

‘WRIT’ING WRONGS BY COMPENSATION: CONSTITUTIONAL TORTS AND THE NEED TO PROVIDE A METHOD TO THE MADNESS

An Analysis of Judicial Trends Over the Past 5 Years (2019–2024)

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ABSTRACT

*Constitutional courts in India routinely award compensation for violations of fundamental rights. Such claims for monetary relief, often referred to as constitutional tort claims, evolved as an exception to the doctrine of sovereign immunity and were firmly established as a judicial remedy in *Rudal Sah v. State of Bihar* (“Rudal Sah”). This paper examines how constitutional courts have applied, and at times departed from, the principles laid down in Rudal Sah. It undertakes an empirical study of High Court decisions from the past five years (2019 to 2024) to map the categories of cases that reach the courts’ dockets, the quantum of monetary relief awarded, and the judicial reasoning invoked to justify such relief. The analysis reveals marked inconsistency, as courts shift between rationales of deterrence, palliative relief, exemplary damages, and the metaphorical need to “apply balm to the wounds” of petitioners. In practice, the decisive factor often appears to be little more than the subjective “temper of the court,” highlighting the absence of a coherent or principled framework for awarding compensation. To address these inconsistencies, the paper proposes adopting the multiplier method and the Vento guidelines as tools to bring greater clarity, consistency, and predictability to constitutional compensation. In doing so, it attempts to provide a “method to the madness” that characterizes the current state of constitutional tort jurisprudence.*

Keywords: constitutional tort – compensation – fundamental rights violations – judicial remedies – Rudal Sah

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I. INTRODUCTION

On January 29, 2024, the Supreme Court of India directed the State of Haryana to pay compensation of Rs. 5 lakh to three accused persons who were illegally sentenced in a murder case.¹ In a revision petition before the High Court (“HC”), the HC reversed the acquittal of the accused persons despite the fact that High Courts have no powers to reverse acquittals in their revisional jurisdiction. The Supreme Court, after relying on judgements that cemented the doctrine of constitutional torts, directed a compensation of Rs. 5 lakh for unjust imprisonment for three months. While the judgement was celebrated for providing some relief to persons unjustly imprisoned, such decisions raise larger questions of consistency in judicial reasoning. On what basis does the Court decide that three months of imprisonment can be compensated by providing Rs. 5 lakh? This is the precise question that this paper seeks to answer.

The concept of constitutional torts in India represents a mechanism for public law accountability, allowing for remedies distinct from, but in addition to, private law tort claims.² Constitutional tort refers to the liability imposed on the state or its officials for violations of fundamental rights guaranteed under the Constitution.³ Unlike tort claims rooted in private law, constitutional torts operate within the framework of public law, addressing state actions and omissions that infringe upon constitutionally protected rights. Traditionally, constitutional tort remedies were provided for gross violations of Article 21 of the Constitution, and not for fundamental rights violations simpliciter.

The doctrine of constitutional tort emerged as a judicial response to systemic limitations in civil justice mechanisms and the underdevelopment of tort law in India.⁴ Interestingly, constitutional tort claims reflect a paradox: they are both a *symptom* of and a *response* to the deficiencies of the private law system in India. It is a symptom because victims of State wrongdoing, confronted with the delay, evidentiary hurdles, and uncertainty of ordinary tort suits, turn instead to the writ

1 *Mahabir v State of Haryana* (2025) SCC OnLine SC 184.

2 Theodore Eisenberg and Stewart Schwab, 'Reality of Constitutional Tort Litigation' (1987) 72 Cornell Law Review 641.

3 Shyamkrishna Balganesh, 'The Constitutionalisation of Indian Private Law' in Sujith Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds) *The Oxford Handbook of The Indian Constitution* (1st edn, Oxford University Press 2016) 682–696.

4 Usha Ramanathan, 'Tort Law in India' (2001) Annual Survey of Indian Law 615, 616 <<https://www.ielrc.org/content/a0206.pdf>> accessed 9 January 2024.

jurisdiction under Articles 32 and 226, thereby exposing civil courts' incapacity to deter or redress public wrongs. It is also a response, for the Supreme Court and High Courts have used those very writ powers to craft a distinct public-law remedy of constitutional compensation. This remedy sidesteps trial-court procedures and fault-based standards, delivering redress for fundamental-rights violations while signalling the need for deeper reform of India's tort regime. By invoking writ jurisdiction under Articles 32 and 226, the judiciary has established constitutional torts as a tool for addressing fundamental rights violations.⁵

The recent case of *Kaushal Kishore v Union of India*, has brought constitutional torts into focus, particularly regarding the (mis)application of public law principles in private domains.⁶ Despite its growing significance and debate on the application of constitutional tort, there is a scarcity of secondary literature analysing its *practical application* in the Indian context. Even in other jurisdictions the doctrinal scope of constitutional tort is unclear and confusing, leading many to criticize the very conception of providing compensation via writ remedies.⁷ This paper seeks to bridge the existing gaps in empirical analysis by examining judicial trends in constitutional tort litigation over the past five years, in order to defend and make a case for constitutional torts. Unlike existing literature that predominantly explores the theoretical justifications for constitutional torts, this paper focuses on case law to assess how constitutional torts have been practically litigated in India.⁸

In doing so, Section II traces the evolution of constitutional tort litigation in India and the move away from the defence of sovereign immunity, starting with early judicial pronouncements. Section III highlights how the Supreme Court moved from hesitant rulings to firmly establishing the law in *Rudul Sah v State of*

5 *In Re Directions in the Matter of Demolition of Structures* (2025) 5 SCC 1 [63]-[65].

6 *Kaushal Kishore v State of Uttar Pradesh* (2023) 4 SCC 1. For a criticism of the case, see Gautam Bhatia, 'Kaushal Kishor, Horizontal Rights, and Free Speech: Glaring Conceptual Errors' (*Constitutional Law and Philosophy*, January 2023) <<https://indconlawphil.wordpress.com/2023/01/27/kaushal-kishor-horizontal-rights-and-free-speech-glaring-conceptual-errors/>> accessed 23 August 2025.

7 E Garrett West, 'Refining Constitutional Tort' (2025) 134(3) Yale Law Journal 863. For an overall critique of constitutional torts and the inconsistency in its application see Christina Brooks Whitman, 'Emphasizing the Constitutional in Constitutional Torts' (1997) 72 Chicago-Kent Law Review 661, 669; Michael Wells, 'Constitutional Torts, Common Law Torts, and Due Process of Law' (1997) 72 Chicago-Kent Law Review 617, 618.

8 M.P. Chengappa and Adya Jha, 'Personal Liability: Forging New Tools of Accountability in Public Law' (2021) 67(1) Indian Journal of Public Administration 27-39; Thomas A. Eaton, 'Causation in Constitutional Torts' (1982) 67 Iowa Law Review 443; Richard H. Fallon Jr., 'Bidding Farewell to Constitutional Torts' (2019) 107 California Law Review 933.

Bihar, and how it has subsequently extended its application to newer factual contexts that go beyond violations of personal liberty. Section IV forms the bulk of this paper and empirically examines constitutional tort litigation from 2019 to 2024 by analysing cases that cited *Rudul Sah* in High Courts to understand how these claims have been litigated. This section reviews the *types* of claims, the *inconsistency* in awarding compensation, and the lack of clear *reasoning* when providing compensation. Section V draws on examples from the data set to explore why courts reason inconsistently in constitutional tort cases, arguing that outcomes often reflect the “temper of the court” rather than any coherent or predictable standard. Section VI offers recommendations to improve uniformity, proposing the adoption of the multiplier method in cases involving death or serious injury, and, in other cases, reliance on Jason Varuhas' framework of constitutional torts as “actionable per se.” This section also sets out an analytical framework to guide consistent adjudication in such matters. Section VII concludes by highlighting that, in the current state of the law, inconsistency remains the only constant in constitutional tort jurisprudence.

II. THE EVOLUTION OF CONSTITUTIONAL TORTS IN INDIAN JURISPRUDENCE

Traditionally, holding the government liable for wrongful acts committed by its officials was nearly impossible under tort law because of the principle of sovereign immunity.⁹ The common law doctrine that “the King can do no wrong,” was adopted in India and initially helped to shield the state from liability for actions performed in its sovereign capacity. The justification for this immunity was that the state, as a sovereign entity, needed protection from civil claims to ensure governance and the effective discharge of public duties.¹⁰ However, over time, Indian courts began to critically examine and narrow the scope of this defence, recognizing its potential to erode public accountability. While earlier judgments such as *P. & O. Steam Navigation Co. v Secretary of State for India* (1861) upheld the principle of sovereign immunity, later decisions began to impose liability for state actions, especially in cases involving violations of fundamental rights.¹¹

9 Neel Maitra, 'Sovereign Immunity' in Sujit Choudhary, Pratap Bhanu Mehta, and Madhav Khosla (eds) *Oxford Handbook of the Indian Constitution* (1st edn, Oxford University Press 2016) 986.

10 *ibid.*

11 *ibid.*

The concept of constitutional torts represents a significant departure from the traditional reliance on sovereign immunity. It is rooted in the idea that the Constitution of India prioritizes the supremacy of “the people” rather than the government or the state, and that the state must be held accountable for violations of constitutional rights.¹² This approach recognizes that the state derives its authority from the people and is, therefore, bound by the constitutional mandate to respect and uphold their rights.

