

**STATUTORY COMPENSATION AND VICTIM COMPENSATION  
SCHEME**

**DISSERTATION**

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Thank you

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## **Table of abbreviations**

ACC - Accident and Compensation Cases

ACC(SC) - Accident and Compensation Cases (SC)

AIHC - All India High Court Cases

FAJ - All India Prevention of Food Adulteration Journal

AIR - All India Reporter

AIR(Mys) - All India Reporter (Mys)

ARC - Allahabad Rent Case

ALT(Cri) - Andhra Law Times (Criminal)

ALT(SC) - Andhra Law Times(SC)

ALD(Cri) - Andhra Legal Decision (Criminal)

ALD - Andhra Legal Decisions

ALD-SC - Andhra Legal Decisions (SC)

APLJ - Andhra Pradesh Law Journal

AnWR - Andhra Weekly Reporter

AD - Apex Decision

ARBLR - Arbitration Law Reporter

BC - Banking Cases

BC-SC - Banking Cases with court

BomCR(Cri) - Bombay Cases Reporter (Criminal)

BomCRSupp - Bombay Cases Reporter(Supp)

CLT(SC) - Cuttack Law Times (SC)

CWN - Calcutta Weekly Notes

DLT - Delhi Law Times

DLT(SC) - Delhi Law Times (SC)

DRJ - Delhi Reported Journal

### List of cases

- NIRBHAYA CASE 2012
- United India Insurance Co. Ltd. v. Patricia Jean Mahajan
- Arun Kumar Agrawal & Anr vs National Insurance Co. Ltd. & Ors on 22 July, 2010
- Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010 (10) SCALE 298
  
- Suresh & Anr vs State Of Haryana on 28 November, 2014
- Ashby v. White
- Thangarajan v. Union of India
- Krshna moopan vs. state of kerela
- Hari Kishan v. Sukhbir Singh
- Satya Prakash vs State on 11 October, 2013
- Balasaheb Rangnath Khade v The State of Maharastra, on 27 April, 2012
- Mohini vs The State (Govt. Of Nct Of Delhi)
- Jagdish Kaur & Anr. vs Balwan Khokhar & Ors.
- Ahmmed Kutty v. Abdulla Koya 2009 (6) SCC 660
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- Palaniappa Gounder v. Tamil Nadu, AIR 1977 SC 213
- Sarwan Singh v. State of Punjab
- P.P. Sah v. State of Bihar, AIR 1977 SC 704
- Balraj v. State of U.P(1994) 4 SCC 29
- Baldev Singh and Anr. v. State of Punjab

- Andhra Pradesh v. Polamala Raju @ Rajarao(2000) 7 SCC 75
- Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr
- Ankush Shivaji Gaikwad v. State of Maharashtra Criminal Appeal no. 689 of 2013
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- State of Rajasthan v. Sohan Lal and Ors(2004) 5 SCC 573
- Hindustan Times Ltd. v. Union of India,
- Director, Horticulture Punjab and Ors. v. Jagjivan Parshad, (2008) 5 SCC 539
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- Samaj Parivartana Samudaya v. State of Karnataka, Writ Petition No. (C) 562 of 2009.
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### Introduction

To ensure fair and effective administration of criminal law is foremost and essential in creating public faith and confidence in one of the pillars of government, that is, judiciary. The ultimate object of criminal law is to punish the accused and to protect the rights of individual.

In any welfare state it is the duty of the government that the rights of individuals are protected and principles of equity justice and good conscience are followed. With the evolution of societal norms and values, the ways of inflicting punishment have also evolved. Now compensation to victim is a preferred means to punish accused.

If we discuss about the evolution of concept of compensation it can be traced back from the ancient Sumeria approximately 2050 B.C. The Code of Hammurabi from 1750 B.C. had introduced the concept of compensation as a reward. Ancient Greek, Roman, Arab laws had also provided particular law of compensation.

The concept of might is right and an eye for an eye and tooth for a tooth was in existence and generally it was believed that the only way to compensate a person who has been victimized is to harming somebody in return so that he may not repeat the same in future. The feeling of vengeance was there.

But later it was realized that an eye for an eye will make the whole world blind and another way to treat the victim and accused has introduced.

Now the victim can be compensated by various ways like monetary compensation, imprisonment and recently in India the courts have started to order to plant trees as a punishment or as compensation. There is a case of New Delhi in which Delhi High Court has ordered a man to plant 50 trees as service towards environment within a month. The case was related to power theft case.

So the law is changing according to the needs of society. But it is seen that in India victim is a forgotten person and has been taken as granted and the focus is upon the offender. There are huge no of cases in which the accused gets the benefit of doubt and takes the advantages of loopholes of legal system.

There are human rights agencies which advocate the rights of accused and do not talk about the victim.

The recent example of this case is the ***NIRBHAYA CASE 2012*** (DELHI GANG RAPE CASE) even though the apex court have declared them guilty and awarded death sentence to them, there is no execution of the sentence till now and the advocates of accused are trying to delay the execution and leaving no stone unturned in protecting them. It amounts torture to her parent and to her family and they are also victim along with Nirbhaya. Who will compensate for the loss caused to her life and torture caused to her family? This calls for reforms in the criminal justice administration in India. ***Justice must not only be done, it must also seem to be done.***

Under present scenario if the court finds that offence has been committed against the accused yet it may discharge him in one of the following ground:-

- a) When no clue has been found to held him guilty during trial or investigation;
- b) No evidence has been found on crime scene or at any other place for holding him guilty;
- c) If criminal has taken advantage of the exceptions provided in Indian Penal Code as general exceptions.
- d) There may be case of mistake of fact.
- e) Taking advantages of loopholes of law.
- f) Benefit of doubt is given to accused.

In these cases the acquittal of accused does not give any solace to the victim. And in such cases no compensation is awarded to accused and it amounts to the denial of justice.

Thus the main aim of this study is to evaluate and analyze the compensation given to victims and victim compensation scheme / program in Indian context and to recommend suitable compensation scheme for India. in doing this topic the victim of crime in brief , victims and their kinds and statutory provisions regarding compensation have been taken into consideration.

## **Objective of the study**

- To study about the concept of compensation.
- How far compensation is justified to repair the loss or damages caused to victims.
- To study the evolution of concept of compensation in India as well as in world.
- To study the existing statutory provisions regarding compensation in India.
- To study the reports of committees regarding compensation.
- To study about Victim Compensation Scheme under the Code of Criminal Procedure.
- To give suggestions for the improvement in compensation given to victims.

## **Hypothesis**

- There is general feeling that compensation provided under different Acts in India is somewhere inadequate and is not justified according to present scenario.
- There is delay in execution of compensation award
- The introduction of concept of plea bargaining is a good in criminal administration system.

### **Scope of the study**

This study includes statutory as well as constitutional provisions with regard to compensation and case laws along with law journal. This study also includes how the concept of compensation can be made more effective in India. An attempt to check the loopholes of law is being done In this study. Suggestions were made in this study for the compensation to victims. In this study the provisions of victim compensation scheme of the Code of Criminal Procedure provided under various sections.

### **Research Methodology**

For the completion of this work the help of primary and secondary sources have been taken for the utilization and correction of data. The other sources of information shall include slandered reference books, law reports (AIR, SSC, (Cri)), committee and commission reports journal, magazines and newspaper.

The method used for this study is analytical, comparative, critical and comparative in nature. This study also undertakes the report of malimath committee.

## Chapter -2

### Concept of compensation

The word compensation has been derived from the Latin word 'compensatio' which means to weight against and that is similar to the word recompense.

*“Equity will not suffer a wrong to be without remedy”* it means according to the concept of equity there is no wrong of which there is no remedy and law also says that “ ubi jus ibi remedium” which says that there is no wrong to be without remedy.

Criminal Justice system, from its beginning, has been subjected to constant review and scrutiny owing to the dynamic changes of society, which has been occurring over the years. Since crime is an act against the public at large, so it is the responsibility of a state to punish wrongdoer. Hitherto, the State's focus would only lie on punishing an individual for any criminal acts committed by them. However, realizing the fact that the victim against whom the crime was committed, was put to irreplaceable pain and suffering and punishment alone was not completely serving the needs of victim, criminologists, penologist and jurist over the world started discussing on the idea that how the loss caused to the victim can be compensated , then the concept of victim compensation has been introduced to protect the rights of the victims and to support them financially.

According to **oxford dictionary**, **“compensation means to provide something to balance or reduce the bad effect of loss, injury or damage etc.”**

**According to Black's Law Dictionary**, **“comensation means payment of damages, or any other act that court ordes to be done by a person who has caused injury to any other and must therefore make the other whole”.**

In case of Arun kumar Agrawal vs.National insurance company limited that **Compensation** awarded does not become "just **compensation**" merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say the deceased aged 40 years having annual income of Rs.45,000 leaving his surviving wife and child), one Tribunal awards

Rs.10,00,000 another awards Rs.5,00,000, and yet another awards Rs.1,00,000, all believing that the amount is just, it cannot be said that what is awarded in the first **case** and the last **case** is just **compensation**. "Just **compensation**" is adequate **compensation** which is fair and equitable, on the facts and circumstances of the **case**, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of **compensation**. It is not intended to be a bonanza, largesse or source of profit.

The Court observed thus: - "The measure of damages in the **case** of breach of a stipulation by way of penalty is by S. 72 reasonable **compensation** not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such **compensation** as it deems reasonable having regard to all the circumstances of the **case**. Jurisdiction of the Court to award **compensation** in **case** of breach of contract is unqualified except as to the maximum stipulated; but **compensation** has to be reasonable, and that imposes upon the Court duty to award **compensation** according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive **compensation** from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of "actual loss or damages"; it does not justify the award of **compensation** when in consequence of the breach no legal injury at all has resulted, because **compensation** for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from breach.

**In United India Insurance Co. Ltd. v. Patricia Jean Mahajan, this Court held:-**

The purpose to compensate the dependants of the victims is that they may not be suddenly deprived of the source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be a just and fair **compensation**. But in **cases** where the amount of **compensation** may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may

be a **case** where, while applying the multiplier system, the lesser multiplier may be applied. In such **cases**, the amount of multiplicand becomes relevant. The intention is not to overcompensate.<sup>1</sup>

"The basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury."<sup>2</sup>

<sup>34</sup>In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds....."

The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by Rule of Law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated.

Right of access to justice under Article 39-A and principle of fair trial mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation. It is a paradox that victim of a road accident gets compensation under no fault theory, but the victim of crime does not get any compensation, except in some cases where the accused is held guilty, which does not happen in a large percentage of cases.

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<sup>1</sup> In United India Insurance Co. Ltd. v. Patricia Jean Mahajan

<sup>2</sup> Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010 (10) SCALE 298

<sup>3</sup> Constitution of India

<sup>4</sup> Suresh & Anr vs State Of Haryana on 28 November, 2014



## Evolution and origin of compensation

Compensation has been given to the victims from a very long time period that is from the period of Arab, Romans etc. The code of Hammurabi was the document in which the proper set of rules was made for the compensation.

After all this common law came into existence which introduced the concept of compensation in form of damages. There are two kinds of damages one is liquidated damages which court can ascertain and fix and another kind of compensation that is un liquidated damages which cannot be ascertained by the courts. But to get compensation the loss or injury must be foreseeable otherwise no compensation could be given.

The ancient Babylonian Code of Hammurabi (about 1775 BC) was the first code which provides compensation for crime victims. The Code he code defined that the government of particular area should have to pay compensation. In case of murder governor had to pay compensation to the heir of the victim. In the succeeding centuries, restitution to the victim by the offender replaced compensation of the victim by the State and now it is the responsibility of the state to make sure that compensation has been paid. But in middle age this concept was disappeared and victim had no remedy except to sue the accused and state was not bound by laws to compensate. The Anglo-Saxan “Wergild” the Hebrew law as reflected in the Book of Exodus, the law of the Franks and even the provision in our Criminal Procedure Code for the compounding of offences are other familiar examples of the principle of criminal compensation. In the early era of history, therefore, the emphasis was on compensation to the victims or the “spiritual” and material satisfaction of the victims rather than on punishment of the offender.

According to **Sir Henry Maine**: “Now the penal law of ancient communities is not the law of crimes, it is the law of wrongs, or. After the middle age, restitution as a concept separate from punishment seems to have been on the wane. Little as we know about crime today, even less was known then.

## Meaning and definition of victim

There can be several factors that tend to make any person victim and some of factors are namely, nature, society, energy, supply, motorization and criminality. Nature causes disasters such as earthquake, floods droughts and famine due to this a person can also be the victim of the act of God. Motorization and energy resources are causing innumerable traffic accidents on land, at sea, and in the air, apart from industrial and domestic accidents.

Victims can be categorized in two categories , criminological and non criminological. Last but not the least, the most important categories of victims is crime victims. The main thing that makes a person victim is pain caused to him due to commission of crime.“Victim is a person who is put to death or subjected to misfortune by another; one who suffers severely in body or property through cruel or oppressive treatment, one who is destined to suffer under some oppressive or destructive agency; one who perishes or suffers in health etc from some enterprise or pursuit voluntarily undertaken Under this definition, we can assume that both natural and legal persons, individuals and collective groups and the families and dependants of injured parties can also be victim.

While realizing the gravity of the problem **the United Nation General Assembly (UNGA) in 1985 adopted a „Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power.** The Declaration gives a comprehensive definition of a victim.

<sup>5</sup> According to declaration, Victims includes: Any person who, individually or collectively, have Simpairment of their fundamental rights, through acts or emissions that are in violations of criminal laws, including those laws prescribing criminal abuse of power.

The term victim is defined in Criminal Procedure Code 1973 section 2(wa) as “Victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the

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<sup>5</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the General Assembly on 29 November 1985.

accused person has been charged and the expression "victim" includes his or her guardian or legal heir.

The term victim is defined in Criminal Procedure Code 1973 section 2(wa) as "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.

<sup>6</sup>"Tears shed for the accused are traditional and 'trendy' but has the law none for the victim of crime, the unknown martyrs"?

This was remarked by the Hon'ble Justice VK Krishna Iyer regarding the condition of victims in India. The victim is almost a forgotten entity in the criminal system rather the irony is that the victim sets the wheel of justice moving by giving information to the state instrumentalities without which the entire system could collapse. But still, the role of victim in the overall process is insignificant.

It is the main goal of the law to protect individual's life, liberty, and property. The modern criminal law is supposed to represent the ambitions and norms of the society as well as to punish and reform the criminals but it overlooks the victim. The criminal justice system in our country is based on the premise that 'hundred guilty men should be let free, but one innocent man should not be punished'. So victim has to suffer in such conditions.

