, with Article 21 guaranteeing the right to life and personal liberty as the cornerstone of human dignity. However, the realisation of these rights has often been impeded by executive overreach, legislative inertia, and systemic failures within the justice system. In this context, judicial activism, characterised by the judiciary's proactive interpretation of constitutional provisions to address social injustices, has emerged as a vital instrument for remedial justice. Compensatory jurisprudence, which entails the award of monetary damages by constitutional courts for violations of fundamental rights, exemplifies this activist ethos. It represents a judicial innovation that bridges the gap between abstract rights and tangible remedies, holding the State accountable for its tortious actions.

To a significant extent, the advent of compensatory jurisprudence is a direct consequence of judicial activism in India. Judicial activism, particularly through Public Interest Litigation (PIL) and the expansive reading of Articles 21, 32, and 226, has not only necessitated but also operationalised this jurisprudence as a tool for restorative justice. While other factors, such as international human rights norms and evolving societal expectations, have influenced its growth, the judiciary's bold interpretive role remains pivotal.

II. JUDICIAL ACTIVISM IN INDIA: FOUNDATIONS AND EVOLUTION

Judicial activism in India is not a novel phenomenon but a response to the Constitution's transformative mandate under the Preamble to secure justice, social, economic, and political. Early judicial restraint, evident in cases like **A.K. Gopalan v. State of Madras**¹, confined Article 21 to mere procedural safeguards, reflecting a positivist interpretation. However, the landmark **Kesavananda Bharati v. State of Kerala**² marked a turning point by establishing the basic structure doctrine, empowering the judiciary to strike down amendments threatening the Constitution's core. This laid the groundwork for activism by affirming the judiciary's role as the ultimate interpreter of constitutional limits.

¹ AIR 1950 SC 27

² AIR 1973 SC 1461

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The true surge in activism occurred post-Emergency (1975-1977), a period of executive authoritarianism that suspended fundamental rights under Article 359. The Supreme Court's capitulation in **A.D.M. Jabalpur v. Shivkant Shukla**³, upholding the suspension of fundamental rights during emergency, including the writ of habeas corpus, drew widespread criticism, prompting a judicial redemption arc. The lone dissent of Justice H.R. Khanna became emblematic of judicial courage. In **Maneka Gandhi v. Union of India**,⁴ Justice P.N. Bhagwati expansively interpreted Article 21, holding that any procedure depriving life or liberty must be "right, just, and fair," interlinking it with Articles 14 and 19. This "due process" infusion transformed Article 21 into a reservoir of substantive rights, including dignity, privacy, and health.

Activism further crystallised through PILs, pioneered by Justices V.R. Krishna Iyer and P.N. Bhagwati. In **Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai**⁵, Justices Krishna Iyer, for the first time, relaxed the rule of locus standi, paving the way for PILs. Cases like **Hussainara Khatoon v. State of Bihar**⁶ and **S.P. Gupta v. Union of India**⁷ allowed epistolary jurisdiction, treating letters as writ petitions to amplify marginalised voices. This democratized access to justice, enabling the judiciary to venture into socio-economic realms like bonded labour (**Bandhua Mukti Morcha v. Union of India**⁸), environmental protection (**M.C. Mehta v. Union of India**⁹), and immediate emergency medical aid (**Parmanand Katara v. Union of India**¹⁰). Scholarly discourse, such as S.P. Sathe, posits that this era's activism was "inevitable" given legislative vacuums, fostering a "compensatory mode" to rectify State failures.¹¹ As Upendra Baxi notes, it represented "social action litigation," transforming the Court into a "people's court."¹²

In the digital age, activism has extended to data privacy (**Justice K.S. Puttaswamy v. Union of India**¹³), and access to the internet (**Anuradha Bhasin v. Union of India**¹⁴), sustaining its relevance.

This activism was indispensable for compensatory jurisprudence, as it expanded remedies beyond habeas corpus to include monetary relief, compensating for the state's breach of its Article 12 obligations. Thus, judicial activism provided the doctrinal and procedural scaffolding for compensatory jurisprudence, shifting from declaratory relief to affirmative remedies.

III. THE CONSTITUTIONAL BEDROCK OF COMPENSATORY JURISPRUDENCE

Compensatory jurisprudence derives its legitimacy from Articles 32 and 226, which empower the Supreme Court and High Courts, respectively, to issue writs for fundamental rights enforcement. Article 32, dubbed the "heart and soul" of the Constitution by Dr B.R. Ambedkar¹⁵, was traditionally preventive, but activism rendered it remedial. In **Bandhua Mukti Morcha**¹⁶, the Court invoked Article 32 to direct rehabilitation, prefiguring monetary awards.