However, whether the defence of sovereign immunity continues to exist in contemporary Indian jurisprudence remains unclear, and in any case, is irrelevant to the inquiry undertaken in this paper. Some commentators rightly observe that, despite ambiguities and conflicting case law on sovereign immunity in private law, Indian constitutional courts have unambiguously rejected the defence of sovereign immunity for fundamental-rights violations.¹³ In this context, sovereign immunity has effectively died a “natural death” in the context of public law remedies.¹⁴

The initial judicial pronouncements on awarding compensation for violations of fundamental rights were marked by hesitation and ambiguity.¹⁵ One of the earliest cases raising this issue was *Khatri v State of Bihar*, which dealt with custodial violence resulting in the accused losing their eye-sight.¹⁶ The State contended that the officials had acted unlawfully, and therefore, outside the scope of their duties, and that the State could not be made liable for such acts. Speaking for the Court, Justice P.N. Bhagwati ordered the State to pay compensation for housing

12 *Jagdish v State of Madhya Pradesh* (2021) SCC OnLine MP 4117 [50]. The Court noted, “The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is *not available* and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer.” (emphasis added).

13 Some of the cases from my dataset expressly highlight this position. See *Rama Nand Rai v State of Bihar* (2020) SCC OnLine Pat 2427 [22]. The Court held, “The position that emerges...is that award of compensation in a proceeding under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.”; *Jagdish v State of Madhya Pradesh* (2021) SCC OnLine MP 4117 [54]. The Court notes, “The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is *not available* and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer.” (emphasis added).

14 Nishant Singh and Srishti Jha, 'Problems of Computing the Damages in Constitutional Torts: Problems and Perspectives' (1998) 10(1) National Law School Journal 132, 133.

15 In this paper, the phrase 'compensation', 'costs', 'reparations' etc. are used synonymously. Though these terms have very specific meanings in private law, Courts have used them loosely in constitutional tort jurisprudence.

16 *Khatri v State of Bihar* (1983) 2 SCC 266.

the victims in a residential facility for the visually impaired in Delhi. However, the Court cautiously refrained from conclusively determining whether compensation could or should be awarded for violations of Article 21.

A similar approach was taken in *Sant Bir v State of Bihar*, where a person had been unlawfully detained for more than sixteen years.¹⁷ Justice Bhagwati observed that “the question would still remain, to be considered whether the petitioner is entitled to compensation from the State for his illegal detention in contravention of Article 21 of the Constitution.”¹⁸ Despite acknowledging the violation, the Court left the question of compensation unresolved.

This pattern of reluctance can be observed in other cases from the 1980s.¹⁹ The breakthrough came in *Devaki Nanda v State of Bihar*,²⁰ which involved a significant delay in processing pension payments.²¹ The Court imposed “exemplary costs” of Rs. 25,000/- on the State for “intentional, deliberate, and motivated” harassment of the petitioner.²² However, the judgment offered little discussion on the broader doctrine of providing compensation for violations of fundamental rights, leaving the theoretical foundation for such awards unclear.

III. MOVING FROM AMBIVALENT ANNOUNCEMENTS TO DEFINITIVE CLARITY

The turning point in constitutional tort jurisprudence arrived with the case of *Rudul Sah v. State of Bihar*. In this case, the petitioner had been acquitted by a lower court but was unlawfully detained for over fourteen years. By the time the case was heard, he had been released, rendering the plea of habeas corpus infructuous. In this context, the Court ordered payment of Rs. 30,000 as compensation and expressly laid down the principle of awarding monetary damages for violations of fundamental rights under constitutional torts.²³ The Court made it clear that such compensation was in addition to any other claim that the petitioner would make under private law.

17 *Sant Bir v State of Bihar* (1982) 3 SCC 131.

18 *ibid* [7].

19 Sushila Rao, ‘Constitutional Rights Violations and Compensatory Jurisprudence in India and U.S.A.: Justifications and Critique’ (2006) 18(1) National Law School of India Review 93.

20 *Devaki Nandan Prasad v State of Bihar* (1983) 4 SCC 20.

21 *ibid* [10].

22 *Rudul Sah v The State of Bihar* (1983) 4 SCC 141.

23 *ibid* [11].

Despite being a landmark case, *Rudul Sah* resulted in several unresolved questions. The Court's reasoning oscillated between two objectives i.e., providing "palliative" compensation to the victim and "penalizing state instrumentalities" acting under the guise of public interest.²⁴ This lack of clarity reflects a broader concern with the judiciary's reliance on varying and often inconsistent theoretical justifications for providing compensation. As we shall see later in this paper, such an approach leads to disparate outcomes, since the reasoning behind awarding compensation differs significantly from case to case. Sushila Rao rightly characterizes this as an "ambivalent beginning," as it failed to articulate a coherent jurisprudential foundation for awarding compensation.²⁵

It was in *Nilabati Behera v State of Orissa* that the Supreme Court provided its most explicit and authoritative pronouncement on the issue.²⁶ Recognizing the need for a robust remedy in public law, the Court held that Article 32 imposed an obligation to "forge such new tools as may be necessary for doing complete justice and enforcing fundamental rights."²⁷ It clarified that compensation under Articles 32 and 226 was a remedy available in public law, based on strict liability for violations of fundamental rights, and that the principle of sovereign immunity would not apply in such cases even though it might still be a defence in private law actions.

Thus, in *Rudal Sah*, the Supreme Court recognised that a violation of the right to personal liberty under Article 21 could justify the award of monetary compensation. That case concerned illegal detention, but in the decades since, the Court has never questioned the principle it laid down. Instead, it has treated *Rudal Sah* as settled law and steadily expanded its scope. In recent years, the Court has granted compensation well beyond cases of unlawful imprisonment, for example by awarding compensation to a convict kept in prison beyond the expiry of their sentence,²⁸ to victims of fire tragedies,²⁹ to an employee compulsorily retired after making a sexual harassment complaint,³⁰ to residents whose homes were illegally

24 *ibid* [19]. The Court held, "The right to compensation is some *palliative* for the unlawful acts of instrumentalities which act in the name of public interest..." (emphasis added).

25 Rao (n 19).

26 *Nilabati Behra v State of Orissa* (1993) 2 SCC 746.

27 *ibid* [20].

28 *Bhola Kumhar v Chhattisgarh* (2022) SCC OnLine SC 837. This case is specifically interesting because this was an SLP under Article 136, and not a writ petition under Article 32, but the Court still invoked powers under Article 142 to provide compensation.

29 *Sanjay Gupta v State of Uttar Pradesh* (2022) 7 SCC 203; *MCD v Uphaar Tragedy Victims Association* (2011) 14 SCC 481.

30 *Nisha Priya Bhatia v Union of India* (2020) 13 SCC 56.

demolished,³¹ and to the families of sewage workers who died due to unsafe working conditions caused by state negligence.³²

However, despite Courts scrupulously following *Rudal Sah*, fundamental questions remain unresolved. Is the Court awarding exemplary costs to deter public authorities, or merely palliative compensation to remedy individual harm? Are there circumstances in which courts may decline to award compensation? And what is the nature of the rights for which compensation has been recognised? These issues were left unanswered even in landmark rulings such as *Rudal Sah* and *Nilabati Behera*.

The Supreme Court occupies a unique position as the apex court of the country. As a polyvocal institution, its benches speak in multiple voices, and over time, it has exercised wide latitude to chart its own course without being strictly bound by past precedent or reasoning.³³ This flexibility allows it to expand, contract, or even depart from earlier principles depending on the bench, its composition, and the case at hand. For this reason, examining High Court decisions often offer a clearer picture of how the law is applied on the ground and how the Supreme Court's pronouncements shape day-to-day adjudication.

Moreover, the cases that reach the Supreme Court represent only a small fraction of the disputes in which such questions arise. Thus, to understand how these principles are actually applied, it is necessary to turn to High Court decisions, where the majority of such litigation occurs. Despite this, there is a striking lack of scholarly literature analysing High Court jurisprudence in this area. This paper seeks to address that gap, and as the next section will show, inconsistencies in judicial reasoning on these points remain prevalent in contemporary practice.

IV. HOW HAVE HIGH COURTS FARED: AN EMPIRICAL ANALYSIS

As highlighted earlier, *Rudul Sah* was a path-breaking judgment in which the Supreme Court awarded compensation for the violation of fundamental rights. The decision has become the key precedent on which litigators rely when seeking such relief, and the Court itself has repeatedly noted that *Rudul Sah* marked a point of “no looking back.”³⁴

31 *In Re Directions in the Matter of Demolition of Structures* (n 5).

32 *Delhi Jal Board v National Campaign for Dignity and Rights of Sewerage and Allied Workers* (2011) 8 SCC 568.

33 Nick Robinson, 'Structure Matters: The Impact of Court Structure on the Indian and U.S. Supreme Courts' (2013) 61(1) American Journal of Comparative Law 173, 185.

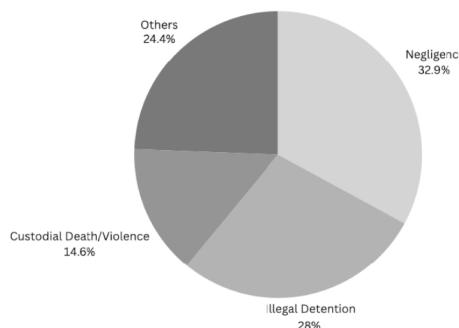
34 *Kaushal Kishore* (n 6) [152]. The Court notes, “After *Rudul Sah*, there was no looking back.”