### **Category of victims Description**

- Victims having no relationship with the criminal Every member of society is a potential victim.
- Victims provoking crime These are victims of a crime committed after the offender was encouraged.
- Victims inciting crime These are people who without actually doing anything to the criminal behave in a way which entices, incites or attracts him. (Example: A woman who

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<sup>6</sup> Justice Krishna Iyer, Hon'ble Judge, Supreme Court of India in his writing "The Criminal Process and Legal Aid", Published in Indian Journal of Criminality. P.10

walks around half-naked or in see through clothes, risks being raped, a wealthy man walking around alone in disreputable areas, risks being robbed or kidnapped).

- Physically weak victims These are victims who, because of their constitution or their physical or mental characteristics, make the offender think about attacking them. Children, the old, women, the mentally ill, etc.
- Socially weak victims These are people not fully integrated into the society. Immigrants, those who practice certain religions, ethnic minorities and the socially under privileged are often exploited by criminal elements.
- Self-victims These are people who are victims of themselves like the drug addicts, alcoholics, people who commit suicides, gamblers, etc
- Political victims These are people who suffer in some way or are even killed because of their political beliefs. People who hold political power in a country can make victims of people who oppose them.

### **Compensatory jurisprudence**

While studying the biological, sociological, psychological, and criminological details about the victim - victimology brings into focus the victim-offender relationship and role played by victim."  
– **Fattah**

Compensation to victims is a well recognized principle of that and has been enshrined under various laws. Under the law of torts the victims can claim compensation for the injury to the person or property suffered by them but in such case that injury or loss must be foreseeable. It took decades for the victims to get a decree for damages or compensation through civil courts, which is resulting in so much hardship to them. The commencement or the introduction of compensatory jurisprudence in the light of human rights philosophy is a positive signal indicating that the judiciary has undertaken the task of protecting the right to life and personal liberty of all the people irrespective of the absence of any express constitutional provision and of judicial precedents.

Article 32 of the Constitution of India it is the power of the Supreme Court to issue direction or order or writ, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warrant to and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III of the Constitution. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is "guaranteed", that is to say, the right to move the Supreme Court under Article 32 for the enforcement of any of the rights conferred by Part III of the Constitution is itself a fundamental right. Therefore supreme court is the guardian and protector of the right of individual.

<sup>7</sup>As according to **Holt CJ** in the case of **Ashby v. White** remarked: "If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it and a remedy if he is injured in the exercise or enjoyment of it, and, indeed it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal..."

In 1975, a judgment by **Madras High Court** in **Thangarajan v. Union of India**, maybe offered route to the idea that compensation can likewise be conceded under the Article 32 of the Constitution. All things considered, a divisional seat of Madras High Court held, "As pointed out by the Supreme Court in, there is hardly any justification for the State to claim immunity especially after India has become a democratic republic and a Constitution had been enacted. It is cruel to tell the injured boy who has suffered grievous injuries and was in hospital for over six months incurring considerable expenditure and been permanently incapacitated that he is not entitled to any relief as he had the privilege of being knocked down by a lorry which was driven in exercise of sovereign functions of the State. Considering the circumstances of this case, we would strongly recommend to the

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<sup>7</sup> Ashby v. White (1703) 92 ER 126.

Union Government to make an ex gratia payment of Rs. 10,000, to the appellant herein.”

These are some cases in which the concept of compensation was introduced. And there are many more cases to discuss.

The jurisprudence of our criminal system is based upon the reformatory theory of Indian Criminal jurisprudence which is embodied mainly in Indian Penal Code ('IPC') and Code of Criminal Procedure ('CrPC') has provisions to ensure that the liberty of is not chained such as presumption of innocence, the right to legal assistance, right to fair trial, right of the accused to be informed of charges before trial, and right to present a defense. During the unending process of trial in our country, the sufferings of victims are entirely overlooked by sympathy for the accused. But of late, it has been realized by the courts that the ultimate wrong has been done to the victim and his welfare is of the same importance as that of the accused. The attitude has begun to change. Many countries around the world have recognized the need to provide rehabilitation and legal assistance to help them recover from the effects of crime.

In reference to the dismal state of the criminal justice system in the country, the government appointed the Malimath Committee to suggest reforms to the criminal justice system. The Malimath committee report emphasizes on 'justice to victims' as one its primary objectives. It aims to provide equity to victims of crime by permitting them, as an issue of ideal, in criminal procedures and compensation.

The UN Declaration recognized four major components of the right of victims of crime – access to justice and fair treatment, restitution, compensation, and assistance. Through the declarations the goal to protect the rights of victims are being justified.

### **Compensation to victims in India**

Compensation awarded to the victims can be summarized under the following heads in India which is as follows -:

- Compensation under The Code Of criminal procedure
- Compensation under the constitution of India

- Compensation under the Motor Vehicle Act ,1988
- Compensation in Rape Cases
- Compensation under Domestic Violence Act,2005
- Compensation under Electricity Act ,2003
- Workman compensation Act ,1923
- Compensation under Enviournment Act ,1986
- Public liability Insurance act,1991
- Compensation for violation of Human Rights Act, 1993
- compensation under Probation of Offenders Act, 1958
- compensation under Consumer Protection Act,1986

These are some act under which compensation is awarded to award compensation to victims is evident under criminal and constitutional law both. The Constitutional law in its own way extended the ambit of compensation to the victims of crimes through the Article 32 and Article 21. The criminal law also provides compensation to the victims of crime and abuse of powers through many sections.

From time to time many Acts have been passed by the parliament to award compensation but is not possible to discuss all the provisions of these legislations as there is possibility of violation of every law and if law is violated, it is followed by consequences which may be compensated. Therefore, it would be legitimate to point out that compensation may be related with violation of any statute. However, an attempt has been made to point out the provisions of compensation under some of the social legislations in which new dimensions of compensatory jurisdiction has been developed.

## **Compensation and Code of Criminal Procedure**

The Criminal Procedure Code is the first and may be the oldest legislation in India to deal with the subject of compensation to victim of crime. The provision of Criminal Procedure Code concerning victim compensation occupy a prominent place in the progressive developments of the law relating to victim compensation.

The provisions for compensation envisaged in the Code of Criminal Procedure, 1973 are contained in Sections 357, 358 and 359-A of the Code. Some other provisions on the subject matter are under Sections 237 and 250 of The Criminal Procedure Code.

Power of Court to Pay Compensation on Conviction Specifically, Section 357 of the Criminal Procedure Code, 1973 enables the passing of an order of compensation by the Trial Court, the Appellate Court and the High Court or Court of Session in revision at the time of passing of judgment, out of fine imposed by the Court under the following circumstances:

Firstly,

(a) To the complainant, for meeting expenses properly incurred in the prosecution;

(b) To any person, who has suffered loss or injury by the offender, when he can recover compensation in Civil Court;



(c) To a person entitled to recover damages under the fatal Accidents Act, when there is a conviction for causing death or abetment thereof;

(d) To a bonafide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or disposing of stolen property and which is ordered to be restored to its rightful owner.

Secondly, where there is an appeal against any sentence or fine, no compensation shall be paid till the appeal period lapses.

Thirdly, in all cases where no fine is imposed, the Court may order the payment of compensation to the victims of crime who have suffered any loss or injury. Whenever compensation is paid under Section 357 it shall be taken into account by any Civil Court which subsequently takes up the civil suit claiming compensation. Section 357 of Code of Criminal Procedure Says: (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine.

(a) in defraying the expenses properly incurred in the prosecution ;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court recoverable by such person in a civil Court;

(c) when any person is convicted of any offence for having abetted the commission of such an offence in paying compensation to the persons who are, under the fatal Accident Act 1855, entitled to recover damages from the person sentenced for the loss resulting to them from such death .

(d) When any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust or cheating or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide

purchaser of such property for the loss of the same if such property is recorded to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed or if an appeal be presented before the decision of the appeal

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation such amount may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this Section may also be made by an Appellate Court or by the High Court or the Court of Session when exercising its power of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter the Court shall take into account any sum paid or recovered as compensation under this Section. Section 357 visualizes a wide range of situations under which compensation may be ordered to be paid to Legislative Provisions of Compensation in India. The victims of crime. Under the Section, the categories of victims which become entitled to claim compensation are the complainant victim or any person who has suffered loss or injury because of the offence. He can recover compensation in Civil Courts under the fatal Accidents Act, 1855 and when there is a conviction causing death or abetment thereof or a bonafide purchaser of property, etc. can claim compensation. Considering Section 357, sub section (1) of the Code empowers a Criminal Court to award the whole or any portion of the fine recovered for the purposes mentioned in clause (a) to (d). Further clause (a) and (d), in essence, deal with defraying pecuniary losses incurred by a person in prosecution and by a bonafide purchaser of stolen goods, respectively. Clause (b) and clause (c),<sup>8 9</sup> on the other hand, respectively deals with

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<sup>8</sup> Sec. 358 also empowers a magistrate; in his discretion to award a compensation, not exceeding Rs.100 to an accused from a complainant for loss of time and expenses incurred on account of being groundlessly arrested at the instance of the complainant.

<sup>9</sup> Code of Criminal Procedure, 1973, Section 359 also empowers a Court, in its discretion to order a convict in addition the penalty imposed upon him, to pay reasonable costs, in whole or in part, incurred by the complainant in prosecution of a non-cognizable offence.

recompensating 'any loss' (pecuniary or otherwise) or injury caused by any offence and by death. In order to claim compensation under clause (b) it is necessary to show that person suffered a loss. 'Loss' means that can be compensated in money including some substantial detriment from a worldly point of view and loss of support and even loss of mere gratuitous liberty while the word 'injury' has been given a very wide meaning and connection in Indian Penal Code, 1860. The compensation under this Section not only corresponds to damages awarded in civil proceedings but is also to be taken into consideration by a Civil Court in determining the quantum of damages in a subsequent civil suit relating to the same matter. Further, sub-section (3) was inserted in Section 357 of the Code of Criminal Procedure, in 1973, unlike sub-section (1), empowers a Criminal Court, in its discretion, to order the accused to pay by way of compensation a specified amount to victims of the offence even if fine does not form part of the sentence imposed on him keeping this in view. Section 357(3) of Criminal Procedure Code has not only recognized the philosophy of the compensation simplicitor to the victims of crime even in the situation where no sentence of fine has been imposed but it also added a new dimension to the idea of re-compensating them. Prior to inclusion of this clause no compensation could be awarded unless a substantive sentence of fine was passed and then too this was limited only to the extent of the fine actually realized. So it can be for any amount and not limited to the amount of fine imposed or recovered.

### **Compensation to the Persons Groundlessly Arrested**

Section 358 of the Code provides:

Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient grounds for causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(1) ) In such cases, if more persons than one are arrested, the Magistrate may in like manner, award to each of them such compensation, not exceeding one hundred rupees, as such Magistrate thinks fit. Legislative Provisions of Compensation in India.

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- (2) All compensations awarded under this Section may be recovered as if it were a fine and if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding 30 days as the Magistrate directs, unless such sum is sooner paid.

Thus, Section 358 visualizes when any person has been caused to be arrested by the police, at the instigation of a person and the Magistrate finds that such arrest was caused on insufficient grounds, Further, it is pertinent to note that Section 358 obviously aims at protecting the constitutionally guaranteed personal liberty of the person under Article 21 of the Constitution of India and also save them from illegal and arbitrary arrest, even without reference to any accusations or charge levelled against such person. Thus, this is definitely, important piece of legislation against groundless arrest by the police and while upholds the rule of law by having democratic values.

### **Order to Pay Costs in Non-Cognizable Cases**

Under Section 359 of the Code when any person has been convicted in non-cognizable case the Court may order for the refund of expenses incurred by the complaint in launching the prosecution. So under Section 359, the complaint victim is entitled to claim only the expenses incurred in the launching of the prosecution for loss or injury suffered by him.

Similarly, Section 250 of the Code also lays down special provision for the payment of compensation to the accused person in cases where he is discharged or acquitted as a result of finding no reasonable ground existing for launching such prosecution.

The Section 250 read as follow :

- (1) If in any case instituted upon complaint or upon information given to a police officer or to Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the

accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information or the accusation is present, call upon him forth show cause why he should not pay compensation to such accuse d or to each or any of such accuse d when there are more than one or, if such person is not present direct the issue of a summon s to him to appear and show cause a s aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may for reason s to be recorded, make an order that compensation to such amount not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under sub - section (2) further order that, in default of payment, the person ordered to pay such compensation shall under go simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisonment under sub - section (3), the provisions of Sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this Section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him: Provided that any amount paid to an accused person under this Section shall be take n into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order a s if such complainant or informant had been convicted on a trial had by such Magistrate .

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal ha s elapsed, or, if an appeal is presented , before the appeal ha s been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the of the order.

(8) The provisions of this Section apply to summons-cases as well as to warrant cases.

Section 250 of the Code of Criminal Procedure, thus, covers only those specific cases where case has been instituted upon a complainant or upon the information given to police or to the Magistrate accusing some person of having committed certain act or offence triable by a Magistrate and the case should have been ended in an acquittal when the Magistrate trying the case should have found that complaint or the information given was false and either frivolous then the magistrate may order the informant to pay compensation.

Further, Section 250 of the Criminal Procedure Code, 1973 lays down special provision for payment of compensation to an accused person in cases where he is discharged or acquitted as a result of finding no reasonable ground existing for launching such prosecution.

Code of Criminal Procedure, 1973, Section 250 in India the offender. After considering all the provisions of the Code it is clear that Section 357(3) confer wider powers on the Court to award compensation irrespective of the fine amount imposed. Further, it is clear from the above provision which at least visualize a minimum scheme of compensation, for the victims. If the provision of Section 357(3) is excluded then the purpose of the provision, become futile in case the offender is unable to pay the fine imposed. Therefore, in most of the cases where compensation is awarded, it remains unreal.

In case of **Krshna moopan vs. state of kerela**, "The correct position appears to be that at the stage when the Magistrate passes the order under Sub-section (1) of Section 250 Cr.P.C. he was only of opinion that there was no reasonable ground for making accusation, and therefore the complainant or the informant should be asked to show cause why an order for payment of compensation should not be passed against him. The requirement under Sub-section (2) appears to involve a consideration of the materials placed before the Magistrate in greater depth to satisfy himself whether there was no reasonable ground to make the accusation, and that is to be done after recording and considering the statement in which the complainant or the informant may show cause why action should not be taken against him, and finally for passing an order of compensation reasons have to be recorded. The expression 'if he is satisfied' used in Sub-section (2) of Section 250 Cr.P.C. as distinguished from 'is of opinion' in Sub-section (1) of Section 250 Cr.P.C. would indicate that before passing a final order under Sub-section (2), the Magistrate is required to give a more anxious and careful consideration to the question involved."

## **Victim compensation scheme under the Code Of Criminal Procedure,1973**

In old Code of Criminal Procedure ,1898 contained a provision for restitution in the form of section 545. Now there is only one general law that govern the victims compensatory rights as mentioned in under Criminal Procedure Code, 1973 in Section 357.

