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# Compensatory Jurisprudence and Human Rights in the Light of Covid-19 Pandemic in India

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## ABSTRACT

*The world has been suffering the biological pandemic due to deadly lifeless virus popularly known as coronavirus. On 11 March 2020, the WHO declared COVID-19 a pandemic. Almost all Nations undergone national lockdowns. The Countries started exploring various mechanisms to prevent, control and cure this disease including restricting some human and fundamental rights of their citizens such as right to move, right to education, and right to work. However, the restrictions were claimed to provide right to health and life. India also claimed to have made such attempts, however, lack of supply of health essentials apparently due to lack of infrastructure and lawlessness approach of Centre and States governments towards hoarding and profiteering, says otherwise. Whether the deaths caused are the consequence of COVID only? Are the governments not responsible for their attitudes and inactions? Human rights have been violated in the name of restrictions for controlling the disease and providing the people, right to life and health. The Apex Court has been instrumental in involving the concept of compensatory jurisprudence in the case of constitutional torts. This paper explores whether in the current scenario, the Centre and States governments can be held liable under constitutional tort. It further explores whether the non-payments of explicitly stated ex-gratia compensation and other statutory reliefs to the affected citizens is not violation of their right to life and livelihood. If yes, then, the violators should not be booked under constitutional tort besides other criminal and civil liabilities?*

**Keywords:** *Compensatory jurisprudence, Human rights, Covid-19 pandemic, constitutional tort, ex-gratia compensation.*

## I. INTRODUCTION

2020-2021 is the year of saving the human race from those generally considered non-living entities, viruses. The planet is witnessing a constant tug of war between humans and viruses

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for millions of years. Although these viral enemies keep acquiring new traits, we, the human, constantly evolve new ways to defend our body from them<sup>2</sup>. This time we humans have been engaged in the fight against a novel coronavirus disease popularly known as COVID-19.

COVID-19 (Coronavirus disease) is the first biological disaster of its kind. On 11 March 2020, WHO declared COVID-19 a pandemic. The Director-General of WHO said in its opening remarks at media briefing that-"[p]andemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death."<sup>3</sup>

Although underreporting of data cannot be ruled out, however, assuming it is accurate, the data updated on 25 May, 2021,<sup>4</sup> shows 16,82,95,111 covid cases reported worldwide 3,39,25,190 (20.16%) reported in the USA followed by 2,71,22,158 (16.12%) cases in India. Total deaths due to coronavirus is 34,93,319 out of which 6,04,504 (17.30%) in USA and 3,10,416 (8.89%) in India. The statistics show that more than one-third of the total cases and an almost similar death case ratio are from two countries. The one belongs to a developed nation, the world leader, and another belongs to a fast-growing developing nation. Therefore, the author believes that it would not be justifiable for the time being to compare every resolution and rescue mechanism of disaster management in the USA or any other developed nation with that of India, especially in terms of infrastructures and technology. We must, and we should surely learn from them. However, presently, it is the time to combat coronavirus disease with a holistic approach accompanied with humanity and honesty from all concerns, including India's people. India is fighting against such a biological disaster for the first time. So, it may argue by the State machinery that the country was neither well equipped nor was ready to fight this deadly contagious disease. This argument may find some ground of validity or justifiability for last year when the COVID virus entered into the geographical boundaries of our country without a warning signal of its deadly nature. However, this year, they cannot hide behind the same reasoning for the rise of covid cases and substantial rise in deaths due to covid. Failure on the part of the Central and State machinery is evident. The human right to life is being violated. Deaths of corona patients due to lack of beds and ventilators in hospitals, oxygen supply; medicines and injections; and other ancillaries have resulted from various factors. However, the primary factor is lack of vision or passive attitude on the part of the Central and State

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<sup>2</sup><https://www.technologynetworks.com/biopharma/news/virus-vs-human-gene-similarities-offer-cellular-defense-insights-294148> [Accessed 25 May 2021].

<sup>3</sup><https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> [Accessed 25 May 2021].

<sup>4</sup> <https://www.worldometers.info/coronavirus/#countries> [Accessed 25 May 2021].