Any empirical assessment inevitably leaves room for subjectivity. I have selected *Rudul Sah* as the key precedent for this study, chiefly because it is one of the earliest judgments on constitutional compensation and remains frequently cited by the courts.³⁵ To trace judicial trends and understand how the grant of compensation has evolved, this paper examines every High Court judgment from the past five years (2019–2024) that cites *Rudul Sah*. Using the case-reference feature on SCC Online, I identified and analysed the full set of these decisions to see how courts have fashioned remedies under the rubric of constitutional torts. This study does not claim to be exhaustive, but it offers a fair picture of the current state of such litigation before High Courts in India.

For analytical clarity, these cases are categorized into four groups: illegal detention, custodial violence or death, negligence by authorities, and all other residuary cases. This classification highlights the nature of claims brought before the courts and allows for a structured evaluation of judicial reasoning, the quantum of compensation awarded, and the principles guiding such awards. Through this framework, the paper identifies patterns and inconsistencies in judicial approaches to observe the practical application of constitutional tort jurisprudence in India.

A. Thematic Overview of the Nature of Rights Claimed

Out of the ninety-three cases that cite *Rudul Sah* across various High Courts in the country, eighty-three specifically address the question of granting compensation for constitutional torts, while the remaining cases reference it only in passing. The pie chart below provides a visual representation of the percentage of cases falling under each broad category.



³⁵ A consistent line of cases has now established this doctrine, with each citing *Rudul Sah*. See *Arvinder Singh Bagga v State of Uttar Pradesh* (1994) 6 SCC 565; *N. Nagendra Rao & Co. v State of Andhra Pradesh* (1994) 6 SCC 205; *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37; *People's Union for Civil Liberties v Union of India* (1997) 3 SCC 433.

In absolute numbers, 27 cases involve pleas of negligence by the State, 23 relate to illegal detention, 12 concern custodial death/violence, and 21 fall under the residuary category. A brief summary of each case is provided in the Annexure.

Interestingly, while constitutional torts are meant to address violations of fundamental rights, courts sometimes fail to specify the fundamental right in question. For example, in cases involving the illegal acquisition of private property, courts have awarded compensation by observing that such issues “silently yet surely impact the right to property of the citizens.”³⁶ The Court granted compensation of Rs. 50,000 in that case by holding that the “fundamental right” to property of the petitioner had been violated due to bureaucratic inaction in updating the land records of the petitioner. Similarly, in *Rathinam v State of Tamil Nadu*, the Court granted compensation of Rs. 1,00,000 for “compensation for interfering with the right to property of the petitioners.”³⁷

While one could possibly argue that Article 21's expanded scope may allow property rights to be read within its ambit, courts often bypass this analysis and grant compensation for violations of a right that is no longer fundamental under the Constitution. Whether this reflects a deliberate move to compensate for violation of mere constitutional (as opposed to fundamental) rights, or a failure to adequately reason through the legal basis, remains open to interpretation.

This section highlights three key problems with the current jurisprudence on constitutional torts in India. *First*, it examines the ambiguity surrounding what constitutes an “appropriate case” for granting compensation, leading to inconsistent outcomes and an undefined scope of constitutional torts. Under this, the paper focuses on two themes, namely that mere omissions are enough to establish government liability, and the curious case of “legal detention” and consequent grant of compensation. *Second*, it addresses the wide disparity in the quantum of compensation, with courts awarding both substantial and nominal sums, reflecting the absence of uniform principles for determining compensation. *Third*, it highlights the need for a coherent theory of compensation and standardized methods for calculating damages, as courts struggle to balance palliative, punitive, and deterrent objectives, resulting in ad hoc decision-making.

36 *Jayalakshmi v State of Tamil Nadu* (2021) SCC OnLine Mad 16513 [25]. The Court records, “In the spirit of what the Supreme Court has held, this Court now directs the respondents to pay the petitioner a sum of Rs. 50,000/- as compensation for interfering with the right to property of the petitioner for over a decade, with no lawful justification” (emphasis added).

37 *Rathinam v State of Tamil Nadu* (2021) SCC OnLine Mad 8589 [8].

1. What are “Appropriate Cases” – Penalising Both Acts Omissions

In early cases, including *Rudul Sah*, the Court granted compensation where positive and deliberate actions (as opposed to mere inaction, or omissions) of the State resulted in constitutional torts. However, the Supreme Court has clarified that not every violation of a fundamental right automatically constitutes a constitutional tort. For instance, in *MC Mehta v Union of India*, a five-judge bench cautioned against awarding compensation in all cases involving violations of fundamental rights.³⁸ The Court held:

“The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words “in appropriate cases” because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded... The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position...”³⁹ (emphasis supplied)

However, what constitutes an 'appropriate cases' for granting compensation remains unclear. A key question is whether mere *omissions* by the State, even without deliberate intent, fall within the scope of constitutional torts. Judicial trends suggest that the answer is in the affirmative, as courts have increasingly held the State liable for acts of negligence and failure to fulfil constitutional obligations, regardless of intent, as is shown in the next section.

2. Negligence: Do Mere Omissions Lead to Compensation?

In *State of Nagaland v Moba Changkai*, the Manipur High Court considered a plea for Rs. 25 lakh in compensation, alleging negligence by the State in failing to provide adequate healthcare facilities near the petitioner's residence.⁴⁰ The petitioner claimed that the absence of accessible medical services resulted in the death of his wife and unborn child and sought additional reliefs for the welfare of

38 *M.C. Mehta v Union of India* (1987) 1 SCC 395.

39 *ibid* [7].

40 *State of Nagaland v Moba Changkai* (2021) SCC OnLine Gau 2552.

surviving children and improvements in healthcare infrastructure.⁴¹ While the Court emphasized that “not every minor violation of fundamental rights” warrants compensation and clarified that a “mere coincidental or remote cause” would not justify invoking its compensatory jurisdiction, it still awarded Rs. 5 lakh as compensation.⁴²

Similarly, in *Kamalbai v State of Maharashtra*, the Bombay High Court awarded Rs. 50,000 for the State's failure to locate the petitioner's missing husband despite efforts over a decade.⁴³ The Court described it as a “sad state of affairs” and held that the omission of a duty vested in the State was sufficient to justify compensation.⁴⁴ The Gauhati High Court adopted a similar stance in *Kaphot Dam v State of Assam*, where a woman sought directions to produce her husband, who had been kidnapped.⁴⁵ The Court ruled that malice or intent was not necessary to establish liability.⁴⁶ It emphasized that even if the failure arose from inadequate resources to tackle insurgent activity, the State's obligation to protect citizens remained undiminished. Thus, the State was held liable for compensation for the amount of Rs. 10 lakh.

In most cases of negligence, it is not the deliberate action of the State that leads to a grievance by the petitioner, but an *omission* to act that leads one to come to

41 ibid [4]. The petitioner argued, “Alleging utter lack of health infrastructure in the village, various health care projects existing only on paper, *negligence on the part of the authorities to provide necessary healthcare and services in the village*, the petition has been filed for improving the medical infrastructure in the village and for award of Rs. 10,000,000 as an exemplary compensation on account of the death of the mother and for ensuring the health and education of the surviving children and other reliefs relating to health care services which are quite comprehensive in nature.” (emphasis added).

42 ibid [46].

43 *Kamalbai v State of Maharashtra* (2021) SCC OnLine Bom 3694.

44 ibid [14]. The Court held, “For the last 13 years, the petitioner is fighting to secure presence of her husband. The State machinery has failed to produce the petitioner's husband, even after a decade, it is sad state of affairs on the part of State machinery... By taking into consideration peculiar facts and circumstances of the case and the time spent by the petitioner almost more than a decade to exercise fundamental right guaranteed under the Constitution, we are of the considered view to award Rs. 50,000/- (Rupees Fifty Thousand Only) to the petitioner by way of exemplary costs.”

45 *Kaphot Dam v State of Assam* (2019) SCC OnLine Gau 5633.

46 ibid [23]. The Court held, “Though, the fault may not be deliberate, or it may be for reasons like lack of availability of adequate manpower and infrastructure to deal with the activities of the insurgents in the remote parts of the State, yet the constitutional obligation of the State to ensure safety and security of the citizens cannot be denied...thus if the failure of the State to secure the safety of the citizens for any reason leads to loss of life of a citizen, the State will have to compensate for the loss of life. It is under this premise that compensation under the public law remedy has been recognized by the courts in India.”

the Court. An analysis of 27 cases involving claims of negligence shows that courts successfully granted compensation in 22 cases. In fact, the highest compensation in the dataset of Rs. 66.85 lakhs was also awarded in a case of negligence by authorities, where death resulted from electrocution.⁴⁷ This suggests that negligence, often arising from omissions rather than deliberate intent, has increasingly been recognized as sufficient to establish liability under constitutional torts.

3. 'Lawful Detention' or Constitutional Tort

Another category of cases that stands out is illegal detention, which can be divided into two types. The *first* involves cases where the police detain a person without legal authority, for which compensation is generally justified and often awarded.⁴⁸ The *second*, and more complex, involves cases where a person is lawfully convicted by a magistrate or court, later acquitted after years of imprisonment, and then seeks compensation. While it is a well-settled principle that a judicial decision cannot violate fundamental rights, courts have been divided on whether compensation should be granted in the second category of cases.