The rejection of sovereign immunity, a doctrine rooted in colonial precedents like **Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India**,¹⁷ was crucial. Pre-independence, the State enjoyed immunity for "sovereign functions," but post-Constitution, this was untenable. In **State of Rajasthan v. Vidyawati**¹⁸ the Court emphasised that the common law rule of sovereign immunity did not apply in India, paving the way for constitutional torts.¹⁹

Article 21's expansion under **Maneka Gandhi**²⁰ was instrumental, encompassing the right to compensation for violations. This activist ethos crystallised compensatory jurisprudence as a public law remedy, distinct from private tortious actions, emphasising the State's vicarious liability without proof of malice.

³ AIR 1976 SC 1207

⁴ AIR 1978 SC 597

⁵ AIR 1976 SC 1455

⁶ AIR 1979 SC 1369

⁷ AIR 1982 SC 149

⁸ AIR 1984 SC 802

⁹ AIR 1987 SC 1086

¹⁰ AIR 1989 SC 2039

¹¹ Judicial Activism in India: Transgressing Borders and Enforcing Limits, Oxford University Press, 2002

¹² "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India," Third World Legal Studies, Vol. 4, Article 6, (1985).

¹³ (2017) 10 SCC 1

¹⁴ (2020) 3 SCC 637

¹⁵ M P Jain, "Indian Constitutional Law", 9th edn., 2025.

¹⁶ *Supra* note 8

¹⁷ 1861 Bom HCR App A-1

¹⁸ AIR 1962 SC 933

¹⁹ Dr. Narender Kumar, "Constitutional Law of India", 12th edn., 2025.

²⁰ *Supra* note 4

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IV. DEVELOPMENT THROUGH LANDMARK JUDGEMENTS

Initially, the judiciary did not entertain compensation to be given under writ either by Article 32 or Article 226. The seed for granting compensation under writ jurisdiction has been laid by the Supreme Court in **Khatri (2) v. State of Bihar**²¹. In this case, Justice Bhagwati observed: "Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty."²²

A. The Pioneering Case: *Rudul Sah v. State of Bihar*²³

Rudul Sah, acquitted in 1968 of murder charges due to insanity, languished in Bihar's Muzaffarpur jail for 14 years post-acquittal, released only in 1982 after media exposure. His PIL under Article 32 sought compensation for this egregious Article 21 violation. The Supreme Court awarded Rs. 30,000 as interim compensation, marking the birth of compensatory jurisprudence. The Chief Justice Y.V. Chandrachud (as he was then) observed: "A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah. The Leviathan will have liberty to raise those points in that suit. Until then, we hope, there will be no more Rudul Sahs in Bihar or elsewhere."²⁴

Rudul Sah indirectly buried the much-debated distinction of 'sovereign' and 'non-sovereign' functions, unfolding State liability under Article 21. It set a precedent for interim awards, emphasising urgency over protracted civil suits.

B. Expansion: *Bhim Singh v. State of J&K*²⁵

Building on Rudul Sah, the instant case involved the illegal detention of MLA Bhim Singh to prevent his attendance at a crucial Assembly session on September 11, 1985. Arrested under sedition charges without production before a magistrate, Singh's rights under Article 22(2) were flouted. Justices O. Chinnappa Reddy and V. Khaliq awarded Rs. 50,000 as exemplary damages, stating: "We do not have the slightest doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be."²⁶ This case invoked the tort maxim *injuria sine damnum* (injury without damage), affirming compensation even absent pecuniary loss. It underscored activism's deterrent function, holding higher echelons accountable.

C. Apex: *Nilabati Behera v. State of Orissa*²⁷

The custodial death of Suman Behera, who was beaten to death in 1987, led to his mother Nilabati's epistolary PIL. Inquiry revealed police brutality, not a train accident as claimed. The Hon'ble Court granted Rs. 1,50,000 in compensation for custodial violence, stating that, "Article 32 imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution."²⁸ To strengthen this ruling, the Court cited Article 9(5) of the International Covenant on Civil and Political Rights, 1966, stating that the clause suggests that an enforceable right to compensation is not incompatible with the concept of guaranteed rights.²⁹

Until this judgment, compensation was granted on an ad hoc basis without any structural formulation; however, the Supreme Court crystallised this rule into a remedy through this verdict. The Court went one step further by laying down standards for determining the amount of compensation: - gravity of the offence, severity of harm, victim's losses and state's financial capacity.

D. Further Milestones: *D.K. Basu v. State of West Bengal*³⁰ and Beyond

In D.K. Basu, addressing custodial torture, the Court issued 11 guidelines under Article 141, including compensation provisions, upholding that the claim in public law for compensation for unconstitutional deprivation of a fundamental right is a claim based on strict liability, in addition to a private law remedy.