The Apex Court in **Hari Kishan v. Sukhbir** Singh high lighting the importance of Section 357(3) of the Criminal Procedure Code, 1973 says, Section 357 of Cr.P.C. 1973, is an important provision. This power to award compensation is not ancillary to other sentences but it is in addition thereto. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender.

The provisions relating to compensation to victims of crime are contained in sections 357, 357(1), 357 (2), 357 (3), 357A, 358, 359 and 250 of the Code of Criminal Procedure, 1973.

In 2009, the central government gave directions to every state to prepare a scheme which has to be in agreement with the center's scheme for victim compensation. The primary purpose of the scheme is to provide funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

### **Amount of compensation under the scheme**

It is the court which orders that the victim who suffered loss needs to get compensated Authority or the State Legal Service Authority, as the case may be, decides the quantum of compensation to be awarded.. Under the scheme, whenever a recommendation is made by the Court for compensation, the District legal service.

## **Victim compensation scheme Section 357A of the code of criminal procedure**

1. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.
2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.<sup>10</sup>

Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated. In order to give complete mental satisfaction to the victim, it is extremely essential to provide some solace to him in the form of compensation so that it can work as a support for the victim to start his life afresh.



Section 357 Cr.P.C. empowers the Court to award compensation to the victim(s) of the offence in respect of the loss/injury suffered. The object of the section is to meet the ends of justice in a better way. This section was enacted to reassure the victim that he is not forgotten in the criminal justice system. The amount of compensation to be awarded under Section 357 Cr.P.C. depends upon the nature of crime, extent of loss/damage suffered and the capacity of the accused to pay for which the Court has to conduct a summary inquiry. However, if the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court can invoke Section 357A to recommend the case to the State/District Legal Services Authority for award of compensation from the State funded Victim Compensation Fund under the Delhi Victim Compensation Scheme, 2011. Section 357 Cr.P.C. is mandatory and it is the duty of all Courts to consider it in every criminal case. The Court is required to give reasons to show such consideration.<sup>11</sup>

### **Authority to provide compensation**

The State or the District Legal Services Authority shall, after due enquiry-award adequate compensation by completing the inquiry within two months.

Also, it is the duty of the State or the district legal service authority to provide an immediate first-aid facility or medical benefits to the victim free of cost on the certificate of the police.

### **Aid provided to Victims under this scheme**

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under the following of the Indian Penal Code,

376 (Rape)

376A (intercourse by a man with his wife during separation)

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<sup>10</sup> Section 357A inserted by the Cr.P.C. (Amendment) Act, 2008

<sup>11</sup> Satya Prakash vs State on 11 October, 2013

376 B (intercourse by a public servant with a woman in his custody), 376 C (Intercourse by superintendent of jail or a remand home), 376 D (intercourse by any member of the staff of a hospital with any woman in that hospital) of the Indian Penal Code.

376 C (Intercourse by superintendent of jail or a remand home),

376 D (intercourse by any member of the staff of a hospital with any woman in that hospital) of the Indian Penal Code

### **If the compensation is inadequate**

If the trial Court, at the conclusion of the hearing, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make a recommendation for compensation.

When is the compensation to be provided

- Along with the duty of the offender, it is the duty of the state too, to compensate the victim. Compensation to the victim of crime can be provided:
- At the conclusion of the trial. That is on the orders of the court.
- When inadequate compensation is granted by the lower court to the victim of crime, the Appellate Court might increase the compensation.
- Where accused is not traceable, it becomes the duty of the state to compensate the victim of the crime.

More than four decades back Krishna Iyer J speaking, It is weakness of our jurisprudence that victims of crime and the distress of their dependents of the victim do not attract the attention of law. In fact, the victim compensation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature. In this paper attempt has been made to show compensatory rights of victim is not a vanishing point in modern criminology in India.

In **Balasaheb Rangnath Khade v The State of Maharashtra, on 27 April, 2012** )the court observed:

The criminal justice system has been designed with the State at the center stage. Law and order is the prime duty of the State. It fosters peace and prosperity. The rule of law is to prevail for a welfare State to prosper. The citizens in a welfare State are expected to have their basic human rights. These rights are often violated. The law and order is breached.

## **Where conviction and fine is a part of sentence**

When an accused is proven guilty, and the court passes an order which contains a fine of any denomination, the court can order such fine or any part of it to be paid to the victim of crime. The fine imposed is utilised to compensate the victim of fine in the following ways.

### **Compensating for the expenses incurred during litigation (357 1 a)**

This is the essential relief which a victim of a crime must get. Litigation costs in India are very arbitrary. The lawyer charges hefty amount. Getting justice at times adds to the burden of the victim itself. Instead of getting justice, the victim is trapped in the honeycomb of justice delivery system.

The court knows this fact and thus, compensate victim by providing them the expenses incurred during litigation.

### **Compensation for loss or injury to be recovered by the civil court**

If the court is of the view that, the compensation sought is beyond the jurisdiction of the court, the court itself orders the appropriate court to look into the matter.

In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.

### **Compensation in case of death**

One might question the fact that, who is the victim where death has been caused? As the victim is already dead, who should be compensated for the crime?

It is the family of the victim. Think of the mental trauma they might have gone through. Medical expenses incurred, expenses during last rites. What if the victim who died was the sole bread earner of the family?

The Court is well aware of such situation. Therefore, the legislature and the judiciary tied their hands to do complete justice.

Victims are entitled to recover damages from the person sentenced for the loss resulting to them from such death. When any person is convicted of any offence for having caused the lives of another person or of having abetted the commission of such a crime.

Compensation of victim of crime in offences like theft, cheating, criminal breach of trust, etc

In cases of crime such as theft, cheating, criminal breach of trust, criminal misappropriation, the Court either tries for recovery of goods and in the case where recovery is not possible court orders for compensation for the price of such goods.

### **Compensation when fine is not a part of the Sentence**

The accused person in such case may be ordered by the court to pay a certain sum as compensation to the victim of crime who suffered loss or injury. Indian legal system is victim friendly. Victim's rights are kept at the top of the priority list.

When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

## **VICTIM COMPENSATION SCHEME**

In 2009, the central government gave directions to every state to prepare a scheme which has to be in agreement with the center's scheme for victim compensation. The primary purpose of the scheme is to provide funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

### **Quantum of compensation under the scheme**

It is the court which orders that the victim who suffered loss needs to get compensated. Under the scheme, whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, decides the quantum of compensation to be awarded.

### **Compensation in cases where the accused is not found guilty or the culprits are not traced**

Where the cases end in acquittal or are discharged, and the victim has to be rehabilitated, the court may make a recommendation for compensation.

Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for an award of compensation.

### **Who is to provide compensation in the above case**

The State or the District Legal Services Authority shall, after due enquiry-award adequate compensation by completing the inquiry within two months.

Also, it is the duty of the State or the district legal service authority to provide an immediate first-aid facility or medical benefits to the victim free of cost on the certificate of the police.

### **Treatment of victim of crime**

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under the following of the Indian Penal Code,

376 (Rape)

376A (intercourse by a man with his wife during separation)

376 B (intercourse by a public servant with a woman in his custody), 376 C (Intercourse by superintendent of jail or a remand home), 376 D (intercourse by any member of the staff of a hospital with any woman in that hospital) of the Indian Penal Code.

376 C (Intercourse by superintendent of jail or a remand home),

376 D (intercourse by any member of the staff of a hospital with any woman in that hospital) of the Indian Penal Code

What to do in case of inadequate compensation

If the trial Court, at the conclusion of the hearing, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make a recommendation for compensation.

### **When is the compensation to be provided**

Along with the duty of the offender, it is the duty of the state too, to compensate the victim. Compensation to the victim of crime can be provided:

At the conclusion of the trial. That is on the orders of the court.

When inadequate compensation is granted by the lower court to the victim of crime, the Appellate Court might increase the compensation.

Where accused is not traceable, it becomes the duty of the state to compensate the victim of the crime.

## **CENTRAL VICTIM COMPENSATION FUND SCHEME**

The Central government in 2015 formulated the CVCF scheme to compensate the determined. Every state has their own guidelines which decide the procedure.

An attempt has been made to bring forth the procedure by examining different scheme of the different states. This is a standard procedure which one might follow

### **Making an application before the District/State Legal Service Authority**

An application can be made for temporary or final compensation. It can be filed by the Victims or their dependents or the SHO of the area.

The application must be submitted along with a copy of the First Information Report (FIR), medical report, death certificate, if available, copy of judgment/ recommendation of court if the trial is over, to the State or District Legal Services Authority

### **The scrutiny stage.**

District Legal Service Authority of every state first verify the content of the claim. Specific loss, injury, rehabilitation is taken into consideration.

### **Deciding the quantum of compensation to be given to victim of crime**

The quantum of compensation to be granted is decided on the following factors,

- The gravity of the offence and the loss suffered by the victim.
- Medical expenditure incurred during treatment.
  
- Loss of livelihood as a result of injury or trauma.
  
- Whether the crime was a single isolated event (Example Theft) or whether it took place over an extended period of time (Example multiple times, Rape with a woman who has been locked in a house)
- Whether the victim became pregnant as a result of such offence.
  
- In the case of death, the age of deceased, his monthly income, the number of dependents, life expectancy, future promotional growth prospects etc.
  
- Or any other factor which the Legal Service Authority might deem fit.

### **Method of disbursement of compensation**

The amount of compensation so awarded shall be disbursed by the respective Legal Service Authority by depositing the same in a Nationalized Bank in the joint or single name of the victim/dependent(s).

Out of the amount so deposited, 75% (seventy-five percent) of the same shall be put in a fixed deposit for a minimum period of three years.

The remaining 25% (twenty-five percent) shall be available for utilization and initial expenses by the victim/dependent(s), as the case may be.

In the case of a minor, 80% of the amount of compensation so awarded, shall be deposited in the fixed deposit account and shall be drawn only on attainment of the age of majority, but not before three years of the deposit

HERE IS A LIST OF MINIMUM COMPENSATION TO BE PROVIDED TO VICTIM OF A CRIME. THIS LIST IS AS PER THE NOTIFICATION BY THE CENTRAL GOVERNMENT ON CVCF SCHEME.

**Minimum Amount of Compensation**

<b>Sl. No.</b>	<b>Description of Injures / loss</b>	<b>Minimum Amount of Compensation</b>
1	Acid attack	Rs. 3 lakhs
2	Rape	Rs. 3 lakhs
3	Physical abuse of minor	Rs. 2 lakhs
4	Rehabilitation of victim of Human Trafficking	Rs. 1 lakh
5	Sexual assault (Excluding rape)	Rs. 50,000/-
6	Death	Rs. 2 lakhs
7	Permanent Disability (80% or more)	Rs. 2 lakhs
8	Partial Disability (40% to 80%)	Rs. 1 lakh
9	Burns affecting greater than 25% of the body (excluding Acid Attack cases)	Rs. 2 lakhs
10	Loss of foetus	Rs. 50,000/-
11	Loss of fertility	Rs. 1.5 lakhs
12	Women victims of cross border firing:	

The amount of compensation will increase by 50% if the victim is below 14 years of age

Where to complain when the compensation is released by the authority, but the same has not reached in the hands of the victim

This is an unforeseen situation which can further worsen the condition of the victim.



Where the funds are released, but the allotted fund has not reached to the victim, it is preferred to go in person to the District/Legal Service Authority and complain the same. The Legal Service Authority might ask you to inquiry the same with the bank authorities. Do as advised by the Legal Service Authority.

District/Legal Service Authority is designed to help the people, and they are performing their duty well. But if the issue is not redressed yet, there is no other option left than to fight another legal battle.

It is advised to file a writ petition in the High Court under Article 226 of the Indian Constitution.

There is a case of Mohini vs The State (Govt. Of Nct Of Delhi) it was said that -

The provision of Section 357A(1) Cr.PC shows that it provides that the victim/dependent shall receive adequate compensation. Section 357A (3) provides that where the trial court concludes that the compensation awarded under Section 357 is not adequate, it may make a recommendation for compensation. Section 357A (5) Cr.P.C. provides that the District Legal Services Authority after due enquiry will award "adequate compensation".

The stress is on "adequate compensation"<sup>12</sup>.

<sup>13</sup>As per Section 357A, the State Government is expected to prepare a scheme in coordination with the Central Government for providing funds for the purpose of compensation to the victim or his dependants who have suffered loss and injury as a result of the crime and who require rehabilitation.

Since neither the State Government nor the Central Government is before this Court we deem it appropriate to issue notice to them also so that they can come forward with their response in respect of the compliance of the mandate of Section 357A of Cr.P.C. Mr. Sanjay Lao accepts notice on behalf of the State Government and he wants some time to bring to the notice of this Court as to whether any steps have been taken in respect of the mandate of Section 357A Cr.P.C

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<sup>12</sup> Mohini vs The State (Govt. Of Nct Of Delhi) & ... on 14 September, 2015

<sup>13</sup> Jagdish Kaur & Anr. vs Balwan Khokhar & Ors. on 17 December, 2018

## Scheme Framed by State Government

Under s. 357 A, only very few state governments as shown in Table 3.1 have framed the scheme for providing the funds for compensation to the victims or their dependents, who have suffered the loss or injury on the account of offence against body and who require rehabilitation. The victim compensation fund would have budgetary allocation for which necessary provision shall be made in the annual budget by the state governments. Each state has framed different scheme for their victim of crime. There is no provision for filing an appeal (in case victim is not satisfied with award of compensation) in NCT Delhi and Gujarat. Even the eligibility criteria to get compensation along with procedure are also different in these states. Apart from this, each state has different schedule of victim compensation scheme.

In <sup>14</sup>**Ahmmmed Kutty v. Abdulla Koya** the court observed that compensation cannot be awarded to the victim of crime if the accused was not convicted. But in the same year in a case decided on later date, i.e., <sup>15</sup>**Vijagan v. Sadanandan**, the court observed that compensation can be awarded to the victim even if accused was not convicted. It shows that courts are free to award compensation even if accused was not convicted because every case has its different situations. The provisions of compensation thus suffer from inherent limitations and are invoked sparingly, grudgingly and often inconsistently by the courts despite the amendments providing required uniformity and the Apex Court exhorting the courts to take recourse to these provisions.

<sup>16</sup>**In Hari Singh and State of Haryana v. Sukhbir Singh**, it was observed by the court that though s.357 (2) is an important provision, but the courts have seldom invoked it. The court laid down that the power of courts to award compensation is not ancillary to the sentence or other sentences but it is in addition thereto. It is a measure responding appropriately to crime as well as reconciling the victim with offender and indeed a step forward and in our criminal justice system. However, the application of the amended provisions regarding compensating the victims of crime is yet to become a norm and practice universally.