In *Chandresh Marskole v State of MP*, the High Court awarded Rs. 42,00,000 as compensation, recognizing that the accused spent over thirteen years in jail before being acquitted.⁴⁹ Despite the Sessions Court following the procedure established by law, the High Court emphasized the unique circumstances of the case and the prolonged deprivation of liberty as the justification to grant compensation.⁵⁰

However, in *Jamini Kanta Mondal v State of West Bengal*, the Calcutta High Court took a contrary view.⁵¹ It distinguished between 'lawful detention' and 'unlawful detention', holding that the petitioner's detention was in accordance with the procedure established by law and could not be deemed illegal, thereby refusing

47 *Kaneez Fatima v State of Uttar Pradesh* (2022) SCC OnLine All 2030.

48 *Suniitha v State* (2022) SCC OnLine Mad 5278; *Kadek Dwi Ani Rasmini v K. Natarajan, Inspector of Police* (2019) SCC OnLine Mad 23; *Imtiyajbi v State of Maharashtra* (2019) SCC OnLine Bom 1722.

49 *Chandresh Marskole v State of Madhya Pradesh* (2022) SCC OnLine MP 5881.

50 *ibid* [79]. The Court held, "In view of what we have held hereinabove, the fact that the Appellant has spent more than thirteen years awaiting justice and, in the facts and circumstances unique to this case, we award the Appellant a compensation of Rs. 42,00,000/- (rupees forty two lakhs), which shall be paid by the State within ninety days from the date of this order."

51 *Jamini Kanta Mondal v State of West Bengal* (2023) SCC OnLine Cal 3472.

compensation.⁵² Similarly, the Allahabad High Court in *Upendra v State of Uttar Pradesh* expressed frustration over the lack of a statutory framework to award compensation in such cases.⁵³ While acknowledging the injustice of the petitioner spending 13 years in prison before being released, the Court stated that it was “helpless” in granting compensation due to the absence of clear legal provisions.⁵⁴

Interestingly, the Supreme Court has also recognised the need for a specific legislation on this aspect. In *V Senthil Balaji v ED*, while granting bail to a politician hailing from Tamil Nadu, a bench of Justice Oka and Masih JJ. recognised in *obiter dicta* that cases of “clean acquittals” may give rise to compensation claims under Article 21.⁵⁵ A year later, a three judge bench of the Supreme Court acquitted a convict on death row and labelled it as a “clean acquittal”.⁵⁶ After relying on the *obiter* in *Senthil Balaji*, the Court, speaking through Karol J. expressly noted that the “day of reckoning” when compensation could be provided in cases of clean acquittal had not arrived, yet when it does, it would “not be breaking new ground but only affirming our commitment to the constitutional guarantee of Right to Life under Article 21”⁵⁷

Yet, the Supreme Court has taken a conflicting stance in *Mahabir v State of Haryana* wherein a division bench, speaking through Pardiwala J., awarded compensation of 5 lakh to the three accused persons whose acquittal was wrongfully overturned by the HC in revisional jurisdiction.⁵⁸ However, in *Mahabir*, the Court made no comments on the factual matrix being a “clean acquittal.” Similarly, in

52 *ibid* [10]-[22]. The Court held, “In the case on hand the petitioners were taken into custody at the stage of investigation and subsequently they were released on bail. The petitioners were found not guilty after trial. The detention of the petitioner was, thus, in accordance with the procedure established by law and the same cannot, by any stretch of imagination, be said to be illegal or unlawful...Since the detention of the petitioners cannot be said to be unlawful or illegal, this Court is of the considered view that no direction for payment of compensation should be passed in the case on hand.”

53 *Upendra v State of Uttar Pradesh* (2024) SCC OnLine All 6343.

54 *ibid* [30]. The Court held, “The appellant has already undergone about 13 years of imprisonment before being released on bail on 21-10-2022 for no fault on his part for which he is entitled to heavy compensation from State, but due lack of statutory framework, we are helpless.”

55 *V. Senthil Balaji v Deputy Director, Directorate of Enforcement* (2024) SCC OnLine SC 2626 [28]. The Court noted, “...In such cases of clean acquittal, crucial years in the life of the accused are lost. In a given case, it may amount to violation of rights of the accused under Article 21 of the Constitution which may give rise to a claim for compensation.”

56 *Kattavellai @Devakar v State of Tamil Nadu* (2025) SCC OnLine SC 1439 [46].

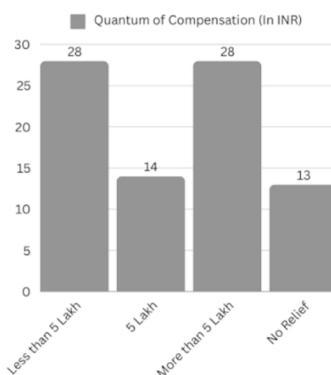
57 *ibid*.

58 *Mahabir v. State of Haryana* (n 1).

Nambi Narayanan v Siby Matthew, the Court granted a sum of Rs. fifty lakh to Mr. Narayanan after recognizing that he was wrongfully arrested despite there being no finding of a “clean acquittal.”⁵⁹ Thus, the Supreme Court’s jurisprudence appears paradoxical: while one would expect compensation to be granted at the very least in cases of clean acquittal, the Court has often denied it even there, yet in other cases where no such finding exists, it has been generously awarded.⁶⁰ Such cases, though few and far in between, highlight the inconsistency in judicial reasoning when addressing claims of wrongful imprisonment following lawful convictions.

B. Quantum of Compensation and Judicial (In)Discretion

In 70 out of 83 cases, the Court agreed to grant compensation to petitioners. The following bar graph highlights the trend using 5 lakh as a benchmark figure.



In terms of absolute numbers, the quantum of compensation awarded in constitutional tort cases varies massively, ranging from as low as twenty-five thousand (25,000) to as high as sixty-six lakhs and eighty-five thousand (66,85,000). However, this wide range of awards highlights significant inconsistencies, even in cases with similar factual matrices.

A comparison of two cases illustrates this disparity. In *Sumit Kumar v State of Bihar*, heard before the Patna High Court, the petitioner was illegally detained for thirty-six days. The Court awarded a substantial compensation of Rs. five lakh (5,00,000), reflecting the seriousness of the violation despite the relatively short period of detention.⁶¹ In stark contrast, in *Jagdish v State of Madhya Pradesh*, the

59 *S. Nambi Narayanan v Siby Matthews* (2018) 10 SCC 804 [43].

60 Though one may fairly argue that Mr. Naryanan’s case was one where the State actively went after him with an alleged vendetta, and is thus qualitatively different.

61 *Sumit Kumar v State of Bihar* (2020) SCC OnLine Pat 2700.

petitioner faced illegal detention for more than twelve years, yet the Court granted only Rs. three lakh (3,00,000) as compensation.⁶²

This striking disparity raises fundamental questions about the principles guiding the quantum of damages in constitutional tort cases. While *Sumit Kumar* appears to emphasize the punitive and deterrent objectives of compensation, *Jagdish* seems to adopt a more conservative and remedial approach, offering merely token relief for a far more egregious violation. Such inconsistencies highlight the lack of a coherent framework for determining compensation, leaving outcomes largely dependent on judicial (in)discretion. In neither of the two cases did the Courts provide any reasons for the quantum of compensation awarded.

V: THE NEED TO JUSTIFY QUANTUM OF COMPENSATION: GOING BY THE “TEMPER OF THE COURT”

A review of the dataset reveals that there is no clear theory or jurisprudential basis guiding the grant of compensation in constitutional tort cases. Courts oscillate between justifications such as deterrence, palliative relief, exemplary damages, and the need to “apply balm to the wounds” of petitioners. This inconsistency is reflected in both the reasoning offered and the quantum of compensation awarded.

In *Pankaj Kumar Sharma v Govt of NCT of Delhi*, the Court emphasized deterrence, stating that “a meaningful message must be sent to the authorities that police officers cannot be law unto themselves.”⁶³ Similarly, in *Puli Raju v Govt of AP*, the Andhra Pradesh High Court justified awarding compensation to deter state authorities from similar misconduct.⁶⁴ The idea of deterrence also underpins judgments directing personal liability for officers. In six out of the eighty-three cases, the Court expressly held individual officers liable instead of imposing costs on the state.⁶⁵ In others, the government retained the option to recover compensation

62 *Jagdish v State of Madhya Pradesh* (2021) SCC OnLine MP 4117.

63 *Pankaj Kumar Sharma v Govt. of NCT of Delhi* (2023) SCC OnLine Del 6215 [14]. The Court also notes, “A punishment of censure which is not likely to have any effect on the career of the police officers will not be a sufficient deterrent to the officer. The censure should be of such nature that other officers too must not emulate such actions in future.”

64 *Puli Raju v Govt of Andhra Pradesh* (2019) SCC OnLine TS 3477.