²¹ 1981 SCR (2) 408

²² Seema Bengani, "Compensation as a Remedy in Public Law", available at: <https://www.sconline.com/blog/post/2024/05/25/compensation-as-a-remedy-in-public-law/>, May 25, 2024 (Visited on 27 Nov., 2025).

²³ AIR 1983 SC 1086

²⁴ *Ibid*

²⁵ AIR 1986 SC 494

²⁶ *Ibid*

²⁷ AIR 1993 SC 1960

²⁸ *Ibid*

²⁹ Justice G. Yethirajulu, "ARTICLE 32 AND THE REMEDY OF COMPENSATION", (2004) 7 SCC (J) 49.

³⁰ AIR 1997 SC 610

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Evolution continued in diverse spheres. In **Paschim Banga Khet Mazdoor Samity vs State of West Bengal**³¹ compensation was awarded for the denial of timely emergency medical treatment by government hospitals, violating Article 21's right to life. Environmentally, **Vellore Citizens Welfare Forum v. Union of India**³² imposed "polluter pays" principles with compensatory funds. In **Railway Board v. Chandrima**³³, a case involving the gang rape of a foreign national woman by railway employees, the Court ruled that as a national of another country, she could not be subjected to deplorable treatment, nor could she be subjected to physical violence at the hands of government employees who violated her modesty. The right granted to her under Article 21 was thereby breached. As a result, the State was constitutionally required to compensate her.

E. Recent Developments: Reinforcing Compensatory Jurisprudence

The jurisprudence has adapted to modern challenges ranging from clerical errors to Article 19's violations.

In **Aftab v. State of Uttar Pradesh**³⁴, the Supreme Court confronted a blatant infringement of personal liberty when the petitioner, granted bail on April 29, 2025, for offenses under Section 366 IPC and the UP Prohibition of Unlawful Conversion of Religion Act, 2021, remained incarcerated for 28 days due to a clerical omission in the release order—omitting "Section 5(i)" as "Section 5." The bench lambasted the Uttar Pradesh prison authorities, terming the delay "preposterous" and a "serious dereliction of duty." Directing a judicial inquiry by the Principal District Judge, Ghaziabad, the Bench awarded Rs. 5 lakhs as interim compensation, emphasising: "Liberty is a very valuable and precious right guaranteed to a person. It cannot be bartered on these useless technicalities."³⁵

In **Indibily Creative (P) Ltd. v. State of W.B.**³⁶ the Supreme Court stipulated compensation of 20 lakh under Article 19(1)(g)³⁷ for the unlawful blanket ban and obstruction of the public exhibition of a Bengali film by the state authorities and police.

In **Geeta Devi v. Govt. of NCT of Delhi**³⁸ the Delhi High Court held the state accountable under the constitutional tort doctrine for infringing the child's right to life under Article 21 and awarded ₹2.5 lakh in compensation to the family of a five-year-old child killed by stray dogs.

In **Chambara Soy v. State of Orissa**,³⁹ some persons had blocked a road, due to which the petitioner was delayed in taking his ailing son to the hospital, and his son died on arrival at the hospital, violating his right to move freely under Article 19(1)(d) and right to life under Article 21. The Supreme Court imposed on the State the liability to pay the compensation of Rs 1,00,000 to the victim due to the inaction on the part of the State authorities in removing the aforesaid blockage.

These instances demonstrate compensatory jurisprudence's maturation, with courts quantifying damages via multipliers (e.g., per diem liberty loss in Aftab) and mandating inquiries for vicarious accountability. They affirm activism's adaptability, countering critiques of overreach by grounding awards in evidentiary thresholds.

V. EXTENT OF CONCURRENCE: A BALANCED PERSPECTIVE

The author concurs substantially that compensatory jurisprudence is a consequence of judicial activism, as evidenced by the judiciary's creative expansion of Articles 21 and 32 amid executive lapses. Activism's PIL mechanism and rejection of immunity directly birthed this remedy, fostering a "victimology" approach, as termed by Justice V.R. Krishna Iyer in **People's Union for Democratic Rights v. Union of India**⁴⁰, "The court is not an inert institution but a dynamic one." Recent cases affirm this, with damages escalating to reflect inflation and societal costs.

However, this is not absolute. Other catalysts include global human rights pressures like the International Covenant on Civil and Political Rights (as recognised in **Nilabati Behera**⁴¹) and Universal Declaration of Human Rights⁴², and statutory echoes like the

³¹ AIR 1996 SC 2426

³² AIR 1996 SC 2715

³³ AIR 2000 SC 988

³⁴ 2025 INSC 995

³⁵ Krishnadas Rajagopal, "Supreme Court orders U.P. to pay compensation to man whose release on bail was delayed", The Hindu, 26 June, 2025

³⁶ AIR 2019 SC 1918

³⁷ Article 19(1)(g) of the Indian Constitution grants every citizen the fundamental right to practice any profession or carry on any occupation, trade, or business.

