

## Nilabati Behera Summary

**CONSTITUTION OF INDIA** - Articles 21, 32, 142 and 226--International Covenant on Civil and Political Rights, 1966; Article 9(5)--Contravention of human rights and fundamental freedom by State and its agencies--Claim for monetary compensation under Article 32 or 226--Court has obligation to grant such relief and the plea of sovereign immunity will not be available since a claim in public law for compensation for contravention of human rights and fundamental freedoms, the perfection which is guaranteed in the **Constitution** is an acknowledged remedy or enforcement and protection of such right and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from and in addition to the remedy in private law.

The power available to the Supreme Court the Court is not helpless and the wide powers given to the Supreme Court by Article 32 which itself is a fundamental right, imposes a constitutional obligation on the court (Supreme Court) to forge such new tools which may be necessary for doing complete justice. The power under Article 142 is also an enabling provisions in this behalf. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress that which is appropriate in the facts of each case. The deceased was 22 years old having monthly income between Rs. 1200 and 1500. Award of compensation in the proceeding would be taken into account for adjustment in the event of any other proceeding taken by the petitioner for recovery of compensation. The State directed to pay Rs. 1,50,000 to the petitioner and a further sum of Rs. 10,000 as a cost to be paid to the Supreme Court legal aid committee.

**CONSTITUTION OF INDIA** - Articles 142--Contravention of human rights and fundamental freedom--Claim for monetary compensation on that account under Articles 32 and 226--The compensation can be allowed against the State--Defence of sovereign Immunity held not available to the respondent.

The Supreme Court is not helpless and has wide powers under Article 32 and imposes a constitutional obligation on the court to forge new tools which may be necessary for doing complete justice and enforcing **fundamental rights** guaranteed by the **Constitution**. The power available to the court under Article 142 is also enabling provisions in this behalf. The contrary view not merely render the court powerless and the **Constitution** guarantee a mirage but may in certain situation, be incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State except by punishment for the extreme contravention, the court is powerless to grant any relief against the statement except by the punishment of the wrong doer for the resulting offence and recovery of damages under private law.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHT, 1966 - Article 9(5)--**Constitution** of India, Articles 21, 32, 142 and 226--Contravention of human fundamental freedom by state and its agencies--Claim for monetary

compensation under Articles 32 and 226--Compensation can be demanded in the writ petition and the same would be maintainable.

A claim in public law for compensation for contravention of human rights and fundamental freedom, the protection of which is guaranteed in the **Constitution** is an acknowledged remedy for enforcement and protection of such right and such a claim based on strict liability made by resorting to a constitutional remedy provided for enforcement of a fundamental right is distinct and in addition to the remedy in private law for damages for the tort resulting from the contravention of Fundamental Right. The defence of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental right, there can be no question of such defence being available in the constitutional remedy. The power of the Supreme Court under Article 142 is also an enabling provision and contrary view would not merely render the court powerless and constitutional guarantee a mirage but may, in certain situation 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 wrong-doer for the resulting offence and recovery of damages under private law by ordinary process. Article 9(5) of International Covenant, 1966 indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guarantee right. In such circumstances, the principle on which the court's power under Articles 32 and 226 is exercised to award monetary compensation for contravention of fundamental rights. On the findings reached in the instant case, it is a clear case for award of compensation to the petitioner for custodial death of her son.

**SOVEREIGN IMMUNITY - Sovereign Immunity--Concept of sovereign immunity is not applicable to a case of violation of Fundamental Right-Defence of sovereign immunity being inapplicable and alien to the concept of guarantee of Fundamental Right, there can be no question of such defence being available in the constitutional remedy--Where claim made for monetary compensation under Article 32 or Article 226 on account of contravention of human rights and fundamental freedom by the State and its agencies, the State cannot claim sovereign immunities.**

A claim in public law for compensation for contravention of human right and fundamental freedom, the protection of which is guaranteed in the constitution is an acknowledged remedy for enforcement and protection of such a claim based on strict liability made by resorting to an constitutional remedy provided for the enforcement of F.R. is distinct from and an addition to the remedy in private law for damages for the tort resulting from the contravention of Fundamental Right. For the death of deceased Suman who was 22 years having monthly income of Rs. 1200-1500, direction issued to the State to pay Rs. 1,50,000 to the petitioner and further Rs. 10,000 as costs, since said Suman died in the Police custody.