65 For instance, see *Anilkumar A.B v State of Kerala* (2022) SCC OnLine Ker 1830 [37], the Court noted, “Therefore, the State should pay the compensation to the petitioners in this case and the same should be recovered from the persons, who are responsible for the illegal confinement and illegal registration of cases against the petitioners in these writ petitions. The tax paying citizens should not be burdened with this liability.” Similar observations are made in *Kuldeep v State of Karnataka* (2023) SCC OnLine Kar 3 [32], the Court notes, “The State shall recover the compensation paid to the petitioner from the salary of the officers found guilty in the departmental enquiry.” (emphasis added).

from erring officials after conducting disciplinary inquiries. For instance, in *Re: Directions in the matter of Demolition of Structures* the Supreme Court stated that the responsible officers would bear the costs of restitution and damages personally.⁶⁶

While these cases suggest that deterrence forms the primary rationale for awarding compensation, several other judgments present a contrasting perspective. In *Saroj Devi v State of Bihar* (2023), the Court emphasized that compensation should focus on the compensatory and not punitive aspect. The Court held that the purpose of providing compensation is a means to “apply balm to the wounds” of the petitioner rather than “punish” the transgressor.⁶⁷ This focus on redress rather than retribution appears in numerous other judgments, further complicating the theoretical foundation of constitutional torts.

Where does this leave us? The central difficulty with India's constitutional-tort jurisprudence is the vast, unguided discretion judges exercise when fixing damages. It is because the remedy is framed as “compensation,” courts instinctively borrow the common-law idea that damages must mirror the harm suffered. Yet, as Singh and Jha note, that premise collapses in public-law cases wherein constitutional injuries (unlawful detention, custodial death etc) do not lend themselves to precise monetary valuation, especially when the factual record is disputed.⁶⁸ In practice, judges must put a price on dignity, autonomy, or lost years of liberty, all while the standard evidentiary tools of tort litigation are unavailable in writ proceedings.

Cass Sunstein highlights another layer of the problems where judges, under pressure to decide quickly, reason at “the lowest level of abstraction,” converging on the same outcome but justifying it in markedly different ways.⁶⁹ Indian constitutional tort jurisprudence illustrates this perfectly. One bench invokes deterrence, another speaks of punitive damages, a third stresses *restitutio in integrum*, yet each fixes a sum that seems largely intuitive. With no principled yardstick, the only discernible guide is what Karl Llewellyn called the “temper of

66 *In Re Directions in the Matter of Demolition of Structures* (n 5) [97].

67 *Saroj Devi v State of Bihar* (2023) SCC OnLine Pat 4359 [19]. The Court held, “In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender”. See also *Rama Nand Rai v State of Bihar* (2020) SCC OnLine Pat 2427.

68 Singh and Jha (n 14).

69 Cass Sunstein, 'On Analogical Reasoning' (1993) 106(3) Harvard Law Review 741; Cass Sunstein, 'Incompletely Theorized Agreements' (1995) 108(7) Harvard Law Review 1733.

the court" i.e., the judges' felt sense of justice in the particular case.⁷⁰ Although this flexibility is often praised for delivering swift relief where ordinary tort law fails, it does not come without its own costs. Rehan Abeyratne warns that constitutional-tort actions risk "over-constitutionalising" routine disputes by elevating every administrative lapse into a rights violation, portraying the lower judiciary as slow or corrupt, and favouring results over procedure, or ends over means.⁷¹ The next section highlights two possible solutions to this problem.

VI. PROPOSALS FOR MODEST REFORMS AND UNANSWERED QUESTIONS

This inconsistency arises because, as courts have acknowledged, there is barely any guidance on how to determine the quantum of compensation.⁷² This section provides two possible solutions: *first* the multiplier method for cases involving death or serious injury, and *second*, Jason Varuhas' framework of considering violations of fundamental rights as "actionable *per se*" for all other violations.

A. The Multiplier Method: Death or Serious Injury

While the objective of providing relief remains laudable, courts remain divided on the theoretical justifications for granting compensation. One reason courts often lean toward the multiplier method is to do away with the considerable variation and inconsistency in assessing compensation and also to bring uniformity and consistency. The multiplier method is used to calculate how much money should be given as compensation for a person's death. The working of the multiplier method is:

1. First, the court figures out the annual financial support (called the multiplicand) that the deceased was providing to their dependents.

70 Karl Llewellyn, 'Remarks on the Theory of Appellate Decision and the Rules or Canons of About How Statutes are to be Construed' (1950) 3 Vanderbilt Law Review 395.

71 Rehan Abeyratne, 'Ordinary Wrongs as Constitutional Rights: The Public Law Model of Torts in South Asia' (2018) Texas International Law Journal 1.

72 *Yusub v State of Karnataka* (2022) SCC OnLine Kar 1721 [64]. The Court recognised "The compensation which is required to be awarded in such cases would have to be determined on a case-to-case basis. *There being no guidelines as such which are in place for application in the present matter*". Similarly, in *Konto Warisa v Union of India* (2022) SCC OnLine Gau 2113 the Court recognised in [106], "*Thus, a cursory glance of the decisions referred to above, would show that there has been no uniformity as regards the quantum of compensation awarded and it has differed from case-to-case.*" (emphasis added).

2. Then, this amount is multiplied by a number (multiplier) based on the age of the deceased or the dependents, whichever is higher.
3. This multiplier is chosen based on how long the dependents are expected to need financial support and how much money would be needed if it were invested at a steady interest rate to provide that support over time.
4. The idea is that this money should not only provide yearly financial support but also run out by the time it's no longer needed.

The multiplier method has been well-recognized in motor-accident cases.⁷³ The Allahabad High Court has favoured the multiplier method even for constitutional torts, describing it as a "logically sound and legally well-established method of ensuring a 'just' compensation for violation of fundamental rights which will make for uniformity and certainty of the awards."⁷⁴ It further noted that "a departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases." Similarly, the Delhi High Court has also held that "there could be no fairer and better assessment method of computation of the compensation than the manner it is reckoned for assessment of compensation in case of death or injury in case of motor accidents."⁷⁵ Recently, the Kerala HC has also extended the use of the multiplier method beyond death, to cases of serious injuries sustained.⁷⁶

However, other Courts have expressly rejected the application of the multiplier method, citing its inapplicability in cases of writ-compensation. Generally, there is little reasoning provided except for assertions that, "The occurrence/accident in question, admittedly, is not covered by the provisions of the

73 For a detailed explanation of the multiplier method see *Sarla Verma v Delhi Transport Corporation* (2009) 6 SCC 121.

74 *Kaneez Fatima v State of Uttar Pradesh* (2022) SCC OnLine All 2030 [24]. The Court held, "The court must try to assess as best as it can, the loss suffered. The multiplier method is *logically sound and legally well-established method* of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. *A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases.*" (emphasis added).

75 *Promila Rastogi v DDA* (2024) SCC OnLine Del 7954 [32]. The Court noted, "there could be no fairer and better assessment method of computation of the compensation than the manner it is reckoned for assessment of compensation in case of death or injury..."

76 *Oriental Insurance Co Ltd v Abdul Khader* (2023) SCC OnLine Ker 5686.

Motor Vehicles Act, 1988" to reject the operation of the multiplier method to determine compensation.⁷⁷

In cases of death or serious bodily impairment, the Supreme Court has also turned to the multiplier-method. This was expressly recognized by the Supreme Court in *MCD v Uphaar Tragedy Victim Association*, wherein the Court expressly asked the Delhi HC Registrar to decide claims of compensation due to family of deceased persons from a fire accident in line with the multiplier method.⁷⁸ Similarly, in the recent case of *Sanjay Gupta v State of Uttar Pradesh*, the Supreme Court was concerned with a fire tragedy that occurred in 2006 and consequent demands for compensation being made for the victims. The Court initially appointed a Court Commissioner to decide on the quantum of compensation, but later asked the HC to appoint a judicial officer to decipher the exact amount of compensation, in line with the multiplier method.⁷⁹

To reiterate, in this methodology, the court first fixes the annual loss, then multiplies it by a factor taken from actuarial tables that already correct for inflation, interest, and the uncertainties of life. These tables are standard in personal-injury litigation and have been accepted by Courts in motor-accident cases. Bringing the same method into constitutional-tort litigation would let judges price future economic harm without resorting to guesswork, while still leaving room for a modest, reasoned uplift that marks the gravity of the constitutional violation. This approach helps provides a consistent and uniform framework. In the six cases where the multiplier method has been applied by Courts, the compensation granted has exceeded Rs. 5 lakh in all instances. From the perspective of citizens, the multiplier method appears beneficial in assessing wrongdoings systematically and predictably. Courts have awarded sums as high as Rs. 40 lakh and Rs. 66 lakh under this method, highlighting its ability to address egregious violations while maintaining fairness and structure.

77 *Nizam's Institute of Medical Sciences v Prasanth S. Dhanaka* (2009) 6 SCC 1 [92]. The Court records, "Mr. Tandale, the learned counsel for the respondent has, further submitted that the proper method for determining compensation would be the multiplier method. *We find absolutely no merit in this plea.* The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method." (emphasis added). See also *Saroj Devi v State of Bihar* (2023) SCC OnLine Pat 4359; *Rama Nand Rai v State of Bihar* (2020) SCC OnLine Pat 2427.

78 *MCD v Uphaar Tragedy Victim Association* (2011) 14 SCC 481.

79 *ibid* [66]-[76].

However, the multiplier method presupposes death or physical injury in its calculus, which makes it unusable for other cases such as illegal detention, where the injury may not be purely physical. For this reason, the next section argues another possible alternative to ensure consistency and fairness in reasoning and outcomes.

