



CONSTITUTIONAL
REMEDIES UNDER
THE CRIMINAL
JUSTICE SYSTEM

EVOLVING DYNAMICS OF CONSTITUTIONAL TORTS:



DAMAGES AS A PUBLIC LAW REMEDY

ILLEGAL DETENTION



Case name	Citation	Note
Rudul Sah v. State of Bihar [14 Years detention after acquittal]	(1983) 4 SCC 141	Compensation as a consequence of breach of fundamental right can be granted under Article 32 without affecting his right to sue for damages.
Bhim Singh v. State of J&K [Remand- without production no affidavit of arresting officer]	(1985) 4 SCC 677	Penal compensation- exemplary costs Affidavits required of the arresting officer

CUSTODIAL DEATH: ECLIPSE OF SOVEREIGN IMMUNITY



Case name	Citation	Note
Nilabati Behera v. State of Orissa [custodial death]	(1993) 2 SCC 746	Law is crystalized-damages as public law remedy on establishment of breach of fundamental rights- distinct and independent from private law remedy. Sovereign immunity is inapplicable is such cases.

ILLEGAL ARREST



Case name	Citation	Note
D.K. Basu v. State of West Bengal [Custodial violence]	(1997) 1 SCC 416	Guidelines issued by the Supreme Court for compliance by Police personnel while arresting or detaining . Compensation payable under article 32/226 in addition to contempt proceedings.
Mehmood Nayyar Azam v. State of Chattisgarh [Harassment in custody]	(2012) 8 SCC 1	Any cruel, degrading and inhumane treatment in custody is harassment- Compensation awarded.
Rini Johar v. State of M.P.	(2016) 11 SCC 703	Violation of D.K. Basu and Arnesh Kumar guidelines- compensation awarded.



Case name	Citation	Note
Nambi Narayanan v. Siby Mathews	(2018) 10 SCC 804	Unjustified arrest in a case of malicious prosecution affecting reputation of ISRO scientist. (no physical torture)- Compensation awarded in public law independent of right to damages in tort or compensation under section 250 C.r.PC

UNNATURAL DEATH IN PRISONS



Case name	Citation	Note
In re: Inhuman conditions in 1382 prisons	(2017) 10 SCC 658	Chief Justices to institute suo-motu public interest proceedings to pay compensation to next of kin in cases of unnatural death in prison. Quantum of compensation- no strait jacketed formula- will depend on the facts of each case.

COMPENSATION TO DO COMPLETE JUSTICE



Case name	Citation	Note
Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble	(2003) 7 SCC 749	Acquittal in custodial violence case- compensation still granted under Article 142

WRONGFUL CONVICTION- COMPENSATION



Case name	Citation	Note
Ankush Maruti Shinde	(2019) 15 SCC 470	Unfair investigation and prosecution infracts Article 21- compensation awarded under Article 142 as the accuseds remained in custody for 16 years under the scepter of death.

COMPENSATION ONLY IN CASE OF MALICIOUS PROSECUTION



Case name	Citation	Note
State of West Bengal v. Babu Chakraborty	(2004) 12 SCC 201	No allegation of malicious and false implication of accused- part of High Court's direction for compensation, set aside.
State of Rajasthan v. Jainudeen Shekh	(2016) 1 SCC 514	Grant of compensation to accused- Absence of evidence to show malicious prosecution or any mala fide or malice like fact situation- Hence, order granting compensation set aside.

LIMITATIONS TO CONSTITUTIONAL REMEDIES



Case name	Citation	Note
Sube Singh v. State of Haryana	(2006) 3 SCC 178	Remedy available only in clear and incontrovertible cases and not where there is no evidence of torture except statement of victim and it is not supported by medical evidence or visible marks of injury.



Case name	Citation	Note
Ashwani Kumar v. Union of India	(2020) 13 SCC 585	While reiterating power of the constitutional court to award compensation and/or issue directions/guidelines in cases of custodial violence/ torture, Supreme Court declined to issue mandamus for enactment of a standalone law in lines of UN Convention as it would amount to usurpation of essential legislative function.



LEGAL AID-
UNDER THE
CONSTITUTION

LEGAL AID - Statutory Provisions



Section 304 CrPC, 1973 guarantees legal aid to accused at State expense in certain cases.

Article 39 A- *To promote equal justice and to provide free legal aid to the poor* , was added to the Constitution of India by the 42nd Amendment in 1976.

Legal Services Authority Act was enacted in 1987.