Governments towards their people. Increasing numbers of human profiteers and an environment of arbitrariness and lawlessness have been another significant reason. In a nutshell, the question is not just who is responsible or liable to compensate the loss suffered by the covid victims or who are covid victims or How to compensate those victims? The primary question is whether civil and criminal liabilities should be imposed upon the state machinery for violating the human rights of their people on the ground of such failure on their part? The answer ought to be in the affirmative.

Recently, the Apex Court of India in Suo-Motu writ petition<sup>5</sup> issued notice to the Union of India, Governments of the States and Union Territories and other petitioners who had filed the petition before various High Courts to show cause regarding the passing of uniform orders about (a) supply of oxygen; (b) supply of essential drugs; (c) method and manner of vaccinations; and (d) declaration of lockdown.

India's Apex Court considered the outbreak of the COVID-19 pandemic as an unprecedented humanitarian crisis. The Court specifically stated that exercising the bounded-deliberative approach so that the constitutional bodies at the Centre and State level could justify their rationale behind their policy approach. However, the policy approaches have to be bound by the human rights framework, which involves the right to life under Article 21 and equality under Article 14 of the Constitution. Right to life means a life with human dignity.

Right of life includes the right to health, right to livelihood, right to a better standard of life, right to leisure, and right to education. Besides the right to health, other rights such as those stated above have been under restriction during this pandemic. There are myriad reasons, including the national and states lockdown. Therefore, the question would be whether the restriction or curtailment of their rights due to lockdown imposed upon the country's people could consider a violation of their fundamental rights guaranteed by the Constitution of India. The answer would depend upon the facts sheet coupled with empirical data and analysis of the same. The same is beyond the scope of this article. Therefore, assumingly, if the lockdowns and other conditions imposed upon the public are arbitrary, discriminatory, and without any just basis, then they are undoubtedly the violators of human rights. However, otherwise such restrictions on human rights shall be considered as the need of the hour.

With or without culpability of violation of human rights in COVID pandemic scenario upon the Central or State governments or institutions, should the victims of the violation mentioned

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<sup>5</sup> Re: Distribution of Essential Supplies and Services During Pandemic (2021) Suo Moto Writ Petition (Civil) No. 3 of 2021.

above of rights get compensation, especially in monetary terms? It is pertinent to note that recently on 24 May, 2021,<sup>6</sup> the Apex Court, while entertaining two public interest litigation (PIL), granted ten days to the Central Government for bringing on record the following: (i) scheme under Section 12(iii) of the Disaster Management Act, 2005; (ii) letter dated 08.04.2015; (iii) the policies or guidelines regarding issuance of death certificate concerning patients who were infected with COVID; and (iv) Guidelines issued by the ICMR.

The PILs mentioned above have been filed for seeking direction regarding compensating the next kin or family member of deceased who succumbed to COVID-19 of notified ex-gratia monetary compensation of Rs. 4 Lakhs in terms of letter dated 8 April 2015. The petitioners have also pleaded uniform policy for issuing the death certificate or any other official document stating the causes of death of COVID-19 patients. A similar PIL has been filed before the Allahabad High Court<sup>7</sup>. The petitioner therein has also sought a refund of the cost of hospitalization from the State Relief Fund.

It is pertinent to note that previously in Suo-Motu writ petition<sup>8</sup>, the Apex Court clarified that it is not directing the NDMA to lay down minimum relief standards for providing ex-gratia assistance in terms of Section 12(iii) & (iv) of the Disaster Management Act, 2005. However, the Court suggested that the NDMA may consider the same in the light of human suffering and loss of livelihood due to the COVID-19 pandemic.

Interestingly, the Central Government had earlier on 14 March, 2020<sup>9</sup> notified the ex-gratia compensation of Rs. 4 Lakhs to families of deceased infected by coronavirus; however, it took U-turn within an hour and deleted the said compensatory clause from the revised circular.