B. Constitutional Tort as “Actionable Per Se”

The Law Commission proposed a State-liability bill in 1956, the Supreme Court urged legislation as early as in *Kasturi Lal*, and Parliament tabled the Government (Liability in Torts) Bill in 1967, yet no statute has emerged in the five decades since. Constitutional tort, therefore, must be seen as a judicial response to this legislative vacuum, compelling the courts to craft practical remedies for citizens who suffer injury or loss rather than deny relief for want of a formal framework.⁸⁰ Yet, in providing relief, consistency must be maintained.

Another way to introduce a “method to the madness” i.e., to attempt to justify the Courts decision is to consider Jason Varuhas' analytical framework wherein fundamental-rights breaches are wrongs that are considered as “actionable per se” i.e., liability arises the moment the right is violated, and a baseline monetary award follows even when the claimant cannot prove economic loss.⁸¹ The key purpose of this award is *vindication* wherein the court publicly affirms that liberty and dignity are inviolable, then adds loss-based sums only where evidence justifies them.⁸² If Indian courts treated Article 21 infringements in this way, every successful writ petitioner would receive a principled vindictory sum, signalling that these rights are ends in themselves rather than negotiable items in a damages calculation. The basic “vindictory” sum must be provided simply for the violation, irrespective of any consequential loss so long as a violation of the fundamental right has been proved.

There are numerous ways to justify the vindictory sum. Varuhas argues that this may be considered as injury to feelings i.e., humiliation, distress, or loss of dignity. English employment tribunals rely on the *Vento* guideline bands, which place such harm in three monetary brackets (low, middle, and top). A judge begins with the band that best matches the facts and then nudges the figure up or down. In *Vento v Chief Constable of West Yorkshire Police*, the Court of Appeal drew up three

⁸⁰ *Kaushal Kishore* (n 6) [149].

⁸² Jason NE Varuhas, *Damages and Human Rights* (Hart Publishing 2016) 25.

guideline bands for “injury to feelings” awards.⁸³ The lower band, intended for isolated or relatively minor violations, runs from £500 to £6,600. The middle band, reserved for more serious but not extreme misconduct, covers awards between £6,600 and £19,800. The upper band spans £19,800 to £33,000, with sums above £33,000 left for truly exceptional cases.⁸⁴ Although subsequent inflation updates have nudged the figures upwards, the core structure wherein the judge start within a published bracket and justify any departure remains unchanged. It is because every court starts from the same table, comparable insults attract comparable sums, and outliers are easy to spot.⁸⁵

As for illegal detention, English false-imprisonment jurisprudence has developed a time-linked tariff that pays roughly £500 for the first hour of unlawful custody, about £3,000 for the first twenty-four hours, and a tapering daily rate thereafter.⁸⁶ Even if Indian courts debate the precise rupee conversion, adopting a published per-diem schedule would let anyone predict the starting point once the number of illegal custody days is known, replacing today's intuitive lump sums with reasoned figures.

Together, the *Vento* bands, the per-diem custody scale, and the multiplier tables supply the missing architecture for damages under Articles 32 and 226. They make the quantum predictable, oblige judges to explain any departure from the norm, and ensure that vindictory awards are significant yet principled rather than the product of raw judicial discretion.

C. The Future of Constitutional Tort Litigation: Do Not Throw Out the Baby with the Bathwater

Despite the chaos in India's constitutional-tort jurisprudence, this article is *not* an invitation to abandon the remedy altogether. Its purpose is to expose the doctrinal gap and then sketch a path toward coherence. Lawrence Rosenthal points out that, whatever one thinks of the traditional justifications for constitutional tort liability (deterrence, corrective justice, or palliative relief), the remedy can be

⁸³ *Vento v Chief Constable of West Yorkshire Police* (No 2) [2003] ICR 318. For extending the *Vento* guidelines to claims of sexual harassment, see Ravi Chandran, 'Workplace Harassment: Persons Liable and Damages Payable under the Protection of Harassment Act 2014' (2015) 27 Singapore Academy of Law Journal 287.

⁸⁴ Jason NE Varuhas, *Damages and Human Rights* (n 82) 277. These bands are for assessment of damages for injured feelings in the discrimination context.

⁸⁵ *ibid.*

⁸⁶ *ibid.*

defended on straightforward political-economy grounds.⁸⁷ Elected officials seek the mix of spending and taxation most likely to secure their re-election, and any damages judgment that siphons funds away from electorally valuable projects therefore imposes a real “political price.”⁸⁸ Ordinary tort suits may add little to that calculus because voters already punish governments that neglect basic safety, but constitutional wrongs are different wherein fundamental rights do not rise or fall with majoritarian sentiment, so political accountability alone can never guarantee their protection.⁸⁹ In this setting, damages liability functions as a calibrated form of political deterrence. It should be preserved where it exerts meaningful pressure while being scaled back, through immunities, caps, or individual punitive exposure, in areas where ordinary politics already supplies discipline and public resources are finite.

Yet, this is not to say that Courts should not be circumspect in providing compensation without caring for due-process or providing arbitrary compensation. Some simple steps can be taken, even without a grand theory for justifying the compensation. For instance, courts should refrain from entertaining cases with disputed questions of fact. Although courts jurisprudentially agree that they should not address disputed facts, in practice, they often do. For instance, in *Deepak Sharma v State of Haryana*, the Punjab and Haryana High Court, despite recognizing the existence of disputed facts and remanding the matter to a civil court, provided an innovative remedy by granting “interim compensation” of Rs. 5 lakh.⁹⁰ It further noted that “there shall be no recovery in case compensation assessed (in the trial court) is less than the interim compensation ordered above.” Similarly, in *Konto Warisa v Union of India*, the court disregarded a prior fact-finding inquiry and proceeded to grant damages.⁹¹

⁸⁷ Lawrence Rosenthal, 'A Theory of Governmental Damages Liability: Torts, Constitutional Torts, and Takings' (2007) 9(3) *Journal of Constitutional Law* 822, 840.

⁸⁸ For the functions and usefulness of constitutional torts, see also Ellen Rock, 'Fault and Accountability in Public Law' in Mark Elliott, Jason Varuhas and Shona Wilson Stark (eds) *The Unity of Public Law* (Hart Publishing 2018).

⁸⁹ Rosenthal (n 87) 840.

⁹⁰ *Deepak Sharma v State of Haryana* (2024) SCC OnLine P&H 5463 [3]-[6]. The Court noted, “The present case is being disposed of at this stage as it raises disputed questions of facts which cannot be ascertained in writ jurisdiction... However, in order to meet the financial hardship of the petitioners, an interim compensation of Rs. 5 lakhs is awarded to the petitioners.” (emphasis added).

⁹¹ *Konto Warisa v Union of India* (2022) SCC OnLine Gau 2113.

In cases involving custodial deaths, courts should rely on other evidence, such as inquest reports by magistrates, to resolve factual disputes. Additionally, appointing *amicus curiae* and court commissioners can help ascertain facts and ensure that procedural hurdles do not obstruct the delivery of remedies.⁹² These suggestions are, of course, not infallible. However, as Solum highlights, “procedural justice” and “consistency” are critical to maintaining faith in the judicial system.⁹³

VII. CONCLUSION

To conclude, the only consistent trend in constitutional tort jurisprudence is inconsistency. This paper's analysis of eighty-three cases from 2019–2024 reveals no common framework governing when compensation is awarded, how liability is determined, or what quantum of damages is deemed appropriate. Courts oscillate between penalizing both acts and omissions by the State, even without intent, and remain unclear on what constitutes an “appropriate case” for relief. The nature of claims varies widely—from illegal detention and custodial violence to negligence. Similarly, the quantum of compensation similarly reflects arbitrariness, ranging from Rs. 25,000 to Rs. 66 lakh. While some courts adopt the multiplier method from motor accident cases to promote consistency, others reject it without adequate reasoning.

This inconsistency raises a larger question of ends over means—whether courts focus on achieving relief for petitioners without adequately justifying the theoretical foundations of their decisions. Compensation is justified alternately as deterrent, exemplary, or palliative, with little effort to reconcile these competing rationales. The dataset further reveals how courts impose personal liability on officials in some cases while shifting responsibility to the State in others, often without explaining the basis for this distinction. In short, there is an urgent need to provide a method to the madness of providing compensation in constitutional tort

92 In *Kehar Singh v Govt. of NCT of Delhi* (2021) SCC OnLine Del 4198, the Court appointed an *amicus* to help ascertain disputed questions of fact.

93 Lawrence B. Solum, 'Procedural Justice' (University of San Diego Public Law and Legal Theory Research Paper Series, 2004) <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1001&context=lwps_public> accessed 9 January 2025.