Legal Aid Interpreted as a Fundamental Right

Huassianara Khatoon v. State of Bihar	(1980) 1 SCC 98	Free legal aid is implicit in Article 21.
Khatri v. State of Bihar	1981 SCR (2) 408	State is bound to provide legal aid not only at the stage of trial but also when they are produced before the magistrate or remanded from time to time
Suk Das v. UT of Arunachal Pradesh	(1986) 2 SCC 401	Legal aid is to be offered by the Courts to indigent litigants, if unrepresented. Demand of legal representation by the litigant not necessary.
Imtiyaz Ramzan Khan v. State of Maharashtra	(2018) 9 SCC 160	Legal aid includes right to communicate via videoconferencing with legal aid counsel.

Breach of Duty to provide Legal Aid: Consequences-

Md. Hussain v. State (Govt. of NCT of Delhi)	(2012) 9 SCC 408	No legal representation to a foreign national - Re-trial ordered by Supreme Court.
Md. Ajmal Md. Amir Kasab @ Abu Mujahid v. State of Maharashtra	(2012) 9 SCC 1	a) Duty of magistrate to provide legal aid immediately on production; failure attracts disciplinary action. b) Duty of courts during trial- mandatory to provide legal assistance unless expressly refused; c) At Pre-trial stage denial of legal representation may not always vitiate trial except when prejudice is caused. During Trial lack of legal representation will always vitiate trial. d) Failure to provide legal representation prior to or at the time of recording confession under section 164 C.r.PC does not render confession invalid.

Legal Aid to Poor is not Poor Legal Aid



Anokhilal v. State of M.P.	(2019) 20 SCC 196	Norms regarding appointment of Amicus Curiae in cases which provides for death penalty/life sentence were laid down.
Manoharan v. State	(2020) 5 SCC 782	Quality of legal aid – counsel’s performance to be reviewed



EXPANDING HORIZONS OF COMPROMISE

-QUASHING OF CRIMINAL
CASE UPON SETTLEMENT



Guiding Principles:-

- (i) To achieve ends of justice
- (ii) To prevent abuse of process of court

A settlement between parties makes:-

- (i) Chance of conviction extremely bleak;
- (ii) Continuation of proceeding is rendered prejudicial to the accused;



- Power should be invoked depending on the facts of each case particularly:-

(a) nature and gravity of offence

- (i)** No quashing of serious offences like murder, rape, etc.
- (ii)** No quashing of cases of corruption by public servants.
- (iii)** Cases predominantly having a civil flavor, matrimonial cases or cases involving family/private disputes with no economic or social ramifications may be quashed.

*[Gian Singh v. State of Punjab (2012) 10 SCC 303],
[Parbatbhai Aahir v. State of Gujarat (2017) 9 SC 641]*



(b) Stage of proceeding-

- **Initial stage-** Courts would freely exercise such power.
- **After charge or commencement of trial-** with circumspection/ after assessing materials on record.
- **Conclusion of trial/ pending appeal-** ordinarily would refuse prayer. [*Narinder Singh v. State of Punjab (2014) 6 SCC 466*]
- [*Anita Maria Dias v. State of Maharashtra (2018) 3 SCC 290*]

MATRIMONIAL DISPUTES



Case name	Citation	Note
B.S. Joshi. V. State of Haryana	(2003) 4 SCC 675	Proceeding under Section 498 A/ 406 IPC quashed upon compromise.
Md. Shamim v. Nahid Begum	(2005) 3 SCC 302	Compromise resiled from after being partially acted upon and receipt of alimony/ compensation as per terms -proceeding quashed
Ruchi Agarwal v. Amit Agarwal	(2005) 3 SCC 299	



- Proceeding cannot be quashed after conviction
[Manohar Singh v. State of M.P. (2014) 13 SCC 75]
(contra Bitan Sengupta V. State of W.B. { (2018) 18 SCC 366 }
- No compounding possible before Sessions Judge.
[Social Action Forum v. Manav Adhikar (2018) 10 SCC 443]

BANK FRAUD AND CORRUPTION CASES



- **No quashing upon compromise.**

Although, *Nikhil Merchant [(2008) 9 SCC 677* – Quashing proceeding under P C Act] was held to be correctly decided in the facts of that case, ratio in Gian Singh, has to be interpreted to prohibit quashing of cases involving bank fraud/ corruption by bank officials.

[Gopal Nair v. CBI (2014) 5 SCC 800]

ATTEMPT TO MURDER cases



- Mere mention of offence is not the determining factor. Court must examine relevant materials i.e. nature and situs of injury, weapon used, medical reports if any, to decide whether chance of conviction is extremely bleak.

[Narinder Singh v. State of Punjab (2014) 6 SCC 466]

- Judges must use their experience and exercise extreme care, caution and courageous prudence in such cases. *[State of M.P. v. Dhruv Gurjar (2019) 5 SCC 570]* (quashing refused)