It is also pertinent to note that various state governments have announced ex-gratia compensations; notably, the Delhi Government has announced a compensation of Rs. 50,000/- to all the families of deceased died due to coronavirus disease<sup>10</sup>. The Government acknowledged that the common public has been facing financial difficulties. Therefore, besides other things, it has further assured that the Government will give Rs. 2,500/- per month to those families who have lost the bread earner of the families and free education to children who have lost their parents one lost due to COVID-19. It is in addition to the ex-gratia as mentioned earlier. Earlier, the Rajasthan government has announced Rs 50 lakh ex-gratia compensation

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<sup>6</sup> Gaurav Kumar Bansal vs. Union of India (2021) Writ Petition (Civil) No. 539 of 2021, dated 24.05.2021.

<sup>7</sup> Dr. Sandeep Pandey vs. Union of India (2021) P.I.L. Civil No. 10341 of 2021.

<sup>8</sup> K Sivaraman vs. P Sathishkummar (2020) Civil Appeal No. 9046 of 2019, Supreme Court.

<sup>9</sup><https://www.thehindubusinessline.com/news/covid-19-deceaseds-kin-to-get-4-lakh-in-compensation/article31068624.ece> [Accessed 25 May 2021].

<sup>10</sup> <https://scroll.in/latest/995225/delhi-arvind-kejriwal-announces-rs-50000-compensation-each-for-families-of-coronavirus-victims> [Accessed 25 May 2021].

to the dependants of sanitation workers in case of death due to COVID-19 while discharging duties<sup>11</sup>.

In the background above, this research article explores the scope of compensatory jurisprudence in light of the violation of or lawful restrictions upon humans' fundamental or constitutional rights during the COVID-19 pandemic period. It further explores whether the compensatory relief to COVID-19 victims can be considered as compensation under "constitutional tort" and that the same could be provided under Constitutional remedies. This paper explores whether in the current scenario, the Centre and States governments can be held liable under constitutional tort. It further explores whether the non-payments of explicitly stated ex-gratia compensation and other statutory reliefs to the affected citizens is not violation of their right to life and livelihood. If yes, then, the violators should not be booked under constitutional tort besides other criminal and civil liabilities?

## **II. HUMAN RIGHTS & FIGHT AGAINST COVID-19**

States are under obligations to protect the human rights guaranteed to everyone. However, it is equally valid that the present crises have posed various challenges for nations worldwide. The pandemic is not only limited to the public health crises but also, to a great extent, affecting us socially and economically. Therefore, the States have to prioritize. Without exception, the priority is to save human lives. That could be done only by adopting extraordinary measures such as lockdowns to slow down or cut the virus chain by restricting the people's right to freedom of movement. Such measures appear to be unavoidable though it inadvertently affects the right of livelihood, right to work, right to education, and to a large extent, the right to leisure. They may lead to some other adverse consequences too.

The law of human rights recognizes national emergencies, which may limit the exercise of certain human rights. However, the instability and fear due to the pandemic worsening the current human rights concerns, such as discrimination against certain groups, hate speech, xenophobia, attacks and forced returns of refugees and asylum-seekers, mistreatment of migrants, and sexual and gender-based violence<sup>12</sup>. Therefore, the measures and their severities for combating the COVID-19 pandemic must be reasonable and justifiable on the grounds of public health and human lives. Furthermore, the responses must be proportionate to the pandemic to preserve the trust between people and their government, especially during a

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<sup>11</sup><https://timesofindia.indiatimes.com/india/rajasthan-rs-50-lakh-compensation-to-dependants-of-sanitation-workers-for-death-due-to-covid-19/articleshowprint/75412659.cms> [Accessed 25 May 2021]

<sup>12</sup> United Nations, 2020. COVID-19 and Human Rights We are all in this together. s.l.:United Nations.

crisis<sup>13</sup>.

Who in the world are unaffected or untouched by the COVID-19 pandemic? Almost all men, women, children of all ages, sex, caste, creed, and religion are affected differently. The human rights of frontline workers, COVID patients, and their families have been affected. Others such as professionals, employees, laborers, migrants, and small and middle employers have also been adversely affected. Since the first lockdown last year, the people are witnessing the increasing gaps of socio-economic inequalities and lack of adequate infrastructure, particularly in the health sector. The Central and State governments or the political parties in ruling or opposition may blame games, but the reality check is no longer a secret or paper tally. The country's infrastructural and human resource vulnerability has revealed the ground reality of ostensible development since independence, particularly in the health sector. The illusion of being in a bio bubble environment is ruptured, and the peoples of the country, especially the tax-payers, have understood that there was no such protection as claimed by the executive and legislative bodies in the first place.