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<sup>14</sup> Ahmmmed Kutty v. Abdulla Koya 2009 (6) SCC 660

<sup>15</sup> Vijagan v. Sadanandan 2009 (6) SCC 652

<sup>16</sup> Hari Singh and State of Haryana v. Sukhbir Singh, Supra note 6

## Compensation added after the Ammendment Act

<sup>17</sup>S.357 B- Compensation to be in addition to fine under section 326 A or section 376 D of Indian Penal Code- The compensation payable by the State Government under section 357 A shall be in addition to the payment of fine to the victim under section 326 A or section 376 D of the Indian Penal Code.

## CRITICAL ANALYSIS OF COMPENSATION TO VICTIMS OF CRIME

<sup>18</sup>S.357, of the Cr.P.C. is regarded a step forward in legislation as it recognized the philosophy of compensation helpful for the victim even where no sentence or fine is imposed as per s.357(3). S.357, Cr.P.C. inter alia, empowers a Criminal Court to award compensation out of fine imposed as a sentence as well as a specified amount as compensation when fine does not form part of the sentence imposed on him. A glance through the scheme of s.357 shows that compensation is among the lowest in the list of priorities of our 'welfare state'. The frame-work of the system is such that optimum and substantial justice to the victim gives unjust relief to the oppressor. Payment of compensation under Probation of Offenders Act, 1958 and Code of Criminal Procedure, 1973, are both subject to the court's discretion but payment under Code of Criminal Procedure is possible only when the act is both a tort and a crime. Victim compensation lacks proper motivation.

S.357, as it stands today does not assure speedy or sure relief. Moreover the trial period is lengthy in India. There are few laws that provide interim or immediate compensation to victim on the lines of Motor Accidents claim cases, so as to meet the <sup>19</sup>immediate needs caused due to the loss. S.357 is regarded as the 'offender's liability.' State liability does not enter the picture however desirable it may be as there is no reference to such under the section.s But emerging theories of victimology support grants-in-aid by the state to assist the victim. As a welfare state, the state shall devise means to ensure speedy payment of compensation and should enact special provision in this

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<sup>17</sup> The Criminal Law (Amendment) Bill, 2013 (Bill No. 63-C of 2013)

<sup>18</sup> S. 356 (1) and S. 357 (3) of Cr.P.C.

<sup>19</sup> Nanak Singh v. State of Punjab, 1983 CrLJ (NOC) 232 (P&H)

direction, either in the existing Code of Criminal Procedure or through a special piece of legislation.

S.358 of Cr.P.C. is another provision that enables payment of compensation, this is granted for misuse of the power by the States, like compensation for groundless arrest or when a police force acts contrary to its duties. In such cases, it is for the state to proceed against the erring officials and realize the amount awarded as compensation.

<sup>20</sup> These provisions have found less favour in the trial courts as courts feel satisfied by sentencing offenders only. It means that the courts are offender oriented. Another reason could be that the recent advancement of victimological knowledge has not flown into the penological corridors of our Magistrates, despite the law having empowered them to utilise these provisions.

It is also notable that courts in India have rarely used these statutory provisions to exercise their discretionary powers to compensate victims of crime. The Law Commission of India had an admitted fact that Courts are not particularly liberal in utilising these provisions, but also observed; it is regrettable that our courts do not exercise their statutory powers under this section as freely and liberally as could be desired.<sup>98</sup> The available empirical studies, reveals a very rare use of the legal provisions in awarding compensation and inadequacy of the compensation awarded.

<sup>21</sup>The Supreme Court of India, when recently called upon to decide legality and propriety of compensation awarded under s.357, Cr.P.C. by Punjab and Haryana High Court, carried the same impression and appealed to courts in India to exercise their powers liberally to meet the ends of justice in a better way. It is also to see any reason for the courts not directing compensation if the accused is in a position to pay it to the entitled injured persons. It, however, cautioned the courts not to award 'unduly excessive' compensation and to first calculate the amount to be awarded and then impose a fine higher than the compensation.

<sup>22</sup>The appellate court also asserted that the requirement of social justice demands that heavy fine should be imposed in lieu of reduction of sentence, compensate the victims of crime. It becomes clear that in India there is fragmented legal framework of compensation, it neither mandates the courts to compensate the victims nor creates any legal right in their favour.

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<sup>20</sup> Chokalingam K., "Readings in Victimology," Indian Journal of Criminology

<sup>21</sup> Palaniappa Gounder v. Tamil Nadu, AIR 1977 SC 213; Sarwan Singh v. State of Punjab

<sup>22</sup> P.P. Sah v. State of Bihar, AIR 1977 SC 704

It is entirely discretion of the court whether to

(i) compensate victims of crime; and

(ii) initiate and move legal machinery to recover the fine, out of which compensation is ordered, or the specified amount of the compensation from the offender to pay it to the victims of the offender. The fate of victim of crime is left solely to the sweet will of the court that can or cannot award any kind of compensation.

### Capacity of offender to pay compensation

The capacity of the offender plays very important role while awarding the compensation. It is crystal clear from these cases: **In<sup>23</sup> Sarwan Singh and others v. State of Punjab,<sup>24</sup>Balraj v. State of U.P. , Baldev Singh and Anr. v. State of Punjab, Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr.**, the Supreme Court held that the power of the Courts to award compensation to victims under Section 357 is not ancillary to other sentences but in addition thereto and that imposition of fine and/or grant of compensation to a great extent must depend upon the relevant factors apart from such fine or compensation being just and reasonable.

In **Dilip S. Dahanukar's** case the Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said: “.... The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged.

A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-s.(3) of s.357 does not impose any such limitation and thus, power there under should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge.”

In <sup>25</sup>**Ankush Shivaji Gaikwad v. State of Maharashtra**, Supreme Court observed that capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course

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<sup>23</sup> (1978) 4 SCC 111

<sup>24</sup> (1994) 4 SCC 29

<sup>25</sup> Criminal Appeal no. 689 of 2013

of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view; both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

## Application of mind

If application of mind is not considered mandatory, the entire provision would be rendered a dead letter.

It was held in <sup>26</sup>**NEPC Micon Ltd. and Ors. v. Magma Leasing Ltd.**, albeit in the context of s.138 of the Negotiable Instruments Act that even in regard to a penal provision, any interpretation, which withdraws the life and blood of the provision and makes it ineffective and a dead letter should be avoided.

In State <sup>27</sup>of **Andhra Pradesh v. Polamala Raju @ Rajarao**, 44 where a three-judge bench of this Court set aside a judgment of the High Court for non-application of mind to the question of sentencing. In that case, this Court reprimanded the High Court for having reduced the sentence of the accused convicted under s. 376, IPC from 10 years imprisonment to 5 years without recording any reasons for the same. This Court said: “...We are of the considered opinion that it is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence... ..To say the least, the order contains no reasons, much less “special or adequate reasons”. The sentence has been reduced in a rather mechanical manner without proper application of mind...”

<sup>28</sup>**In State of Punjab v. Prem Sagar and Ors.**, this Court stressed the need for greater application of mind of the Courts in the field of sentencing. Setting aside the order granting probation by the High Court, the Court stated as follows: ....The High Court does not rest its decision on any legal principle. No sufficient or cogent reason has been arrived. We have noticed the development of law in this behalf in other countries only to emphasise that the courts while imposing sentence must take into consideration the principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind...”

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<sup>26</sup> (1999) 4 SCC 253

<sup>27</sup> (2000) 7 SCC 75

<sup>28</sup> (2008) 7 SCC 550

Although speaking in the context of capital punishment, the following observation of this Court in <sup>29</sup>**Sangeet & Anr. v. State of Haryana** could be said to apply to other sentences as well, particularly the award of compensation to the victim: “In the sentencing process, both the crime and the criminal are equally important. We have unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.” S. 357 Cr.P.C. confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case.

<sup>30</sup>In **Maya Devi (Dead) through LRs and Ors. v. Raj Kumari Batra (Dead) through LRs and Ors.**, honorable Supreme Court held that disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. The Court observed: “. ...There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well-recognised legal principle that orders can be made only after due application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion. 30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own...”

Similarly, in <sup>31</sup>**State of Rajasthan v. Sohan Lal and Ors.**, this Court emphasised the need for reasons thus: “...The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the

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<sup>29</sup> (2013) 2 SCC 452

<sup>30</sup> (2010) 9 SCC 486

<sup>31</sup> (2004) 5 SCC 573

manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind...”

**In Hindustan Times Ltd. v. Union of India**, this Court stated that the absence of reasons in an order would burden the appellate court with the responsibility of going through the evidence or law for the first time. The Court observed : “...In our view, the satisfaction which a reasoned Judgment gives to the losing party or his lawyer is the test of a good Judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal...”

<sup>32</sup>**In Director, Horticulture Punjab and Ors. v. Jagjivan Parshad**, this Court stated that the spelling out of reasons in an order is a requirement of natural justice: “...Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi judicial performance...”

After considering plethora of cases, we conclude safely that while the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case.

Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused.

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<sup>32</sup> (2008) 5 SCC 539



## Limit of compensation

The Court can award compensation to the complainant for which no limit is prescribed in s.357, but in fixing the amount of compensation the Court has to consider what would be reasonable compensation payable to the complainant. The compensation should commensurate with the paying capacity of the accused to pay as also other facts and circumstances of the case like the gravity of the offence, the needs of the victims family, etc. Option to award compensation under s.357 without reference to pecuniary limits for imposing fine is available when the fine is not part of sentence imposed by Magistrate.

There is no provision of law which excludes the jurisdiction of a Civil Court to proceed with the suit for damages even where s.357 might be invoked by a Criminal Court. Where in his criminal prosecution, the accused has paid compensation under s.357 of Cr.P.C., a special duty has been cast on the Civil Court by the provision of sub-s.(5) of s.357 to adjust the compensation so paid while passing a decree in Civil Court.

**In <sup>3334</sup>R. Vijayan v. Baby**, the court observed that: “It is evident from the sub- section (3) of section 357 of the Code, that where the sentence imposed does not include a fine, that is, where the sentence relates to only imprisonment, the court, when passing judgment, can direct the accused to pay by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused has been so sentenced. The reason for this is obvious. Sub- section (1) of section 357 provides that court imposes a sentence of fine or a sentence of which fine forms apart, the court may direct the fine amount to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a Civil Court.

Thus, if compensation could be paid from out of the fine, there is no need to award separate compensation. Only where the sentence does not include fine but only imprisonment and court finds that the person who has suffered any loss or injury by reason of the act of the accused person, requires to be compensated, it is permitted to award compensation under section 357 (3).”

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<sup>33</sup> Pankajbhai Nagjibhai Patel v. State of Gujarat, AIR 2001 SC 567

<sup>34</sup> AIR 2012 SC 528

## Compensation to victims in Constitution of India

Constitution of India has always been the guardian and protector of the rights of individual. Instead of this, the Courts have also granted monetary compensation as a palliative in writ petition under Articles 32<sup>35</sup> and 226<sup>36</sup> of the Constitution, where a person's fundamental right to life and personal liberty was infringed by the police and other state agencies. Similarly giving a new orientation to Article 21,<sup>37</sup> the Supreme Court held that a person who suffers undue detention as imprisonment at the hands of the government is not only entitled to immediate release, but also to monetary compensation as a palliative.

One such pronouncement of the Supreme Court came in the case of <sup>38</sup>**Rudal Shah v. State of Bihar** reveals " a sordid and disturbing state of affairs " for which the responsibility squarely lay on the administration. The petitioner was acquitted by the Court of Session in June 1968 but he was released from jail in October 1982 i.e. after 14 years after his acquittal.

A writ of habeas corpus was moved on his behalf to releasing, the detenu and also claimed compensation on account of the deprivation of his fundamental right guaranteed by Art. 21.

The question arose whether the Supreme Court has power to award compensation in the form of damage or otherwise on account of such deprivation in a petition under Art. 32? After considered the shocking facts of the case, it was the view of Court as expressed by **Chandrachud CJ** that if it refused to pass an order of compensation in favour of the petitioner, "it will be doing merely lip service to the fundamental right to liberty which the State Government has so grossly violated." Such a course will denude the right to life and personal liberty under Article 21 of its significant content.

<sup>39</sup> Thus court directed to state to pay compensation as an interim measure in the sum of Rs. 35000/- for the deprivation of his liberty. For its order the Court observed "Administrative sclerosis leading to flagrant infringement of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of

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<sup>35</sup> ARTICLE- 32 Remedies for enforcement of rights conferred by this part

<sup>36</sup> ARTICLE -226 Power of High Courts to issue Certain Writs

<sup>37</sup> Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>38</sup> AIR 1983 SC 1086; also see: in *Jiwan mal Kocher v. Union of India*, AIR 1983 SC 1107 wherein relief of damage and compensation for alleged losses, humiliation and indignation suffered by the petitioner could not be granted under Article 32.

<sup>39</sup> Ibid

instrumentalities which act in the name of public interest and which present for their protection the powers of the state as a shield."

It overruled the <sup>40</sup>**Kasturi Lal** case and lays down that state is responsible for negligence and wrongs committed by its servants. The Supreme Court in this case has fixed monetary liability on the state for a gross violation of the petitioner's fundamental right under Article 21.

The Supreme Court has served notice that it will create new remedies in its original jurisdiction under Article 32, where such remedies are indispensable to the vindication of the fundamental rights. While it is fairly obvious that the responsibility for the enforcement of the fundamental rights lies on the Supreme Court by virtue of Art. 32, it is apparently difficult to concede that such a responsibility extends to the creation of new remedies. It is alleged that this would involve the court in making decisions on policy, which in truth is a matter to be left to the legislature and that this would contravene the constitutional frame work for the separation of power. There is a possibility that the creation of the remedy of compensation under Article 32 without legislative authorization might involve a decision on policy in the area of allocation of search resources which is ordinary in the legislative province.

**Rudal Shah Judgment** denotes a bold departure from the hitherto existing legal position and created far reaching significance. Ultimately, the Court has adopted new measures only for making the fundamental rights meaningful and effective and has emerged as the champion of the weak, the poor and unprivileged people.

The Court under Article 32 is also free to devise any procedure appropriate for the particular purpose of the proceeding i.e. fundamental right. The power of the Court is not only injunctive in ambit, but it is also remedial in scope. It can order payment of compensation in appropriate cases. Because of this, the Courts in India are now becoming conscious about increasing cases of excesses and negligence on the part of the administration resulting in the negation of the personal liberty. The use of writ jurisdiction for awarding compensation to the victim has made the remedy cheap, fast and more effective.

Again, a revolutionary judgment was delivered by the Supreme Court on the right of arrestee and the formulation of compensation in public law in <sup>41</sup>**D.K. Basu v. State of West Bengal**. The court noted in almost all the States there were allegations of frequent deaths in custody reported in media and custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law.