³⁸ 2024 DHC 7468

³⁹ 2007 SCC OnLine Ori 42

⁴⁰ AIR 1982 SC 1473

⁴¹ *Supra* note 27

⁴² Article 8

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Bharatiya Nagarik Suraksha Sanhita, 2023 (effective 1st July 2024) under Sections 396–398 mandating victim compensation schemes, prompt payments from state funds, and victim impact reports in sentencing. However, implementation lags. Critics, like H.M. Seervai, argue activism risks "judicial despotism," blurring the separation of powers under Article 50.⁴³ Awards risk fiscal burdens without legislative oversight, as seen in funding crises. Yet, in India's context of custodial excesses (NHRC data: 2,739 deaths 2020–2024⁴⁴), activism's "compensatory" intervention is justified, per Amartya Sen's "capability approach" to justice. Thus, activism must temper with restraint to avoid adventurism, especially in resource-strapped contexts, and the recent instances affirm activism's adaptability, countering critiques of overreach by grounding awards in evidentiary thresholds.

VI. CONCLUSION

In sum, the advent of compensatory jurisprudence unequivocally stems from judicial activism, evolving from Rudul Sah's pioneering award to the 2025 Aftab directive against technical detentions. By embedding compensation in Article 21's expanse, the judiciary has democratized justice, echoing Dr B.R. Ambedkar's vision of an egalitarian Constitution. Yet, challenges like implementation persist; future activism must collaborate with legislation for holistic reform. As Justice V.R. Krishna Iyer reflected, "The judiciary must be the catalyst for social change." This jurisprudence, born of activism, endures as its enduring legacy, safeguarding liberty amid evolving threats.

REFERENCES

- 1) AIR 1950 SC 27
- 2) AIR 1973 SC 1461
- 3) AIR 1976 SC 1207
- 4) AIR 1978 SC 597
- 5) AIR 1976 SC 1455
- 6) AIR 1979 SC 1369
- 7) AIR 1982 SC 149
- 8) AIR 1984 SC 802
- 9) AIR 1987 SC 1086
- 10) AIR 1989 SC 2039
- 11) Judicial Activism in India: Transgressing Borders and Enforcing Limits, Oxford University Press, 2002
- 12) "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India," Third World Legal Studies, Vol. 4, Article 6, (1985).
- 13) (2017) 10 SCC 1
- 14) (2020) 3 SCC 637
- 15) M P Jain, "Indian Constitutional Law", 9th edn., 2025.
- 16) Supra note 8
- 17) 1861 Bom HCR App A-1
- 18) AIR 1962 SC 933
- 19) Dr. Narender Kumar, "Constitutional Law of India", 12th edn., 2025.
- 20) Supra note 4
- 21) 1981 SCR (2) 408
- 22) Seema Bengani, "Compensation as a Remedy in Public Law", available at: <https://www.sconline.com/blog/post/2024/05/25/compensation-as-a-remedy-in-public-law/>, May 25, 2024 (Visited on 27 Nov.,2025).
- 23) AIR 1983 SC 1086
- 24) Ibid
- 25) AIR 1986 SC 494
- 26) Ibid

⁴³ Constitutional Law of India, 4th edn., 2023

⁴⁴ GLOBAL TORTURE INDEX 2025: INDIA FACTSHEET, available at: <https://www.omct.org/site-resources/files/factsheets/Factsheet-India.2025.pdf>, (Visited on 27 Nov.,2025).

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- 27) AIR 1993 SC 1960
- 28) Ibid
- 29) Justice G. Yethirajulu, "ARTICLE 32 AND THE REMEDY OF COMPENSATION", (2004) 7 SCC (J) 49.
- 30) AIR 1997 SC 610
- 31) AIR 1996 SC 2426
- 32) AIR 1996 SC 2715
- 33) AIR 2000 SC 988
- 34) 2025 INSC 995
- 35) Krishnadas Rajagopal, "Supreme Court orders U.P. to pay compensation to man whose release on bail was delayed", The Hindu, 26 June, 2025
- 36) AIR 2019 SC 1918
- 37) Article 19(1)(g) of the Indian Constitution grants every citizen the fundamental right to practice any profession or carry on any occupation, trade, or business.
- 38) 2024 DHC 7468
- 39) 2007 SCC OnLine Ori 42
- 40) AIR 1982 SC 1473
- 41) Supra note 27
- 42) Article 8
- 43) Constitutional Law of India, 4th edn., 2023
- 44) GLOBAL TORTURE INDEX 2025: INDIA FACTSHEET, available at: <https://www.omct.org/site-resources/files/factsheets/Factsheet-India.2025.pdf>, (Visited on 27 Nov.,2025).



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