States must exercise their powers for the benefit of the people and not harm. Human rights put the human at the Centre. Therefore, when the world faces a public health emergency, the requirement of response globally which shall have sweeping consequences for our social, political, and economic, is foreseeable. Human rights could be a guide in the present crisis. The United Nations has stated that the centrality of protection, which underpins the response in humanitarian settings, ensures joint preservation of our common humanity and dignity<sup>14</sup>.

The relevant question at this stage is whether the States have been abiding by the obligation of protecting human rights as they must do during such a crisis? The flooding of cases for making guidelines, following directions, and enforcing guidelines before the courts of justice through PILs, private parties, and suo-motu cognizance is enough to show that there is callousness and lawlessness working approach of the Central and States Executive organs. It is no surprise how a state showing a lack of oxygen supply reported having the same surplus after an order from the Apex Court.

Who shall be responsible for such acts and conducts of the government organs and institutions? Human lives were lost not due to coronavirus disease only. However, these deaths are attributable to the States above machinery responsible for the shortage of essentials goods and services. Therefore, they should be fastened with civil and criminal liability. Above all, they

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<sup>13</sup> Id.

<sup>14</sup> Id. Note 12.

should be made liable under constitutional tort, and the victims thereunder should be compensated.

### **III. COMPENSATORY JURISPRUDENCE IN CONTEXT OF CONSTITUTIONAL TORT**

The objective behind the victim compensation is to compensate victims against the crime or violation of their legal and constitutional rights due to negligence, inaction, misconducts, or deliberate actions on the part of the State. However, the interest of such victims cannot be sufficiently achieved unless the State undertakes that responsibility. Thus, justice to victims of crime or victims of a violation of their fundamental or human rights in the hands of the States' instrumentalities includes the fair and appropriate compensation to victims, their families, and dependents for the physical, mental, psychological, and emotional injuries they suffered.

Ordinary civil Courts and Law of torts recognized the principle of compensation to the victim for damages or injury caused. The liability to pay victim compensation is also well recognized under various Indian enactments. However, the Constitution of India does not explicitly recognize compensatory jurisprudence.

Our Constitution, in its Preamble, holds a guarantee that 'justice' is paramount. Therefore, mitigation of injustice and acceleration of justice is the philosophical foundation of law.<sup>15</sup> In India, the Supreme Court introduced the compensatory jurisprudence by invoking powers under Article 32 of the Constitution prominently became apparent in the judgment passed in *Rudal Sah case*<sup>16</sup>. In this case, it was held that in a petition under Article 32 of the Constitution, the Supreme Court could grant compensation for deprivation of a fundamental right. The Hon'ble Court held that-

[i]t is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal.....the important question for our consideration is whether in the exercise of its jurisdiction under Art. 32, this Court can pass an order for the payment of money if such an order is in nature of compensation consequential upon the deprivation of a fundamental right. (*Rudal Sah vs. State of Bihar, 1983*)

This landmark judgment was the stepping stone in the growth of Compensatory Jurisprudence in the domain of Public Law. The Apex Court granted ex-gratia compensation to the petitioner to protect his right of further redressal in the appropriate forum. Later, in the *Nilabati Behera*

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<sup>15</sup> Rangaswamy, D. D., 2018. Evaluating A Need of Constitutionalisation of Victim's Right to Compensation. *Bharti Law Review*, Issue Oct. - Dec., pp. 80-92.