The Court illustrated that all forms of torture or cruel, inhuman or degrading treatment would fall within the ambit of Art. 21 of the constitution. In all matters the monetary compensation is an

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<sup>40</sup> Kasturi Lal v. State of U.P., AIR 1965 SC 1039

<sup>41</sup> AIR 1997 SC 610

effective remedy for redressal of the infringement of the fundamental rights to life or liberty by the public servants and the state is vicariously liable for their tortious acts. To make it more clear, the award of compensation in the public law jurisdiction is also without prejudice to other action like suit for damage which is lawfully available to the victim or the heirs of the deceased with respect to the tortious acts committed by state functionaries." This relief under the public law jurisdiction is, thus in addition to the traditional remedies and not in the derogation of them. The monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the Citizen is therefore, a useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim.

Further the Court has also pointed out that "the quantum of compensation depends upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf"<sup>42</sup>It can be seen from judgments that the Supreme Court and the High Courts have actively been invoking Arts. 32 and 226 of the Constitution while ordering monetary compensation as palliative in writ petitions. It is visible that this type of compensation was not available to the concerned victims in normal course through subordinate courts. But the point that emerges is that the Courts could order compensation only in cases where the state liability was apparent. But the same is not often easy to establish in normal cases of violence.

### **THE CONSTITUTION (TWENTY-FIFTH AMENDMENT) ACT, 1971**

Article 31 of the Constitution as it stands specifically provides that no law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given shall be called in question in any court on the ground that the compensation provided by that law is not adequate. In the Bank Nationalization case [1970, 3 S.C.R. 530), the Supreme Court has held that the Constitution guarantees right to compensation, that is, the equivalent in money of the property compulsorily acquired. Thus in effect the adequacy of compensation and the relevancy of the principles laid down by the Legislature for determining the amount of compensation have virtuality become justiciable inasmuch as the Court can go into the question whether the amount paid to the owner of the property is what may be regarded reasonably as compensation for loss of property. In the same case, the Court has also held that a law which seeks to acquire or

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<sup>42</sup> Khatri v. State of Bihar, AIR 1981 SC 928; Rudal Shah v. State of Bihar, Supra note 88; Sebastian M. Hongray v. Union of India, AIR 1984 SC 1026; Bhim Singh v. State of J&K, AIR 1986 SC 494; Chairman Railway Board v. Chandrima Dass, AIR 2000 SC 988

requisition property for a public purpose should also satisfy the requirements of article 19 (1) (f).

### **Compensation under Motor Vehicle Act,1988**

The people in India are not well aware of the entitlement of the grant of compensation in case of injury or death in a road accident under the Motor Vehicles Act. The poor victims of the road accident, in fact, do not even know the remedies available to them. Thus, there is a need of bringing social awareness among the people. The State which is called as “Welfare State”, has not taken any step to propagate the remedies available to such unfortunate victims.<sup>43</sup>

1 . Taking in to considerations the recommendations made by the Law Commission in its report, the recommendations made by various High Courts And Supreme Court of India in their judgments, the Motor Vehicles Act , 1939 has been amended many times, unfortunately, the piece meal and half-hearted legislation has left many loop holes and deficiencies even in present Act of 1988. A victim on the street is never in a position to ask for adequate compensatory relief for his lawfully entitled claims from rich and privileged adversaries, because no sooner he sets his claims in action he finds himself in a maze of procedural wrong lings which will certainly sap his time, money and energy. Even for initiating a claim he has to go the courts with the bag full of money to dole out as court fees, and other miscellaneous expenses which is certainly beyond his means and capacity. The poor, illiterate and desperate victims of motor vehicle accidents are always exploited. A Right which was otherwise available under common law for damages against a tort feaser was incorporated in Motor Vehicles Act for expeditious disposal

#### **COMPENSATION UNDER MOTOR VEHICLES ACT – AMENDMENT IN SECTION 163 A:**

Third Party Motor Accident claims can be registered with Motor Accidents Claims Tribunal (MACT) under the following Sections of the Motor Vehicles Act.

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<sup>43</sup> Janak Raj Jai, Motor Accident Claims-Law and Procedure, (2007)

**Section 140** – This is a **No Fault Liability** claim under which the compensation payable is as under:

- Rs.50000/- For Death And Rs.25000/- For Permanent Disablement. This Is Fixed Amount. No Need To Prove Wrongful Act/Negligence/Default Of The Owner Of The Vehicle.

**Section 166** – This is a **Fault Liability claim** – Victim/Legal Heirs of victim have to prove in the Court of Law the wrongful act/negligence/default of the owner causing injury/death. Compensation is based on age/income/dependency etc.

**Section 163 A** – Amendment was made in the MV Act in 1994 and introduced a new Section 163 A.

- This Also Is On **No Fault Liability** Basis. However, Payment Is On Structured Formula Basis. While Fixing The Compensation, The Following Parameters Are Taken Into Account –
- Age and Income of the Victim.
- For Calculation of Compensation, the Maximum Annual Income Is Restricted To Rs.40000/-.
- Provision Has Been Made For Compensation For Non Fatal Accidents I.E., Permanent Disablement And Injury Claims On Formula Basis.
- Based On The Formula, The Maximum Compensation For Fatal Accident Claim Is Rs.537000/- And Minimum Is Rs.50000/-.

Victim/Legal Heirs can claim under **Section 140 on No Fault Liability basis** and then can claim under **Section 166 on Fault Liability** Basis. If Award is passed under Section 166, compensation will be paid after reducing the amount received under Section 140.

If Victim/Legal Heirs claim under Section 163 A, they cannot make a claim under Section 166.

#### **Amendment in Section 163 A –**

Now, vide Gazette Notification dated 22<sup>nd</sup> May, 2018, modification has been made by the Ministry of Road Transport & Highways in the provisions of Section 163 A. Compensation, on **No Fault Liability** basis, as per amended provisions, is as under:

- (a) Fatal Accidents – Rs.5 Lacs (Fixed amount, irrespective of income and age)
- (b) Permanent Disablement – Rs.500000/- X percentage disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923). However, minimum liability shall not be less than Rs.50000/-.

(c) Minor Injury – Fixed compensation of Rs.25000/-.

On and from the date of 1<sup>st</sup> day of Jan., 2019, the amount of compensation specified in clauses (a) to (c) above shall stand increased by 5% annually.

**Net effect of Amendment under Section 163 A, which is beneficial to the victim/legal heirs, is as under:**

- *Earlier, The Death Compensation Ranged From Rs.50000/- To Rs.537000/-. Not It Is Fixed Rs.5 Lacs.*
- *For Permanent Disablement, Now The % Calculation Is Based On The Amount Of Rs.500000/- (Fixed). Earlier It Used To Be On The Basis Of Yearly Income (Which Can Be Any Amount Less Than Rs.500000/-).*
- *For Injuries, The Minimum Amount Of Compensation Was Rs.1000/- And Onwards. Not It Is Fixed Compensation Of Rs.25000/-*

The main object of this Act is to provide a speedy remedy instead of a civil suit as is required under Fatal Accidents Act. Fatal Accidents Act is also narrower in this sense that it provides for compensation only to certain dependents of the deceased<sup>4</sup> and does not apply unless death is caused. This Act on the other hand applies even in cases of injuries not causing death and also to damage to property, and when death is caused application for compensation may be made by any representative of the deceased or his agent.<sup>6</sup> But in one respect Motor Vehicles Act is narrower because it applies only in cases of accidents caused by motor vehicles.

The question of liability of the parties, which was governed by Law of Torts, is unaffected by the Act. It only changes the forum taking away the jurisdiction of the Civil Court. As to principles of measure of damages under this Act the amount is to be determined as appears to the tribunal to be just. To analyze this wide discretion certain rules have been evolved, that, the amount of compensation must be reasonable and must be assumed with moderation, regards must be had to awards in comparable cases, the sums awarded should, to a considerable extent, be moderate. While fixing the amount of damages the Tribunal should ascertain separately and determine under different heads pecuniary and non-pecuniary damages awarded. Although the sum awarded must be a lump sum it must be made up of its constituent parts, and it was decided in case <sup>44</sup>**M.P.S.R.T. Corporation v. Jahiram**

The Supreme Court in <sup>45</sup>**Shekhupura Transport Co. v. N.I.T. Insurance Co.**, held that for fixing compensation under S.110-B of Motor Vehicles Act, 1939 (S. 168 of Motor Vehicles Act, 1988)

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<sup>44</sup> A.I.R. 1969 M.P. 79

<sup>45</sup> A.I.R. 1971 S.C. 1924 followed in Babu Singh v. Champa Devi, A.I.R.1974 All 90.

the general principle that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other hand any pecuniary advantage, which from whatever source comes to them by reason of death, that is, balance of loss and gain to a dependent must be ascertained.

The Supreme Court in <sup>46</sup>**M. K. Kunhimohammed v. P. A. Ahmedkutty**, has made certain suggestions to raise the limit of compensation payable as a result of motor accidents in respect of death and permanent disablement in the event of there being no proof of fault on the part of the person involved in the accident and also in hit and run motor accidents and to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of vehicles involved in the accident. The above suggestions made by the Supreme Court have been incorporated in the Bill of the Motor Vehicles. The proposed legislation has been prepared in the light of the above background. Some of the more important provisions of the Bill provide for the following matters, namely:-

- a. Rationalization of certain definitions with additions of certain new definitions of new types of vehicles.
- b. Stricter procedures relating to grant of driving licenses and the period of validity thereof.
- c. Laying down of standards for the components and parts of motor vehicles.
- d. Standards for anti-pollution control devices.
- e. Provision for issuing fitness certificates of vehicles also by the authorized testing stations.
- f. Enabling provision for updating the system of registration marks.
- g. Liberalized schemes for grant of stage carriage permit on non nationalized routes, all-India Tourist permits and also national permits for goods carriages.
- h. Administration of the Solatium Scheme 21 by the General Insurance Corporation.
- i. Provision for enhanced compensation in cases of “no fault liability” and in hit and run motor accidents.
- j. Provision for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles.
- k. Maintenance of State registers for driving licences and vehicle registration.
- l. Constitution of Road Safety Councils.

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<sup>46</sup> (1987) 4 S.C.C. 284.



## Compensation to victim of rape

The compensation part of the rehabilitation of victims of violence including rape is governed by provision of Section 357A of the Code of Criminal Procedure which states that every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim of crime. So far 24 states and 7 UTs have formulated the Victim Compensation Scheme.

The government has introduced a Central Victim Compensation Fund (CVCF) scheme, with an initial corpus of Rs 200 crores, to enable support to victims of rape, acid attacks, human trafficking and women killed or injured in the cross border firing. Till now, there has been an absurd disparity in compensation amount paid by state governments varying from Rs 10,000 to Rs 10 lakh.

Supreme Court of India recently observed that no compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim's fundamental right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace. Cases of rape and sexual violence against women and children are increasing throughout India inspite of post Nirbhaya amendments in the Criminal Law in 2013 and enactment of other special statute.

Various statutory provisions and decisions of the Supreme Court have been studied and analysed to highlight the need for compensation and rehabilitation of rape survivors as a constitutional obligation for human rights cause. Factors considered for deciding quantum of compensation, mechanism to fast track for delivery of compensatory relief and long term rehabilitation has been discussed and recommendation for implementation. Critical analysis of Victim Compensation Schemes (VCS) in various states after amendments and insertion of Section 357 A, in Criminal Amendment Acts, 2009 and 2013

**S. Ahluwalia vs. UOI (2001) 4 SCC 452**, Hon'ble Supreme Court held that in expanded meaning attributed to Article 21 of the Constitution, where the State fails to protect the life of the people, it could not escape the liability to pay compensation to the victims .

Rape involves violation of fundamental rights under Article 21 of the Indian Constitution. Compensation for the violation of fundamental rights is given by way of penalizing the State for violating the fundamental rights guaranteed by the Constitution of India and for the breach of its public law duty. This compensation is in the nature of 'exemplary damages' awarded

against the wrongdoer for the breach of a public law duty. This is apart from and in addition to compensation granted for the loss or injury under the law of torts. “It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention in this matter.” - **Justice Krishna Ayyar, 1980**

<sup>47</sup>Thus, modern approach of victimology acknowledge that a crime victim has right to be adequately compensated, rehabilitated and repaired irrespective of identification and prosecution of offender and the payment of such compensation should be made by state.

### **Justification for compensation**

Various justifications for compensation have been used, such as:

1. Benefit to the victims,
2. Symbolic social recognition for the victim’s suffering,
3. Deterrent effects on the offender as also the reformatory effects on the offender as the paying of compensation has an “intrinsic moral value of its own”.

### **Supreme Court’s View on Compensation:**

Need for long-term Rehabilitation: “Survivors of rape should be compensated by giving them half of the property of the rapist(s) as compensation in order to rehabilitate them in Society. - **P. Sathasivam, CJI**, 23rd Jan 2014 Court further added that “Merely providing interim measures for their stay may protect them for time being but long-term rehabilitation is needed as they (Family Members) are all material witnesses and likely to be socially ostracized.- **P. Sathasivam, CJI**, 23rd Jan 2014

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<sup>47</sup> [Source: "Rattan Singh vs. State of Punjab" AIR 1980 Supreme Court 84]

## **Need for creation of ‘Victim Compensation Fund’**

The ‘Victim Compensation Fund’ shall comprise the following:

1. Budgetary allocation for which necessary provisions shall be made in the Annual Budget by the (Concerned) Government.
2. Receipt of amount of fines imposed under section 357 Cr.P.C., and ordered to be deposited by the courts in the Victim Compensation Fund
3. Amount of compensation recovered from the wrongdoer/accused under clause 9 of the scheme.

4. Donations/contributions from International /National/ Philanthropist/ Charitable Institutions /Organizations and Individuals.

Only few States has made these provisions for creation of “Victim Compensation Fund”. State of Haryana and Delhi are few examples in this regard.

"357B<sup>48</sup>: The compensation payable by the State Government under section 357A<sup>49</sup> shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code, 45 of 1860.

## **Compensation under Domestic violence Against Women’s Act,2005**

Domestic Violence against Women Act, 2005 reads Compensation Order: “Section 22: In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries including mental torture and emotional distress, caused by the act of domestic violence committed by that respondent.

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<sup>48</sup> Code of criminal procedure ,1973

<sup>49</sup> Code of criminal procedure ,1973

The Act inter alia provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family.

According to the Act any harm, injury to health, safety, life, limb or well-being or any other act or threatening or coercion etc. by any adult member of the family, constitutes domestic violence. Any woman who is or has been in a domestic or family relationship, if it is subjected to any act of domestic violence can complain to the concerned Protection Officer, Police Officer, Service Provider or Magistrate. Aggrieved woman has a right to be informed about the available services and free legal services from the protection officer etc. Shelter home and medical facilities can be provided to aggrieved woman. The proceedings of the complaint can be held in camera. Every aggrieved woman has a right to reside in shared household. The protection order <sup>50</sup>by Magistrate can be given in the favour of aggrieved woman. The monetary relief<sup>51</sup> can be given to the aggrieved woman to meet expenses or losses. In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent. The appeal can be made to Sessions Court within 30 days from the order of concerned Magistrate.