ANNEXURE

Case Name and Citation)	Court	Nature of Right	Brief Facts	Compensation Awarded (Yes/No)	Range of Compensation: < ₹5 Lakh = ₹5 Lakh > ₹5 Lakh (In INR)	Disputed Question of Fact	Persons 1	Nature of Liability - State	Reasoning for Quantum
<i>Pili Raju v Govt of AP</i> 2019 SCC OnLine TS 3477	Telangana High Court	Article 21	Negligence (Medical)	Yes	More than 5 Lakh	8 Lakh	No	State	NA
<i>Durga Meena (Smt) v State of Rajasthan</i> 2019 SCC OnLine Raj 3839	Rajasthan High Court	Article 21	Illegal Detention	Yes	More than 5 Lakh	5 Lakh + 10,000 (Costs)	No	State	NA
<i>Deepak Sharma v State of Haryana</i> 2024 SCC OnLine P&H 5463	Punjab and Haryana High Court	Article 21	Negligence (Electrocution)	No	NA	NA	Yes	State	NA

<i>Hardam Singh v State of Punjab and Haryana</i> 2019 SCC OnLine P&H 6373	Punjab and Haryana High Court	Article 21	Negligence (Custodial)	Yes	Less than 5 Lakh	3,36,000 - 2,88,000 (Range of compensation; Multiple petitioners)	Salary x Multiplier	State
<i>Saroj Devi v State of Bihar</i> 2023 SCC OnLine Pat 4359	Patna High Court	Article 21	Negligence (Death Due to Falling in Open Drain)	Yes	More than 5 Lakh	10 Lakh	Yes	State
<i>Sumit Kumar v State of Bihar</i> 2020 SCC OnLine Pat 2700	Patna High Court	Article 21	Illegal Detention (35 Days)	Yes	5 Lakh	5 Lakh	No	State
<i>Thakur Rama Raman v Patna Municipal Corporation</i>		Article 21	Other (Illegal Demolition)	Yes	More than 5 Lakh	5 Lakh + 1 Lakh (Costs)	Yes	State

2019 SCC OnLine Pat 1695	<i>Amar Nath Paddar v State of Bihar 2021</i> SCC OnLine Pat 748	Patna High Court	Article 21	Other (Killed in Police Firing) Yes	More than 5 Lakh	10 Lakh	Yes	State	NA
<i>Rama Nand Rai v State of Bihar 2020 SCC OnLine Pat 2427</i>		Patna High Court	Article 21	Other (Killed in Police Firing) Yes	More than 5 Lakh	10 Lakh	No	State	Multiplier
<i>Madhav Soren v State of Orissa 2022 SCC OnLine Ori 2459</i>		Orissa High Court	Article 21	Negligence (Wall Collapsed in Government School, Led to Death of Student)				State	NA

<i>Purna Chandra Mohapatra v State of Odisha</i> 2021 SCC OnLine Ori 1937	Orissa High Court	Article 21	Custodial Death/Violence	Yes	5 Lakh	5 Lakh	No	State	NA
<i>Farida v State of Manipur</i> 2023 SCC OnLine Mani 234	Manipur High Court	Article 21	Custodial Death/Violence	Yes	5 Lakh	5 Lakh	No	State	NA
<i>State of Manipur v Baby Khushi Kumari</i> 2022 SCC OnLine Mani 451	Manipur High Court	Article 21	Negligence (Electrocution)	Yes	More than 5 Lakh	10 Lakh	No	State	NA
<i>State of Manipur v Nongthombam 2019 SCC OnLine Mani 27</i>	Manipur High Court	Article 21	Negligence (Medical)	Yes	Less than 5 Lakh	25 Thousand	Yes	State	NA
<i>State of Manipur v</i>	Manipur High	Article	Negligence	Yes	More than 5	10 Lakh	No	State	NA

<i>Baby Timchonghoi Mate 2022</i> SCC OnLine Mani 440	Court 21	(Electrocution)	Lakh			
<i>N.S. Ningchangla v State of Manipur 2020 SCC OnLine Mani 3</i>	Manipur High Court	Article 21	Negligence (Electrocution) No	NA	Yes	State NA
<i>K.S. Yaomila v State of Manipur 2020 SCC OnLine Mani 2</i>	Manipur High Court	Article 21	Negligence (Electrocution) No	NA	Yes	State NA
<i>P. Dearson v State of Manipur 2020 SCC OnLine Mani 4</i>	Manipur High Court	Article 21	Negligence (Electrocution) Yes	More than 5 Lakh	No	State NA

<i>Konjengbam (O) Pishak Devi v State of Manipur 2019 SCC OnLine Mani 283</i>	Manipur High Court	Article 21	Custodial Death/Violence	Yes	More than 5 Lakh	6 Lakh	No	State	NA
<i>Kongbrailat pam Ongbi Dasumati Devi v State of Manipur 2019 SCC OnLine Mani 165</i>	Manipur High Court	Article 21	Negligence (Electrocution)	Yes	5 Lakh	5 Lakh	Yes	State	NA
<i>Baby Khushi Kumari v State of Manipur 2020 SCC OnLine Mani 238</i>	Manipur High Court	Article 21	Negligence (Electrocution)	Yes	More than 5 Lakh	10 Lakh	No	State	NA
<i>All Manipur School Student Transporter</i>	Manipur High Court	Article 21	Other (Plea to Provide Interest Free Loan for Studying)	No	NA	NA	NA	NA	NA

<i>Association (AMSSTA) v State of Manipur 2020 SCC OnLine Mani 291</i>	<i>Rathinam v State of Tamil Nadu 2023 SCC OnLine Mad 191</i>	Madras High Court	Article 21	Illegal Detention (257 days)	Yes	Less than 5 Lakh	3 Lakh 50 Thousand	No	State	NA
<i>Rathinam v State of Tamil Nadu 2021 SCC OnLine Mad 8589</i>	Madras High Court	Unclear	Others (Right to Property)	Yes	Less than 5 Lakh	1 Lakh	No	State	NA	
<i>Manokaran v State of Tamil Nadu 2022 SCC OnLine Mad 4697</i>	Madras High Court	Article 21	Illegal Detention (128 days)	Yes	5 Lakh	5 Lakh	No	State	NA	

<i>Jayalakshmi v State of Tamil Nadu</i> 2021 SCC OnLine Mad 16513	Madras High Court	Unclear to Property	Others (Right to Property)	Yes	Less than 5 Lakh	50 Thousand	No	State NA
<i>Sumitha v State</i> 2022 SCC OnLine Mad 5278	Madras High Court	Article 21	Illegal Detention (Number of Days Unclear)	Yes	Less than 5 Lakh	25 Thousand	No	State NA
<i>Kadek Dwi Ani Rasmimi v K. Natarajan, Inspector of Police</i> 2019 SCC OnLine Mad 23	Madras High Court	Article 21	Illegal Detention (26 days) (Also Alleged Malicious Prosecution)	Yes	Less than 5 Lakh	2 Lakh 50 Thousand	No	Personal NA
<i>Malliga v Secretary to Government Home Department Government of Tamil</i>	Madras High Court	Article 21	Custodial Death/Violence	Yes	Less than 5 Lakh	3 Lakh	No	State NA

Nadu Secretariat 2021 SCC OnLine Mad 15954											
<i>Kamlesh v State of MP 2020 SCC OnLine MP 271</i>	Madhya Pradesh High Court	Article 21	Illegal Detention (Four Years)	Yes	5 Lakh	5 Lakh	No	State	NA	Salary x Years of Illegal Detention	
<i>Chandresh Marskole v State of MP 2022 SCC OnLine MP 5881</i>	Madhya Pradesh High Court	Article 21	Illegal Detention (Four Thousand Days; Thirteen Years)	Yes	More than 5 Lakh	42 Lakh	No	State	NA	Salary x Years of Illegal Detention	
<i>Jagdish v State of MP 2021 SCC OnLine MP 4117</i>	Madhya Pradesh High Court	Article 21	Illegal Detention (12 Years and 6 Months)	Yes	Less than 5 Lakh		No	Personal	NA	1 Lakh and 3 Lakh (to two petitioners respectively)	

<i>Anilkumar A.B v State of Kerala 2022 SCC OnLine Ker 1830</i>	Kerala High Court	Article 21	Illegal Detention (50 Days)	Yes	Less than 5 Lakh	2 Lakh 50 Thousand	No	Personal	NA
<i>State of Kerala v Saffa 2021 SCC OnLine Ker 3283</i>	Kerala High Court	Article 19(1)(e) and 21	Other (Illegal Acquisition of Land)	Yes	Less than 5 Lakh	2 Lakh	No	State	NA
<i>Sarojani Surendran v State of Kerala 2019 SCC OnLine Ker 1049</i>	Kerala High Court	Article 21	Custodial Death/Violence	No	NA	NA	Yes	NA	NA
<i>Devipriya (Minor), Represented in These Proceedings by her Father v State of Kerala 2021 SCC OnLine Ker 7437</i>	Kerala High Court	Article 21	Other (Police Violence)	Yes	Less than 5 Lakh	1 Lakh 75 Thousand	No	State	NA

State of Kerala v Girveesh Kumar 2024 SCC OnLine High Court 3475	Kerala Article 21	Illegal Detention (Ten Years)	Yes	5 Lakh	5 Lakh	No	State	NA
T.N. Chandrashekar v Government of Karnataka, by its Chief Secretary 2024 SCC OnLine Kar 1970	Karnataka Article 21	Other (Illegal Demolition)	Yes (But after Quantification by the State)	NA	NA	NA	NA	NA
Supriti Isinwar Devate v State of Karnataka 2022 SCC OnLine Kar 1133	Karnataka Article 21	Other (Illegal Handcuffing)	Yes	Less than 5 Lakh	2 Lakh	No	State	NA