<sup>16</sup>*Rudal Sah vs. State of Bihar (1983) (1983) 4 SCC 141.*

case, another landmark judgment,<sup>17</sup> the Supreme Court reiterated the principle of award of compensation under public law for infringement of fundamental rights. The Apex Court observed that-

The Court is not helpless and the wide powers given to the Supreme Court by Art. 32, which itself is fundamental right, imposes a constitutional obligation on the Court to forge such new tools, which may be guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases where that is the only mode of redress available. The power available to the Supreme Court under Art. 142 is also an enabling provision on this behalf. The contrary view would not merely render the Court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the Court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. (Nilabati Behera vs. State of Orrisa , 1993)

It was further observed that the award of compensation in a proceeding under Article 32 by Apex Court or Article 226 of the Constitution by the High Court is a remedy available in public law, based on strict liability for contravention of fundamental rights. The principle of sovereign immunity does not apply, even though it may be available as a defense in private law in action based on tort. The Court held that the enforcement of the constitutional right and grant of redress embraces the award of compensation as part of the legal consequences of its contravention.

It is pertinent to note that the issues relating to disputed facts are not maintainable in writ proceedings. However, in cases of victimization through public law remedy under the Courts of justice in writ proceedings, the courts have, instead of directing the victims to resort to private law remedy, direct the fact-finding commissions to inquire into the disputed facts and submit reports before them for consideration.

In *Consumer Education and Research Centre v. Union of India*<sup>18</sup>, it was held that the claim for compensation in public law is a remedy available under Article 32 or Article 226 of the Constitution of India for the enforcement and protection of fundamental and human rights and the defense of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights.

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<sup>17</sup>Nilabati Behera vs. State of Orrisa (1993) AIR 1993 SC 1960: (1993) 2 SCC 746).

<sup>18</sup>Consumer Education and Research Centre v. Union of India (1995) 1995 SCC (3) 42.

In M.C. Mehta Case<sup>19</sup>, the Apex Court observed that-

[t]his Court has a constitutional duty to protect the fundamental rights of Indian citizens. What happens when violators and/or abettors of the violations are those, who have been entrusted by law with a duty to protect these rights? The task becomes difficult and also requires urgent intervention by Court so that the rule of law is preserved and people may not lose faith in it, finding violations at the hands of supposed implementers. The problem is not of the absence of law, but of its implementation. Rule of Law is the essence of democracy. It has to be preserved. Laws have to be enforced. (M.C.Mehta v. Union of India, 2006)

Thus, the compensatory jurisprudence in the realm of public law is now well settled. In other words, the compensatory jurisprudence in the form of constitutional tort includes strict and vicarious liabilities of the States, and their instrumentalities have been duly recognized in the Courts of justice in India. However, the quantum of compensation for infringement of fundamental or human rights would depend upon the facts and circumstances of each case.<sup>20</sup>

The Indian judiciary has significantly created compensatory jurisprudence. The scope of writ jurisdiction being expanded to uphold human dignity and other fundamental human rights. Compensation as a mode of redressal of violation of human rights gained importance.<sup>21</sup> This dynamic movement of the Supreme Court resulted in the emergence of compensatory jurisprudence for violating the right of a citizen. The concern of the highest Court to do justice rather than mechanically applying the law based on precedents reinforces the judiciary's credibility among the public, especially the helpless have-nots.

The emergence of compensatory jurisprudence in the light of human rights philosophy is a positive signal that indicates that the judiciary has undertaken protecting the rights of all the people irrespective of the absence of an express constitutional provision and judicial precedents. However, it brings in another issue. How will the compensatory jurisprudence work in the realm of mass victimization or violation of human rights of a massive population during the bio-disaster pandemic?

In Gujrat earthquake case<sup>22</sup> this was the case related to natural calamity. On the morning of 26 January 2001, an earthquake of a high magnitude shook the whole of Gujarat and, more

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<sup>19</sup>M.C.Mehta v. Union of India (2006) 2006 SCC (3) 61.

<sup>20</sup>Sant Bir v. the State of Bihar; Miss Veena Sethi v. the State of Bihar; Radul Sah v. the State of Bihar; Nilabati Behera v. the State of Orissa; D.K. Basu v. State of West Bengal; Sebastian M. Hongray v. Union of India; Bhim Singh v. the State of J&K, 1984 Supp. SCC 504; Saheli: A. Women's Resources Centre v. Commissioner of Police; State of Maharashtra v. Ravikant S. Patil; Peoples Union for Civil Liberties v. Union of India; Punjab Haryana High Court Bar Association v. the State of Punjab.

<sup>21</sup>Central Information Commission Mro P Gandhi vs. GNCT (2016) dated 25 July 2016.