The imprisonment can be made upto 1 year or a fine upto Rs. 20,000/- or both for breach of protection order by the opposite party.<sup>52</sup> The Protection Officer can be prosecuted upto 1 year imprisonment or with a fine upto Rs. 20,000/- or both can be imposed for failure of his duties.

### **Compensation under The Workmen Compensation Act, 1923**

This Act provides for the payment, by certain classes of employers to their workmen, of compensation for injury by accident occurred during or in the course of employment. S.3 envisages an employer's liability for payment of compensation if any personal injury is caused to a workman

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<sup>50</sup> S.18 Protection Orders-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favor of the aggrieved person and prohibit the respondent

<sup>51</sup> S.20 Monetary reliefs.

<sup>52</sup> S.31 Penalty for breach of protection order by respondent

by an accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in respect of

(a) any injury which results in the total or partial disablement of the workman for a period exceeding seven days;

(b) any injury resulting in the death caused by an accident which is not directly attributable to the workman having been at the time thereof under the influence of drink or drugs, or any willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or the willful removal of, or disregard to any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

The Act also lays down the process of determination of payment of compensation by enlisting the injuries deemed to result in permanent partial disablement, the occupational diseases and compensation payable in Schedules I, III, and IV annexed in the Act.

Now, if a claim arises under both the Acts, there is no doubt that the liability of the insurer is wider and not restricted to cases of insolvency, etc., mentioned in Section 14 of the Workmen's Compensation Act, 1923. When a claimant's case arises under both Acts, but he files a claim before the Commissioner under the Workmen's Compensation Act, 1923, the Commissioner can, because of Section 110-AA read with Section 95(5) make the insurer liable even in situations not covered by Section 14 of the Workmen's Compensation Act, 1923. We shall go a little deeper into these aspects.<sup>53</sup>

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<sup>53</sup> National Insurance Company Ltd., ... vs Philomina Mathew And Ors. on 14 December, 1992

Reference is made to a decision of learned single Judge of the Punjab High Court in the case of **Sewa Singh Ladha Singh v. Manager, Indian Hume Pipe Co. Ltd. reported in AIR 1964 Punjab 512**. The decision supports the contention raised by the appellant. In that case the workman was employed as a fitter.

He met with an accident and received injury on his right leg due to which there was permanent deformity in his leg. Movement of his knee joints was restricted and his physical capacity was impaired to the extent of 50% permanently. However, the workman was employed on the same wages by the employer Company even after the accident. Therefore, the Commissioner for Workmen's Compensation rejected the application for compensation. On appeal, learned Single Judge of the Punjab High Court confirmed the view taken by the Commissioner for Workmen's Compensation holding that in case falling under Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923 (i.e. the cases of non-scheduled injuries) the Commissioner is required to examine as to whether the workman has actually suffered loss of earning capacity.<sup>54</sup>

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<sup>54</sup> State Of Gujarat vs Rajendra Khodabhai Deshdia And ... on 13 March, 1990

## PROTECTION OF HUMAN RIGHTS ACT, 1993

In India, National Human Rights Commission was set up under the Act<sup>55</sup> for the protection and promotion of human rights. The National Human Rights Commission came into being through an Ordinance promulgated on 28th September, 1993 presumably under some foreign pressure. The main function of the National Human Rights Commission is to inquire into violations of human rights and negligence in the prevention of such violation by State machinery.<sup>56</sup> Since its inception the Commission has started receiving numerous complaints of violation of human rights. It can also intervene in a judicial proceeding involving allegation of human rights violations, visit any State institution, promote research on human rights, spread human rights literacy, encourage social activism and review the existing human rights laws and recommend measures for their effective implementation.

The Commission enjoys the powers of a civil court while inquiring into the complaints under the Act. It enjoys investigation power and can utilize the services of any governmental investigative agency. NHRC has recommended Rs.62933000/- as monetary relief in 398 cases including 5 disciplinary actions against public officials for their administrative wrongs while doing their duty.

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<sup>55</sup> Protection of Human Rights Act, 1993.

<sup>56</sup> S.12. Functions of the Commission

## Compensation under Probation of Offender's Act,1958

In view of the compensation to victims of crime the Probation of Offenders Act, 1958 also provided in s.5 that the court may direct the released offenders to pay compensation and costs to the injured person.<sup>57</sup> S.5 incorporates the idea of compensation and lays down that a Court while directing release of an offender after admonition or on probation for good conduct, may, in its discretion, order such person for payment of compensation, for the "loss" or "injury" caused by his act or omission, as the Court thinks to be reasonable.

This section also empowers the court making such order to defray the costs of proceedings. Clause (2) provides that the victim must be entitled to recover the amount ordered to be paid under subsection (1) as a fine. But in practice the courts in India are not paying adequate attention to this provision. Thus both the Code of Criminal Procedure and the Probation of Offenders Act do not give a "right" to recover compensation, but simply leave it to the discretion and satisfaction of the Courts to grant compensation when the need arises. This discretionary power makes it very difficult to achieve the purpose of the provisions and enhances the chances of maximum abuse.

The Apex Court rightly observed **in Sukhbir Singh (1988)** that, "section 357 is an important provision but the Court have seldom invoked it perhaps due to the ignorance of the object of it.....we recommend all Courts to exercise this power liberally so as to meet the ends of justice in a better way."

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<sup>57</sup> S 5 Power of court to require released offenders to pay compensation and costs



## Act on Compensation for Environmental Damage August 19, 1994

Compensation shall be paid for a loss defined in this Act as environmental damage, caused by activities carried out in a certain area and resulting from:

- 1) pollution of the water, air or soil;
- 2) noise, vibration, radiation, light, heat or smell; or
- 3) other similar nuisance. The keeper of a road, railway, port, airport or other comparable traffic area shall also be considered to be carrying out activities referred to above in paragraph 1. This Act does not apply to contractual liability for compensation.<sup>58</sup>

Compensation shall be paid for environmental damage in accordance with this Act if it is shown that there is a probable causal link between the activities and the loss referred to in section 1, paragraph 1.

In assessing the probability of causality, consideration shall be given, among other things, to the type of activity and loss and to the other possible causes of the loss.<sup>59</sup>

### Who will pay compensation

Even when the loss has not been caused deliberately or negligently, liability for compensation shall lie with a person

- 1) whose activity has caused the environmental damage;
- 2) who is comparable to the person carrying out the activity, as referred to in subparagraph 1; and
- 3) to whom the activity which caused the environmental damage has been assigned, if the assignee knew or should have known, at the time of the assignment, about the loss or the nuisance referred to in section 1 or the threat of the same. In the assessment of the comparability referred to in paragraph 1, subparagraph 2, due consideration shall be given to the competence of the person concerned, his financial relationship with the person carrying out the activity and the profit he seeks from the activity.<sup>60</sup>

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<sup>58</sup> Section 1 Scope of application ACT ON COMPENSATION FOR ENVIRONMENTAL DAMAGE

<sup>59</sup> Section 3 Causality ACT ON COMPENSATION FOR ENVIRONMENTAL DAMAGE

<sup>60</sup> Section 7 Persons liable for compensation

If the future environmental damage resulting from a nuisance can be assessed in advance, compensation for it shall on demand be pre-set either as a lump sum or as an annual payment.

If there is later an essential change in circumstances, or the assessed loss is otherwise essentially different from that actually resulting from the nuisance, the compensation set in this manner may be adjusted to a reasonable extent considering the circumstances.

An advance lump-sum compensation to be paid for damage caused to real estate shall be ordered to be deposited if the real estate, due to a mortgage or according to the provisions on the lien for an outstanding purchase price, stands as security for a claim or the right to collect a specific revenue in money or goods, and the owner does not show that the rights holders have consented to the payment of the compensation to him, or a court of law considers that the property can, despite the environmental damage, clearly bear the encumbrances attached to it.

The provisions of section 7 of the Act on the Redemption (Expropriation) of Immoveable Property and Special Rights (603/77) apply, where appropriate, to the deposit and withdrawal of the compensation.<sup>61</sup>

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<sup>61</sup> Section 9 Advance compensation

## **186Th Report On Proposal To Constitute Environment Courts.**

The scheme proposed by the Law Commission in this Report, on the other hand,

is very comprehensive. The Judicial body will be an Environment Court at State Level consisting of sitting/retired judges or members of the Bar with more than 20 years standing, assisted by a statutory panel of experts in each State. It will be a Court of original jurisdiction on all environmental issues and also an appellate authority under all the three Acts, viz., Water Act, Air Act and Environment

(Protection) Act, 1986 and will reduce the burden of High Courts/Supreme Court.

There will lie a further statutory appeal direct to the Supreme Court against judgment of the proposed Environment Court. In our view, this scheme is

preferable to the Government's proposal of a single appellate Court at Delhi,

which will be beyond the reach of affected parties.

A claim for Compensation can be made for:

1. Relief/compensation to the victims of pollution and other environmental damage including accidents involving hazardous substances;
2. Restitution of property damaged;
3. Restitution of the environment for such areas as determined by the NGT.

No application for grant of any compensation or relief or restitution of property or environment shall be entertained unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.

## Determination Of Environment Compensation: THE ART OF LIVING CASE

Through the 1980s, the Indian Supreme Court dealt with environmental degradation and governmental inaction through public interest litigation<sup>62</sup>. This allowed the Court to provide wider remedies by expanding locus standi and introducing a non-adversarial procedure. Accordingly, public spirited citizens were able to file petitions through letters based on news reports. While this led to significant improvements in environmental adjudication such as reading the right to clean environment in the right to life under Article 21 of the Constitution, it also posed serious challenges<sup>63</sup>. For instance, the Supreme Court frequently found itself indulging in fact-finding, weighing evidence, and in effect conducting a trial. These are exercises which are supposed to be done by the lower judiciary as it is better equipped to investigate facts.

While the Court applied the principle of sustainable development along with the polluter pays and precautionary principles, there was no pro-environment consistency in their application. With the increasing need for scientific and technical expertise, judges found it increasingly difficult to keep abreast with the latest scientific and technological developments and adjudicate on complex scientific matters involving a high degree of scientific uncertainty.

Accordingly, **the Supreme Court**, through three significant judgments, voiced the need for the creation of a “Green Tribunal”<sup>64</sup>. This judicial push was supplemented by the **186th Report of the Law Commission of India**, which recommended the establishment of “**environmental courts**” in every state. It further recommended that these courts should have both judges and experts.

Thus, while the legislature enacted the **National Green Tribunal Act, 2010** (‘NGT Act’ or ‘**the Act**’) to give effect to India’s obligation under the Stockholm<sup>9</sup> and Rio<sup>10</sup> conferences, the underlying reason for its enactment was to ensure effective adjudication, given the increasing scientific uncertainty. To ensure this, the NGT Act provides for the establishment of an independent statutory panel that includes expert member having expertise in, inter alia, physics, chemistry, botany, zoology, engineering, environmental economics, social sciences and forestry.

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<sup>62</sup> Municipal Council, Ratlam v. Vardhichand, AIR 1980 SC 1622

<sup>63</sup> Rural Litigation Entitlement Kendra v. State, AIR 1988 SC 2187 (This case recognised the right to clean environment under Article 21 of the Indian Constitution).

<sup>64</sup> M.C. Mehta v. Union of India, 1986 (2) SCC 176; Indian Council for Enviro-Legal Action v. Union of India, 1996 (3) SCC 212; A.P. Pollution Control Board v. M.V. Nayudu, 1999 (2) SCC 718.

The environmental adjudication under the NGT has certainly been an improvement over the Supreme Court led public interest litigation regime. Between 2010 and 2017, out of a total of 23,626 cases that were filed, nearly 19,066 cases were disposed. 13 Certainly, the disposal of cases has become more expeditious.

However, whether the NGT has been able to adjudicate more effectively is a question that is still to be answered conclusively. This is because the Tribunal lacks an effective methodology to determine environmental compensation.

The determination of compensation is significant as it not only compensates affected stakeholders but it also reflects the quality of scientific analysis undertaken by the Tribunal. It demonstrates both the accuracy of the Tribunal's assessment of environmental damage in a case and how effectively it dealt with scientific uncertainty. Given the fact that the Tribunal is equipped with members possessing the technical know-how, it is reasonable to assume that the Tribunal's determination of compensation is proportionate to or bears a reasonable nexus with the environmental damage in most cases.

However, as will be demonstrated in the Part II of the paper, the NGT lacks a clear methodology for quantitative assessment of environmental damage. Frequently, it unduly relies on the Supreme Court's approach in mining cases, taken out of context, to determine the initial environmental compensation in considerably different cases.

In Part II, we will analyse **Manoj Mishra v. Delhi Development Authority & Ors. ('the Art of Living Case')**<sup>656</sup>, which aptly exemplifies this. In doing so, we will highlight how the NGT's drastic reduction of the compensation amount from an initial estimate of **INR 120 crore** to a mere **INR 5 crores** was a natural result of the unscientific manner in which it conducted the investigation and quantified the compensation. Thereafter, we shall conclude by summarizing the trends highlighted.

## TRENDS OF THE NGT IN AWARDING COMPENSATION

The NGT Act, 2010 does not prescribe any minimum or maximum amount of compensation that needs to be given. In fact, the only guidance it provides with respect to determining compensation is in §20, which requires the Tribunal to apply the principle of sustainable development, **polluter**

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<sup>65</sup> Armin Rosencranz & Geetanjoy Sahu, Assessing the National Green Tribunal After Four Years.

<sup>66</sup> Manoj Mishra v. Delhi Development Authority, Original Application No. 65 of 2016

**pays principle**, and the precautionary principle while passing an award or order<sup>67</sup>. Nevertheless, the recent trend of the NGT with respect to determining environmental compensation seems to be to make the project proponent pay from five to ten percent of the project cost. This trend was started in 2014 when the NGT arbitrarily adopted the Supreme Court's approach to determining compensation in **Goa Foundation v. Union of India ('Goa Foundation')**<sup>68</sup>. In *Goa Foundation*, the Supreme Court was faced with the issue of determining the environmental damage caused due to certain illegal mining in Goa. In arriving at the compensation amount, the Court held that the project proponents would have to pay 10% of the sale proceeds as compensation.

The Court felt that this was an appropriate compensation given that mining could not be completely stopped due to its contribution towards employment and revenue generation for the State.

Accordingly, it held that if mining had to continue, determining compensation on the basis of sale proceeds would be apt as it would directly affect the profitability of the project.

However, this approach was not intended to act as a precedent for determining environmental compensation in all cases. This is evident from the fact that the Court created a special purpose vehicle "**Goan Iron Ore Permanent Fund**" for depositing the compensation and relied on its earlier decision in **Samaj Parivartana Samudaya v. State of Karnataka**<sup>69</sup>, wherein it had held that ten percent of the sale price of the iron ore during an e-auction should be used as compensation. Thus, the approach, at best, can be a precedent for cases involving illegal mining in regions such as Goa. Clearly, considerations of the state's dependency on mining for revenue and employment generation had gone into arriving at the compensation. Thus, had the considerations been different – in that the Supreme Court was concerned with an activity which did not contribute largely to the State's revenue – and had the Supreme Court had banned mining altogether, the approach to determine compensation would have been significantly different.