<i>Yusub v State of Karnataka 2022 SCC OnLine Kar 1721</i>	Karnataka High Court	Article 21	Other Death of Child Due to Stray Dog Menace)	Yes	More than 5 Lakh	10 Lakh	No	State	NA
<i>Kuldeep v State of Karnataka 2023 SCC OnLine Kar 3</i>	Karnataka High Court	Article 21	Illegal Detention (Number of Days Unclear)	Yes	Less than 5 Lakh	3 Lakh	No	State	NA
<i>X v ICC, ANI Technologies 2024 SCC OnLine Kar 102</i>	Karnataka High Court	Article 21	Other Renewal of License of OLA Cabs)	Yes	Less than 5 Lakh	1 Lakh	No	Personal	NA
<i>Birendra Singh v State of Jharkhand 2023 SCC OnLine Jhar 1256</i>	Jharkhand High Court	Article 21	Other (Harassment by Police)	Yes	Less than 5 Lakh	50 Thousand	No	State	NA

Case Name	High Court	Article	Legal Detention (1080 days)	Yes	5 Lakh	5 Lakh	No	State	NA
<i>Advocate Ali Mohammad Lone v Govt of Jammu and Kashmir</i> 2024 SCC OnLine J&K 267	Jammu and Kashmir High Court	Article 21	Illegal Detention (1080 days)	Yes	5 Lakh	5 Lakh	No	State	NA
<i>P.N. Sharma (deceased), through his legal representative v Union of India</i> 2023 SCC OnLine J&K 56	Jammu and Kashmir High Court	Article 21	Others (Illegal Eviction)	Yes	More than 5 Lakh	10 Lakh	No	State	Items worth 8 Lakh Lost While Evicting)
<i>Mohan Lal v State of HP</i> 2019 SCC OnLine HP 1810	Himachal Pradesh High Court	Article 21	Negligence (Building Collapsed; Leading to Property Damage)	No	NA	NA	Yes	NA	NA
<i>Nigma Devi v State of HP</i> 2022 SCC OnLine HP 4132	Himachal Pradesh High Court	Article 21	Other (Not Appointed to Government Job Despite Valid Qualifications)	Yes	More than 5 Lakh	20 Lakh	No	State	Approximate Salary if Petitioner Had Been Appointed

<i>Sabura Khatum v State of Assam</i> 2024 SCC OnLine Gau 1544	Gauhati High Court	Article 21	Custodial Death/Violence	Yes	Less than 5 Lakh	3 Lakh	No	State NA
<i>State of Nagaland v Moba Changkai</i> 2021 SCC OnLine Gau 2552	Gauhati High Court	Article 21	Negligence (Failure to Provide Necessary Healthcare Services)	Yes	5 Lakh	5 Lakh	No	State NA
<i>Manowara Begum v State of Assam</i> 2019 SCC OnLine Gau 5601	Gauhati High Court	Article 21	Other (Killed in Police Firing)	Yes	5 Lakh	5 Lakh	No	State NA
<i>Sabirri Brahma v</i>	Gauhati High	Article	Custodial	Yes	5 Lakh	5 Lakh	Yes	State NA

<i>Union of India</i> 2020 SCC OnLine Gau 4847	Court	21	<i>Death/Violence</i>					
<i>Kaphot Dam v State of Assam</i> 2019 SCC OnLine Gau 5633	Gauhati High Court	Article 21	Negligence (Failure to Protect Civilians)	Yes	More than 5 Lakh	10 Lakh	Yes	State
<i>Konto Warisa v Union of India</i> 2022 SCC OnLine Gau 2113	Gauhati High Court	Article 21	Custodial <i>Death/Violence</i>	Yes	More than 5 Lakh	20 Lakh	Yes	State
<i>Mamoniako Ny v State of Assam</i> 2021 SCC OnLine Gau 2584	Gauhati High Court	Article 21	Negligence (Failure to Protect Civilians)	No	NA	NA	NA	NA
<i>XXXX ...V Govt. of NCT of Delhi</i> 2024 SCC OnLine Del 2030	Delhi High Court	Article 21	Negligence (Medical)	Yes	Less than 5 Lakh	2 Lakh 91 Thousand	Yes	State

SCC OnLine Del 7954	Court	House Which Was Sold to the Petitioner, Causing Death					
<i>Kehar Singh v Govt. of NCT of Delhi</i> 2021 SCC OnLine Del 4198	Delhi High Court	Article 21	Negligence (Electrocution)	Yes	More than 5 Lakh	20 Lakh	No
<i>Sandeep Kumar v State (Govt. of NCT of Delhi)</i> 2019 SCC OnLine Del 11901	Delhi High Court	Article 21	Illegal Detention (Based on Procedure)	Yes	Less than 5 Lakh	50 Thousand	No
<i>Jilo v State of Chhattisgarh</i> 2023 SCC OnLine Chh 2243	Chattisgarh High Court	Article 21	Other (Killed in Police Firing)	No	NA	NA	Yes

State of Chhattisgarh v Nitin Aryan 2023 SCC OnLine Chh 5127	Chhattisgarh High Court	Article 21	Illegal Detention (1 Year and 6 Months)	No	NA	No	NA	NA
E.S. Beena v State of Chhattisgarh 2022 SCC OnLine Chh 1454	Chhattisgarh High Court	Article 21 and 19(1)(g)	Other (Unlawful Closure of Place of Business)	Yes	Less than 5 Lakh	50 Thousand	Yes	State NA
Nitin Aryan v State of Chhattisgarh 2021 SCC OnLine Chh 1636	Chhattisgarh High Court	Article 21	Illegal Detention (1 Year 6 Months)	Yes	Less than 5 Lakh	1 Lakh 87 Thousand	No	State NA
Ramkhilawan Dansena v State of Chhattisgarh	Chhattisgarh High Court	Article 21	Custodial Death/Violence	Yes	More than 5 Lakh	15 Lakh	No	State NA
Jamini Kanta Mondal v State of West	Calcutta High Court	Article 21	Illegal Detention (Number of	No	NA	NA	No	NA

<i>Bengal</i> 2023 SCC OnLine Cal 3472.			Days Unclear)				
<i>Mst. Rebeka Khanun Molla v State of West Bengal</i> 2024 SCC OnLine Cal 9246	Calcutta High Court	Article 21	Illegal Detention (Number of days unclear)	No (Directs CBI to Unearth Disputed Facts)	NA	Yes	NA
<i>Abhishek Maddineni v State of West Bengal</i> 2024 SCC OnLine Cal 1186	Calcutta High Court	Article 21	Other (Not Appointed to Government Job Despite Valid Qualifications)	Yes	5 Lakh	No	State
<i>Sunita Shukla v State of West Bengal</i> 2023 SCC OnLine Cal 957	Calcutta High Court	Article 21	Custodial Death/Violence	Yes	Less than 5 Lakh	2 Lakh	State

<i>Imtiyajbi v State of Maharashtra</i> 2019 SCC OnLine Bom 1722	Bombay High Court	Article 21	Illegal Detention (36 Days)	Yes	Less than 5 Lakh	50 Thousand	No	State	NA
<i>Sadiquabee Mohd. Usman Shaikh v State of Maharashtra</i> 2021 SCC OnLine Bom 3929	Bombay High Court	Article 21	Illegal Detention (5 Days)	Yes	Less than 5 Lakh	20 Thousand	No	State	NA
<i>Kamalbai v State of Maharashtra</i> 2021 SCC OnLine Bom 3694	Bombay High Court	Article 21	Negligence (Failure to Protect Civilians)	Yes	Less than 5 Lakh	50 Thousand	No	State	NA
<i>Sanjeevani v State of Maharashtra</i> 2021 SCC OnLine Bom	Bombay High Court	Article 21	Custodial Death/Violence	Yes	More than 5 Lakh	6 Lakh 32 Thousand	No	State	Multiplier

3704	<i>Arun v State of Maharashtra</i> 2020 SCC OnLine Bom 3655	Bombay High Court	Article 21	Illegal Detention (6 Days; Upon Grant of Bail, Petitioner Was Rearrested)	Yes	Less than 5 Lakh	50 Thousand	No	State	NA
	<i>Priyanka v State of Maharashtra</i> 2020 SCC OnLine Bom	Bombay High Court	Article 21	Custodial Death/Violence	Yes	More than 5 Lakh	8 Lakh	No	State	Multiplier
	<i>Pratibha Shinde v Principal Secretary, Public Health Department</i> 2021 SCC OnLine Bom 87	Bombay High Court	Article 21	Negligence (Medical)	Yes	5 Lakh	5 Lakh	No	State	NA
	<i>Meena v State of UP</i> 2019 SCC OnLine All 5300	Allahabad High Court	Article 21	Other (Unclear)	Yes	5 Lakh	5 Lakh	NA	State	NA

<i>Bheem Sen v State of U.P. 2019 SCC OnLine All 5199</i>	Allahabad High Court	Article 21	Negligence (Electrocution) Yes	More than 5 Lakh	40 Lakh 73 Thousand No	State	Multiplier
<i>Upendra v State of UP 2024 SCC OnLine All 6343</i>	Allahabad High Court	Article 21	Illegal Detention (13 Years) No	NA	NA	NA	NA
<i>Savitri Devi W/O Khani Lal Pasi v State of U.P. Thru Home Secy 2019 SCC OnLine All 7803</i>	Allahabad High Court	Article 21	Negligence (Medical) Yes	More than 5 Lakh	14 Lakh No	State	Multiplier
<i>Kameez Fatima v State of UP 2022 SCC</i>	Allahabad High Court	Article 21	Negligence (Electrocution) Yes	More than 5 Lakh	66 Lakh 85 Thousand No	State	Multiplier
<i>OnLine All 2030</i>							