<sup>22</sup>Bipinchandra J. Divan vs. State of Gujarat (2002) AIR 2002 Guj 99, (2001) 2 GLR 1394

devastatingly, of its entire Kutch district, leaving thousands of deaths, injured, crippled, orphaned, and homeless. The Government was unprepared to meet such unforeseen natural calamity and finds it difficult through its inadequate machinery to carry out the stupendous task of rescue, relief, and rehabilitation of the quake victims.), 2001, the petitioners filed a PIL wherein, besides other reliefs, they sought the intervention of the Court to ensure speedy and effective relief to quake victims. It was alleged that the Government has failed to meet the situation arising from the calamity and has no adequate infrastructure to perform relief and rehabilitation tasks to the quake victims satisfactorily. The Government took the preliminary objection of the Court's jurisdiction to intervene in a matter like seeking directions for effective steps for disaster management.

The Court observed that-

10. The duties of the Government or the Court on occurrence of a disaster or natural calamity of this magnitude are not statutorily regulated. In fact, there is complete lack of any legislation in this field. Article 21 of the Constitution of India which guarantees to every citizen protection of his life and personal liberty, is repository of all important human rights which are essential for a person or a citizen. When there is a natural calamity like earthquakes, floods, fire, cyclones and similar natural hazards the State as guardian of the people is obliged to provide help, assistance and support to the victims of such natural calamities to help them to save their lives. (Bipinchandra J. Divan vs. State of Gujarat , 2002)

After citing various case-laws<sup>23</sup> of the Apex Court, the Court held that the State is obliged to provide help, assistance, and support to the humans affected by the calamity, so that they may be able to save their lives. This right of assistance in calamity has to be treated as an enforceable right. The Court further applied the doctrine of "Parens patriae," which means "the father of the country." The doctrine explains the right of the sovereign and imposes a duty on the sovereign, in the public interest, to protect persons under disability who have no rightful protector. Conceptually, the parens patriae is the theory of obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligations. The Constitution makes it imperative for the State to secure its citizens' rights guaranteed by Constitution. Where the citizens are not able to assert and claim their rights, the State can be

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<sup>23</sup>(Bhim Singh, M.L.A. v. State of Jammu and Kashmir, AIR 1986 SC 494; Rudul Sah v. State of Bihar and Anr., AIR 1983 SC 1086); Pt. Parmanand Katara v. Union of India and Ors., AIR 1989 SC 2039 Paragraphs 8, 9 to 17); Joint Women's Programme v. State of Rajasthan & Ors., AIR 1987 SC 2060; President, Association of Allottees of Requisition Premises, Bombay v. the State of Maharashtra, 1986 Supp. SCC 567; Rakesh Chand Narain v. the State of Bihar, 1986 Supp. SCC 576; Sadharam Bansal v. Pulin Behari Sarkar & Ors., AIR 1984 SC 1471, Paras 29-30, 68, 70 and 73)

activated and approached to effectively come upon the scene and protect the human rights of victims of a disaster. The same principle was applied in the Bhopal gas leak tragedy case.<sup>24</sup>

In the background mentioned above, the emerging compensatory jurisprudence through judicial activism give some hope of rays for compensation to the victims for violation of their human rights committed by the States' instrumentalities or machinery either deliberately or in negligence or inadvertently or mistake as a consequential result of various measures adopted by them.

#### **IV. MONETARY RELIEF OR COMPENSATION FOR COVID-19 PANDEMIC'S VICTIMS IN THE LIGHT OF DISASTER MANAGEMENT ACT, 2005**

It is already noticed in the introductory part of this article that the Apex Court has granted ten days to Central Government to reply on ex-gratia compensation under Section 12 (iii) & (iv) of the Disaster Management Act, 2005. Therefore, it will be apposite to consider the probability of the outcome of such petitions in due course. It is also noted that the Apex Court did not intervene in this regard previously in Suo-Motu writ petition<sup>25</sup>.