However, the NGT has, without paying heed to the context in *Goa Foundation*, co-opted this approach in several cases that have very different considerations. 25 A good example of this is found in *Forward Foundation v. State of Karnataka ('Forward Foundation')*. The case dealt with unauthorised construction in a Special Economic Zone ('SEZ') by two companies, before receiving the Environmental Clearance ('EC'). Even after receiving the EC, the companies continued to flout the conditions stipulated therein. The NGT, in its judgement, observed that the

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<sup>67</sup> The principle of sustainable development has been defined as, "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"

<sup>68</sup> *Goa Foundation v. Union of India*, Writ Petition (Civil) No. 435 of 2012.

<sup>69</sup> *Samaj Parivartana Samudaya v. State of Karnataka*, Writ Petition No. (C) 562 of 2009.

project fell under the ecologically sensitive area between the Agara and Bellandur lakes and was a threat to the entire ecosystem.

Additionally, the project activities affected the wetlands and storm water drains. Despite the serious environmental damage involved, the NGT unduly co-opted the Supreme Court's approach in Goa Foundation and imposed an environmental penalty amounting to a mere five percent of the project cost.

Nevertheless, the NGT was clearly concerned with the profitability of the project proponent while determining the quantum of compensation. This is evident from its reliance on its decision in **Krishan Kant Singh v. National Ganga**<sup>70</sup> River Basin Authority, wherein the Tribunal was concerned with the "magnitude, capacity, and prosperity of the unit". This is antithetical as in several cases the compensation levied is extremely low in comparison to the project proponent's annual revenue/turnover. A recent study conducted by the Centre for Science and Environment highlights this disproportionate relationship between the compensation levied and the annual turnover of the project proponent in cases involving pollution by the sugar distillery industry in the state of Uttar Pradesh .

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<sup>70</sup> 4 Krishan Kant Singh v. National Ganga River Basin Authority, OA No. 299/2013.

## **Compensation under Insurance Act,1991**

Public Liability Insurance Act,1991 is to provide the compensation for damages to victims of an accident of handling any hazardous substance or It is also calls, to save the owner of production/storage of hazardous substance from hefty penalties. This is done by proving compulsory insurance for third party liability. As from the name of the act, it is Public Liability.

First time owner is put on anvil to provide the compensation/relief, when death or injury to any person (please note-other than a workman) or damage to any property has resulted from an accident of hazardous substance.

Actually the owner shall buy one or more insurance policies before he/she starts handling any hazardous substance. When any accidents come in knowledge of Collector, then he/she verify the occurrence of accident and order for relief as he/she deems fit.

The only restriction that is put on Public Liability Insurance Act is that the application for relief should within five years of the occurrence of the accident.

When Collector finds the guilty, the insurer (means person or insurance company) is required to pay amount as deems to be fit as per law within a period of thirty days of the date of announcement of the award. The Owner shall also pay the relief as Collector deems fit because it is duty of owner to keep the hazardous material safe in his custody. The amount is normally deposited in account of "Relief Fund" and Collector arrange the relief to pay from the Relief Fund.

The Collector shall have all the powers of Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed.



### **Amount of Compensation**

- Reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case.
- For fatal accidents the relief will be Rs. 25,000 per person in addition to reimbursement of medical expenses if any, incurred on the victim up to a maximum of Rs. 12,500.
- For permanent total or permanent partial disability or other injury or sickness, the relief will be reimbursement of medical expenses incurred, if any, up to a maximum of Rs. 12,500 in each case and cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs. 25,000.
- For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months provided the victim has been hospitalised for a period of exceeding 3 days and is above 16 years of age.

## Compensation under Environment Protection Act, 1986

Environmental Protection has become a matter of serious concern to the World. Decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and bio-diversity, excessive concentration of harmful chemicals in the ambient atmosphere and food grains, growing risks of environmental accident and threat to life support system."

Besides this development of industrialization and urbanization has resulted in exploitation of resources as well . To cope up with the problem of environmental protection in Stockhome Conference (1972) the world emphasized on the legislative measures to combat the environmental problem.

In India with uneducated masses, poverty, socioeconomic problems or conditions there is great lack of awareness regarding ecological and environmental problem. India is amongst one of the countries in the world which provide constitutional status to the idea of environmental protection in Part-IV of the Constitution of India i.e. Directive Principles of State Policy.

Prior to 1974, Environmental Protection was not the subject matter of special legislation. Only the Indian Penal Code, 1860, the Criminal Procedure Code, 1973 and Code of Civil Procedure, 1908 were having the provisions. Besides this, the procedural requirements of a regular civil action were very difficult. In the year 1974, the Water (Prevention and Control of Pollution) Act, 1974 was enacted. After this legislation seven years later, the Air (Prevention and Control of Pollution) Act, 1981 was also enacted.

But the comprehensive legislation with regard to environmental protection was enacted through the Environmental Protection Act, 1986. The main object of the Act was to protect and improve the environment. The Act also gives the authority to plan nationwide programmes against environmental pollution and protection for the standards for quality of environment."

" In India, the civil courts played a limited role to combat pollution and offered no relief for violation of enviro-legal right. In personal injury cases, the courts hardly awarded compensation for non-pecuniary loss. However, the courts made awards for pain and suffering or loss for

amenities of life but the compensation awarded was notoriously low. The legal provisions relating to environmental pollution are found under certain other legislations also."

The Environment (Protection) Act of 1986 was passed to protect and improve human environment and to prevent hazards to human beings, other living creatures, plants and property. This new legislation is said to be 'Umbrella' legislation passed to provide a framework for the Central Government towards coordination of activities of various Central and State Agencies established under various legislations.

The Act contains 26 sections with the object of protection and improvement of environment. The remedial measures for protection of environment are made available in case of emergencies due to accidents or unforeseen events.

The Act imposes penalties in the form of imprisonment and fine upto Rs. 1,00,000<sup>7172</sup>. The National Environmental Tribunal Act, 1995 was passed to develop such system under which liability and compensation for the victim of environment pollution and other environmental damages. Besides, this the National Environmental Appellate Authority Act, 1997 was passed to provide for the establishment of a National Environmental Appellate Authority to entertain appeals with respect to restriction of areas in which any industry, operations or processes or class of industries shall not be carried out or shall be carried subject to certain safeguards under Environment (Protection) Act 1986.

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<sup>71</sup> Mishra, Vinod Shankar, *Emerging Right to Compensation in Indian Environmental Law*

<sup>72</sup> See, Environment Protection Act, 1986, Sec. 15.

## **Compensation under Consumer Protection Act, 1986**

In the year 1985 the United Nations General Assembly passed a resolution directing the countries all over the world to frame consumer protection legislations. It considered the interest and needs of consumer in all countries particularly, in the developing countries the consumer protection measures should essentially be concerned with firstly the protection from hazards to health and safety secondly, the promotion and protection of economic interest thirdly, access to adequate information fourthly, control of misleading advertisements and deception representation, fifthly, consumer education and lastly, effective consumer redressals. In India, to protect the interest of the consumer in the society, the Consumer Protection Act, 1986 was passed.

It was one of the most important legislation in the shape of providing the redressal machinery for settling the consumer disputes in a convenient, effective and speedy way. The Consumer Protection Act 1986, incorporates the ingredients of the United Nation General Assembly resolution passed in the year 1985. The Act is to protect the right of the consumer against marketing of goods which are hazardous to life. The Act also provides the right to inform about the quality, quantity, potency, purity of the product. The main object of the Consumer Protection Act is better protection of the interest of the consumer dispute. This Act initiates the new dimension to the concept of law as a tool of social engineering.

### **Claim for Compensation under the Act**

Section 14(1)(d) of the Consumer Protection Act, 1986 lays down that if the District Forum is satisfied that the goods or the service complained against suffer from any defect or deficiency specified in the complaint, it may order the opposite party directing him to pay such compensation in the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party<sup>73</sup> It is important to mention that the forum may award compensation only if two conditions are satisfied: (a) the consumer must have suffered some loss or injury, and (b) the loss or injury must have been caused due to the negligence of the opposite party.

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<sup>73</sup> Indian Airlines vs. R. K. Upadhyay, (1991) 1 CPR 46 (NCDRC)

## Compensation under Indian Penal Code, 1860

In India, criminal law does not provide for payment of compensation to victim of crime for any 'loss' or 'injury' - physical, mental or psychological caused to him by offender <sup>74</sup>. Even the Law Commission is not in favour of creation of legal right in favour of the victim to join hand in criminal proceedings. As a third party definitely it will mix up civil and criminal proceeding.

Further, the Law Commission is of the opinion that there is no advantage in providing for duty to make amend for the harm caused or payment of compensation to the victim of the offence as an additional punishment.

There may be cases where the offender is not in a position to pay compensation owing to his pecuniary conditions. In such cases scheme may be framed for payment of compensation by the State, based on sound and certain legal premises.

The payment of compensation can also be made out of the earning of the offender during imprisonment. However, the Penal Code should give prominence to this aspect of compensating the victim of the offence out of fine imposed on the offender <sup>75</sup>. With a view to give prominence in the Indian Penal Code, 1860 to the payment of compensation out of fine imposed and to give a substantive power to the Trial Court to this effect.

Accordingly, Law Commission of India in its 42 report suggested the insertion of Section 62 in the Penal Code in the following manner: "Whenever a person is convicted of an offence punishable under Chapter XVI, Chapter XVII or Chapter XXI of this Code or of an abetment of such offence or of a criminal conspiracy to commit such offence and is sentenced to a fine whether with or without opinion that compensation is recoverable by civil suit by any person for loss or injury caused to him by that offence, it shall be competent to the Court to direct by the sentence that the whole or any part of the fine realized from the offender shall be paid by way of compensation to such person for the said loss or injury."<sup>76</sup>

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<sup>74</sup> Sec. Vibhute K. I., *Compensating Victim of Crime in India : An Appraisal*, (1990),

<sup>75</sup> Law Commission of India, *Foriv Second Report (1971) on Indian Penal Code 1860*,

<sup>76</sup> *Ibid*

The Parliament did not pay attention to the recommendations of the Law Commission. But, the existing provision relating to compensation was inserted in the Code of Criminal Procedure through amendment and its application has been expanded. It may be provided in the modified Section 357 (545 of old Code) of Criminal Procedure Code that, in every case where the new Section 62 of the Penal Code is attracted, but the Court decides not to make an order for payment of compensation out of the fine, it should record its reasons.

Further, Justice R. L. Narasimham, member of the Law Commission opined that Section 357 (Section 545 of Criminal Procedure Code, 1898) is wholly unsatisfactory because of some reason.

Firstly, under Section 545 Cr.P.C (357 New Code) compensation can be given only in money, to the injured party. There is no provision for direct reparation for the harm caused.

Secondly, the procedure involved in the Section is circuitous, dilatory, expensive and caused much harassment to the injured complainant. The Court is required first to impose fine on the accused and then await its realizations. Keeping this in view when the injured party has to apply for withdrawal of compensation awarded to him and the procedure as is well known in Courts in India, involves much delay and harassment and also expenses in the form of illegal gratification to the subordinate Court staff. It will be very rarely indeed that any aggrieved party can hope to receive the full amount of the compensation awarded to him within reasonable time.

Lastly, it does not cover cases of those accused persons who are unable to pay the fine. The evil effect of short term imprisonment already pointed out persists and the complainant also may not be able to derive any advantage as far as reparation is concerned.

In India 19(5) Accordingly Justice R. L. Narasimham recommended deletion of Section 545 (Section 357 New Code) from the Criminal Procedure Code and insertion of the following Clause in Indian Penal Code:

70 A (1) In the case of conviction for an offence against the human body and offence against property, defamation or an offence against privacy, the Court may direct that the person convicted shall pay compensation to the person mentioned in sub-section (4).

(3) Such compensation need not necessarily be monetary and it may be in any form which the Court considers to be sufficient recompense to the injured party. But, while passing the order for compensation, the Court shall estimate its monetary value for the purpose of execution of the order.

(3) The Court shall not, under this Section direct payment of compensation whose monetary value exceeds the amount of fine which it is empowered to impose.

(4) An order under sub-section (1) may be made –

(a) In addition to any other punishment to which the person convicted may have been sentenced.

(b) In substitution of fine, where the offence not being a capital offence, is one punishable with fine.

(5) The compensation under this Section may be directed to be paid –

(a) to any person who has incurred expenses in prosecution for defraying expenses properly incurred;

(b) to any person for any loss or injury caused by the offence, when compensation is in the opinion of the Court, recoverable by such person in a civil Court;

(c) in the case of conviction of any offence for having caused the death of another person or of having abetted the Commission of such offence, to the person who are, under the fatal Accident

Act, 1855, entitled to recover damages to Legislative Provisions of Compensation in India 198 the person sentenced, for the loss resulting to them from such death; or

(d) In the case of a conviction for any offence which includes, theft, criminal misappropriation, criminal breach of trust, or cheating or of having voluntarily assisted in disposing of, stolen property properly knowing or having reason to believe the same to be stolen, to any bonafide purchaser of such property for the loss of the same, if such property is restored to the possession of the person entitled thereto.

These specific provisions recommend improvements in the law concerning payment of compensation by the offender.

Basically emphasis is given for compensation by a convict out of the fine imposed upon him for committing an offence against the human body, property, defamation or abetment of or criminal conspiracy to commit such offence. Such compensation is recoverable in a civil suit against the convict for loss or injury caused to the person.

Secondly, the provision favours compensation to the victim as an additional punishment and pleads for imposition of a statutory duty on offenders to amend or re-compensate, monetarily or otherwise, the victim. It is crystal clear that the second approach not only shows equal concern to victim of crime but also visualizes a real, reasonable, re-compensation of victim. But the whole of the recommendations of the Law Commission unfortunately not find a place in the provision of the Indian Penal Code, 1860.



### **Malimath Committee on Justice to Victims**

In the report submitted by the Committee on “Reforms of the Criminal Justice System” constituted by the Government of India under the Chairmanship of Justice V.S. Malimath, former Chief Justice of Karnataka and Kerala High Courts, , a chapter has been included on justice to victims.

The observations and the recommendations of the said Committee on justice to victims are as follows:

- Victims do not get at present the legal rights and protection they deserve to play their just role in criminal proceedings which tend to result in disinterestedness in the proceedings and consequent distortions in criminal justice administration.
- Unless justice to the victim is put as one of the focal points of criminal proceedings, the system is unlikely to restore the balance as a fair procedure in the pursuit of truth and co-operation of witnesses will not be forthcoming unless their status is considerably improved along with justice to victims.
- Victims of rape and domestic violence etc. require trauma counseling, psychiatric and rehabilitative services apart from legal aid. The object is to avoid secondary victimization and provide hope in the justice system. At the police station level, with or without the assistance of voluntary organizations, victim support services need to be organized systematically if the system were to redeem its credibility in society.