Before the writ petition, as mentioned earlier, last year, a PIL<sup>26</sup> was filed in the wake of the Covid-19 pandemic. The petitioner, besides other reliefs, sought direction for the Union of India to lay down minimum standards of relief under Section 12<sup>27</sup> of the Act, 2005 for persons affected with COVID-19, including persons affected by the COVID-19 virus and the resultant national lockdown.

The Government filed its counter affidavit wherein it refers and relies on guidelines already existing on Minimum Standards of Relief under Section 12 of the Act, 2005. Therefore, the Apex Court consider the issue as question No.2 as follows:

"II) Whether the Union of India is obliged to lay down the minimum standards of relief under Section 12 of Act, 2005, for COVID-19 irrespective of earlier guidelines issued under Section 12 of the Act, 2005 laying down the minimum standards of relief?"<sup>28</sup>

In this case, the petitioner specifically pleaded that the Centre should come up with detailed

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<sup>24</sup>Charanlal Sahu v. Union of India (1990) AIR 1990 SC 1480.

<sup>25</sup>K Sivaraman vs. P Sathishkummar (2020) Civil Appeal No. 9046 of 2019, Supreme Court.

<sup>26</sup>Centre For Public Interest Litigation vs. Union Of India (2020) Supreme Court dated 18 August 2020.

<sup>27</sup> Section 12. Guidelines for minimum standards of relief. —The National Authority shall recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include (i) the minimum requirements to be provided in the relief camps concerning shelter, food, drinking water, medical cover, and sanitation; (ii) the special provisions to be made for widows and orphans; (iii) ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood; (iv) such other relief as may be necessary.

<sup>28</sup> Id. Note 25.

guidelines under Section 12(ii) and (iii) of Disaster Management Act, 2005 especially, for widows and orphans and ex-gratia assistance to the kith and kin of those losing life because of COVID-19 infections but and adversely affected as a result of harsh lockdown restrictions.

The Centre relied upon the existing guidelines of minimum standards of relief under Section 12 before COVID-19. The said guidelines deal with (i) definition of Relief and Rehabilitation Camp; (ii) Minimum standards in respect of shelter in relief camps; (iii) Minimum Standards in respect of food in relief camps; (iv) Minimum Standards in respect of water in relief camps; (v) Minimum Standards in respect of sanitation in relief camps; (vi) Minimum Standards in respect of medical cover in relief camps and (vii) Minimum Standards of Relief for Widows and Orphans.

The Apex Court held that the guidelines, which were in existence before the declaration of the COVID-19 pandemic, cover all statutory requirements as enumerated in Section 12. It observes that-

"Section 12 contemplates minimum standards of relief to be provided to persons affected by the disaster. The word 'disaster' mentioned in Section 12 encompasses all the disasters, including the present disaster. Section 12 does not contemplate that there shall be different guidelines for minimum standards of relief for different disasters."<sup>29</sup>

It further observes that-

46. The uniform guidelines are contemplated so that persons affected by the disaster are provided with the minimum requirement in the relief camps regarding shelter, food, drinking water, medical cover and sanitation, and other reliefs as contemplated in the section. There being already guidelines for minimum standards in place even before COVID-19, the said guidelines for minimum standards holds good even for those who are affected by COVID-19. Section 12 does not contemplate that afresh guidelines for the minimum standards of relief be issued with regard to COVID-19. (Centre For Public Interest Litigation vs. Union Of India, 2020)

In the backdrop above, where the three-Judges Bench of the Apex Court has upheld the existing minimum stand of relief and again, in the Suo-Motu cognizance preferred not to intervene in this regard; can it be said that the issue will have the same faith in pending petitions? Not necessary. The Apex Court may invoke Article 142 of the Constitution to bring complete justice.

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<sup>29</sup> Id. Note 25.

The Court further noted that the Government of India has notified that the assistance for ex-gratia payment to families of deceased persons, norms of assistance for COVID-19 positive persons requiring hospitalization, and some other assistance shall be provided from State Disaster Response Fund vide circular order dated 14.03.2020<sup>30</sup>. However, probably, it was not brought to the notice of the Court that the notification mentioned above has been withdrawn vide even dated revised circular. If the Centre would again like to take a U-turn, it will be a welcoming step.