- A counsel engaged by the victim may be given a limited role in the conduct of prosecution, that too only with the permission of the court. The counsel so engaged is to act under the directions of the public prosecutor. The only other privilege a victim might exercise is to submit again with the permission of the court, written arguments after the closure of evidence in the trial. This requires change on the lines proposed above.
- Section 439 (2) may allow a victim to move the Court for cancellation of bail; but the action thereon depends very much on the stand taken by the prosecution.
- Withdrawal at any time during trial by the prosecution should be done only after consulting the victim (Section 321 Cr. P. C.).
- There is a need for an officer equivalent to Probation Officer to take care of victim interests in investigation and trial. He may be called Victim Support Service Co-coordinator who may work closely with the police and Courts to monitor, coordinate and ensure delivery of justice during the pendency of the case.
- Give a role to the victim in the negotiation leading to settlement of criminal cases either through courts, Look Adulates or Plea-bargaining.
- The Criminal Justice System should take note of the principles of Indian Constitution and should legislate on the subject of Victim Compensation suitably.
- The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the charge is punishable with 7 years imprisonment or more.
- In select cases notified by the appropriate government, with the permission of the court an approved voluntary organization shall also have the right to implead in court proceedings.
- The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer.
- The victim's right to participate in criminal trial shall, inter alia, include:
  - a) To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence
  - b) To ask questions to the witnesses or to suggest to the court questions this may be put to witnesses

- c) To know the status of investigation and to move the court to issue directions for further to the investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth
  - d) To be heard in respect of the grant or cancellation of bail
  - e) To be heard whenever prosecution seeks to withdraw and to offer to continue the prosecution
  - f) To advance arguments after the prosecutor has submitted arguments
  - g) To participate in negotiations leading to settlement of compoundable offences
- a) The victim shall have a right to prefer an appeal against any adverse order• passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.
  - b) Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.
  - c) Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation by Parliament.
  - d) The Victim Compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.

Role to the victim needs to be given in the negotiation leading to settlement of criminal cases either through courts, Lok Adalats or Plea-bargaining.

## Findings of the Malimath Committee Report

In order to revisit the machinery of criminal justice in India, in 2003, the Committee on Reforms of Criminal Justice System was constituted under the Chairmanship of Justice V.S. Malimath. The Malimath Committee Report made observations regarding the history of the criminal justice system and how it was apparent that it mostly protected the ‘power, the privilege and the values of the elite sections in society’. It evaluated the way crimes are defined in the modern era. The administration of the system demonstrated that there is an ingredient of truth of such a narrow perception. The primary assumption in the functionality of a criminal justice system is that it is the prerogative and dominant function of the State to protect all citizens from harm to their person and property. The State is believed to actualize this by ‘depriving individuals of the power to take law into their own hands and using its power to satisfy the sense of revenge through appropriate sanctions.

’ The Committee Report argued that the State itself becomes a victim when a citizen commits a crime, and as a consequence undermines its authority and contravenes norms in society. It is this victimization that shifted the focus of attention from the real victim who suffered the actual injury to the offender and how he is handled by the State. It was this failure of the State to adequately protect the interests of its citizens that led to the transformation of torts to crimes. With respect to the criminal, the Report noted that criminal justice has matured to comprehend the intricacies of the vehicle of crime: the criminal and the process of ascertaining his guilt, proving it in a court of law and punishing him. Civil law dealt with the monetary and other losses suffered by the victim. Since victims were marginalized and vulnerable, the State stood forth in the shoes of the victim to prosecute and punish the perpetrator.

With respect to the rights of the victim, the Report pondered –

What happens to the right of victim to get justice to the harm suffered? Well, he can be satisfied if the State successfully gets the criminal punished to death, a prison sentence or fine. How does he get justice if the State does not succeed in so doing? Can he ask the State to compensate him for the injury? In principle, that should be the logical consequence in such a situation; but the State which makes the law absolves itself.”

The principle of compensating victims has been recognized more often as a token relief than as a punishment to the offender, or substantial remedy to the victim offered by law. However, provisions in the procedural law of crime in India provides for sentence of fine imposed both as a sole punishment and as an additional punishment according to the wisdom of the court.

However, this provision is only invited when the perpetrator is convicted of the charges he is accused of. In 2008, significant amendments were made to the CrPC that focused on the rights of victims in criminal trial, particularly relating to sexual offences. Although the amendments left Section 357 unaffected, they introduced Section 357-A13 which empowers the court to direct the State to pay compensation to the victim in cases where ‘the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated’.<sup>14</sup> Section 357A subtly recognizes compensation as one of the methods to protect the interest of victims. The provision was incorporated on the recommendation of the 154th Report of the Law Commission. The focus of the provision is on the rehabilitation of the victim even if the accused is not tried. In such instances, the victim is required to make an application to the State or District Legal Service Authorities as the case may be, for the purpose of compensation. The jurisprudence of this provision and the obligation of courts have been defined by the Hon’ble Supreme Court:

“While the award or refusal of compensation under Section 357 of Code of Criminal Procedure, in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation.”

### **Initiative of Government of India**

Ministry of Home Affairs, Government of India on 14.10.2015 conveyed its decision to All State Governments and Union Territories regarding setting up of a Central Victim Compensation Fund (CVCF) with the following objectives :

- To support and supplement the existing Victim Compensation Schemes notified by States/UT Administrations.

- To reduce the disparity in quantum of compensation amount notified by different States/UTs for Victims of similar crime.
- To encourage States/ UTs to effectively implement the Victim Compensation Schemes (VCS) notified by them under the provisions of section 357 A of Cr.P.C. and continue financial support to victims of various of various crimes especially Death Rs. 1,00,000 Grievous Injury Rs. 75,000 Simple Injury Rs. 25,000 58 sexual offences including rape, acid attacks, crime against children, human trafficking etc.,

Government of India also issued CENTRAL VICTIM COMPENSATION FUND (CVCF) GUIDELINES which came into force with effect from 21st August 2015. The important guidelines enunciated as as following: -

Size & Source of CVCF: Initial corpus of Rs. 200 crores drawn out of the Nirbhaya Fund - Empowered Committee headed by the Additional Secretary (CS) , MHA consisting of 7 other members drawn from various ministries has been formed to administer the CVCF. –

To have access from the CVCF, the State /UT must

- a) notify the Victim Compensation Scheme as per the provisions of section 357 A of CrPC.
- b) The State / UT must first pay the compensation and then claim reimbursement from the CVCF
- c) Description of injury and minimum quantity of compensation has been notified and the quantum of compensation should not be less than this.
- d) The citizen portal of the CCTNS should be used to maintain the details of every compensation given to every victim.
- e) Contributions from Corporates and Public can be received through Banking transactions.

## The Law Commission Report and Section 357 of the CrPC

The 41st Report of the Law Commission of India was submitted in 1969. This discussed Section 545 of the Code of Criminal Procedure of 1898 extensively. The report stated that the significance of the recoverability of compensation should be enforceable in a civil court akin to the public remedy available to tort. The gravity of compensability was earlier demarcated by the use of the word “substantial” which excluded cases where nominal charges are recoverable. However, the Law Commission debated against the demarcation since the discretion to apply the provision in cases was used scarcely by the courts in directing compensation for victims.

On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Code of Criminal Procedure Bill, 1970, which aimed at revising Section 545 and re-introducing it in the form of Section 357 as it reads today. The Statement of Objects and Reasons underlying the Bill was as follows:

*“Clause 365 (now Section 357) which corresponds to Section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the court imposes a fine; the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine or fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors.”*

The CrPC consequently incorporated the changes proposed in the said Bill of 1970. In the Statement of Object and Reasons it stated that Section 357 was “intended to provide relief to the poorer sections of the community” whereas, the amended CrPC empowered the court to order payment of compensation by the accused to the victims of crimes “to a larger extent” than was previously permissible under the Code. Section 357 brought about significant changes in the framework. The approach to demarcation was shifted with the exclusion of the word “substantial”. Further, two new subsections were inserted. Subsection (3) provides for payment of compensation even in cases where the sentence does not impose a fine, while subsection (4) outlined the jurisdiction and powers of courts with respect to the section. It states that an order awarding



compensation may be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

## **Victim Compensation and Interplay with Fundamental Rights**

The 154th Law Commission Report on the Code of Criminal Procedure<sup>77</sup> devoted an entire chapter to “Victimology” in which the growing emphasis on victim's rights in criminal trials was discussed extensively. It noted that the interest of criminologists, penologists and reformers of the criminal justice system had gradually been directed to victimology, the control over victimization, and the protection of the various victims of crimes.

It highlighted that crimes often entailed substantive harm to people, and this harm was graver than just the symbolism of its apparent effects in the social order. Consequently the report also addressed the needs and rights of victims and that they should be prioritized in the hierarchy of the process of justice in dissecting a crime.

Compensation was proposed as a recognized method of protection that offered immediate support to the victim. Such compensation could also be extended to the family of the victim in certain instances. The report traced the foundation of the principles of victimology to Indian constitutional jurisprudence. Part III of the Constitution which consists of fundamental rights and Part IV which deals with Directive Principles of State Policy, form the bulwark for “a new social order in which social and economic justice would blossom in the national life of the country<sup>78</sup>”.

Further it also mandates inter alia that the State shall make effective provisions for “securing the right to public assistance in cases of disablement and in other cases of undeserved want<sup>79</sup>”.

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<sup>77</sup> 154th Law Commission Report (1996)

<sup>78</sup> Art.38, Constitution

<sup>79</sup> Art. 41, Constitution

Similarly, Article 51-A makes it a fundamental duty of every Indian citizen, inter alia “to have compassion for living creatures’ and to ‘develop humanism”. The Law Commission interrupts to assert that if the jurisprudence of these Articles are ‘emphatically interpreted’ and ‘imaginatively expanded’ they can form the constitutional underpinnings for victimology.

The Law Commission also disappointedly noted that the scope for victim compensation afforded in Indian criminal law is limited. However, Section 357 of the CrPC is the point of redemption of Indian law since it incorporates victim supportive jurisprudence by empowering courts.

### **Gender related aspects of Victim Compensation**

The UN Special Rapporteur for Violence against Women, Prof. Rashida Manjoo has introduced a feminist perspective to the issue of responsibility of States while making reparations to the victims. According to the Report of the Special Rapporteur, the CEDAW places upon the State the duty to develop penal, civil, labour and administrative sanctions in domestic legislature to provide reparations to women subjected to violence.<sup>8081</sup>

The ambition of law must be to achieve transnational justice for gender sensitive reparations. In order to realise this, nations must continuously undertake efforts to involve women in legislative reforms through discussion and discourse. The nature of reparation must be rehabilitative and not merely compensative. It must attempt to return the victim to status quo ante. There is a need for change in the gender perspective with respect to victim compensation since the experience of women as victims and their consequent collective participation in sharing experiences is more productive and cathartic as opposed to a male-centric discussion of violation.

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<sup>81</sup> CEDAW, art. 4 (d)

## SUGGESIONS

Victim Compensation Schemes in India must be treated as an institution larger than Section 357 or Section 357A. It must envision a program that harmoniously ties criminal provisions, civil remedy, rehabilitative support, role of courts and State accountability.

The prevalent law in India must be reformed and redesigned to be in consonance with international standards. Further, it must engage and involve victims, not only for the purpose of recommendation, but also as a participant so as to reform the compensation scheme into an inclusive process that empowers the victim. The best way to ensure effective implementation of the schemes under Section 357A would be to address the various issues in each provision of the CrPC with a focus on outcome.

Further, in order to achieve success nation-wide, it is imperative for all states to collate recommendations and notify a uniform scale for deciding the grounds and the quantum of compensation. All states must also create awareness of the Victim Compensation Scheme and the procedure for application. Where there are multiple relief fund schemes available, States must recognise that these schemes operate to the benefit of victims, and therefore must not actively prevent victims from availing more than one scheme simultaneously.

Further, where compensation is denied by the competent authority, a fluid redressal mechanism must exist which assists the applicant in their appeal. The procedure for obtaining compensation under most schemes is extremely rigid. Requirements such as medical report may delay the disbursement of compensation that may be urgently required by the victim.

Therefore the scope for interim compensation must be defined and provided for. Further, most schemes focus only on disbursement of compensation rather than following up on rehabilitative support, thus addressing only visible bodily injuries and permanent mental retardation while turning a blind eye to the psychological scars suffered by the victim. Moreover, most children realize they were actually abused at later stages of their lives where physical remnants of the assault have disappeared.

Therefore, amnesty must be provided to those who have overstepped the limitation of time in law. The coordination between the various limbs of justice i.e. the courts, the police, the DLSA and the State Legal Services Authority must be streamlined. Each instrument must inform and assist the victim in realizing compensation. Further, the courts themselves must make recommendations for compensation in cases its wisdom considers such assistance necessary.

## Conclusion

Victim compensation as a concept in India is still nascent and shy to continuous development. While the courts no longer subscribe to the archaic approach of limiting victim support to monetary penalty imposed on the convict, there is much momentum to be gained so as to adequately assist victims from various backgrounds. The development of victim centric jurisprudence must transcend legislative necessity, and afford participating instruments flexibility to respond to the diverse needs of a victim. Compensation must be actualised in the sense of realising rehabilitation for the victim.

Therefore, a holistic Victim Compensation Scheme must encompass assistance through the process of prosecution, psychological support and rehabilitative measures to integrate the victim back into the norm of society. Apart from defining the role of various stakeholders, a successful victim compensation scheme must necessarily provide for transparency in the expenditure of the budget, and a mechanism for accountability.

The State exchequer must be prepared for contingencies and be supportive of the expenditure incurred by the victim. There must be a channel for inviting and recording funds received from various international organisations and the public towards this purpose.

The law under Section 357 and Section 357A of the CrPC must witness a marriage of the State and the courts in functioning harmoniously to alleviate the plight of the victim. Further, it must evolve to accommodate instances where states have either failed to notify effective schemes or the scheme notified are ineffective in operation. The Legislature must realise that the outlook of the Law Commission may be limited to scholarly knowledge, and therefore integrate victims and other stakeholders in the process of making the law.

While the scope of this article is limited to case-study and analysis of scholarly work, there is much to be learnt by actually recording data of applications, complaints and stories of victims. The machinery of criminal justice in India must be reinvented to become a system that is curious to the nature of crimes, their effects on the victims and the stigma it bears in society, and alive to the developments of human rights jurisprudence internationally. As responsible citizens, we must constantly remind the consciousness of justice that it owes a sacrosanct obligation towards the rehabilitation of a victim.

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