Also, the revised list of SDRF/ NDRF dated 08.04.2015<sup>31</sup> deals with Rs. 4 lakhs as ex-gratia assistance. It says, ex-gratia payment of Rs. 4 Lakhs per deceased person to families of deceased persons including those involved in relief operations or associated in preparedness activities, subject to certification regarding the cause of death from appropriate authority. The same list also deals with gratuitous relief for families whose livelihood is seriously affected. However, the same is also subject to certification from the State government regarding the identified beneficiaries not housed in relief camps and the basis for arriving at such beneficiaries.

In the face of the letter mentioned above and the commitment of the Centre or States before the Apex Court, can it be said that the non-implementation of policy guidelines is also a violation of constitutional rights of the people beneficiaries thereof? Indeed! They are violators, primarily when such policies are related to the human and fundamental rights of the people. Flooding the Courts of justice with petitions for mere directions to the governments to act and enforce for which they are duty-bound to abide shows their impunity towards the Court of Law and the public's welfare at large. Such inactions of the States must be treated as liability under constitutional tort, and they should make liable to compensate the victims of their wrongdoing or inaction.

It is also apparent that the ex-gratia assistance of Rs. 4 Lakhs (assumingly it will be allotted) would neither cover all the victims of the Coronavirus disaster nor its quantum, especially in light of various announcements of ex-gratia compensation by the State Governments.

## **V. SUGGESTIONS & CONCLUSIONS**

The judiciary has never been a mute spectator, especially when the issue is related to the fundamental and human rights of the people of India. It is time to deliver another landmark

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<sup>30</sup> Id. Note 25.

<sup>31</sup> Revised list of items & norms of assistance from State Disaster Response Fund (SDRF)/ National Disaster Response Fund (NDRF) (Period 2015-20, MHA Letter No. 32-7/2014-NDM-I Dated 8 April 2015.

judgment by the Apex Court concerning compensatory jurisprudence wherein uniform guidelines for compensation scheme in case of a pandemic like the present one, be made considering all the affected persons or victims, including those affected by the consequences of emergency measures. The following factors may be considered in this regard:

**(A) Classification of Victims & Compensation under COVID-19 pandemic:**

- 1) Deceased victims died due to coronavirus disease-
  - i. while working as frontline workers;
  - ii. not frontline workers but the only bread earners in the family;
  - iii. bread earners (not covered under above i & ii)
  - iv. unemployed adult
  - v. children
  - vi. person with disability
  - vii. any other not covered above.

In this case, the ex-gratia compensation should be provided to the kith and kins of the deceased victims. For quantum, calculation sheet applied under other enactments like Motor Vehicle Act may be used as a reference.

- 2) Victims affected and recovered: They may be provided with the hospital and medical cost with some cap on expenditure. Also, income slab, insurance policies, etc., can be taken as deciding factors.
- 3) Victims of consequences of emergency measures such as lockdowns etc. (financial constraints): at least some nominal compensations to meet up daily needs. Daily wages slab for unskilled and skilled laborers may be considered as deciding factors.

**(B)** Compensation for fundamental human rights violations by the States' organs to all the victims as stated above without discrimination in the quantum of payment. The acts and conducts of the violator would be the deciding factors.

**(C)** Compensation scheme in case of violator or offender is a private party such as Hospital, Doctor: uniformity as much as possible based on earlier precedents and analysis of the harm caused.

**(D)** For a better and uniform standard of relief at the pan India level, the Centre and States governments may be called to contribute funds (announcing or intending to pay to few people) in the potluck.

**(E)** Compensation in a form of Coronavirus tax relief to affected tax-payers. Various countries

have been adopting such mechanism for their citizens and tax-payers such as USA<sup>32</sup>, Singapore<sup>33</sup> and Hong Kong.<sup>34</sup>

Those mentioned above are just a few suggestions. However, an exhaustive list can be prepared that would help in combating the present scenario. However, it would also be used as a ready reckoner for future planning, development, and enforcement.

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<sup>32</sup><https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments> [Accessed 26 May 2021]

<sup>33</sup> <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19> [Accessed 26 May 2021]

<sup>34</sup> <https://www.bbc.com/news/world-asia-china-51640456> [Accessed 26 May 2021]

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