CHAPTER 3
LAW RELATING TO COMPENSATION IN INDIA
INTRODUCTION

In India, the Legislature and the judiciary have taken gradual steps to develop the necessary principles by which compensation could be paid to the victims of crimes. The legislature has done it by enacting the different kinds of laws, namely, the General Laws and Special Laws. The Judiciary through the cases which have been decided by it propounded a set of principles to provide the remedy of compensation where the law is not adequate to provide a remedy to the victim of crime.

In the first part of this chapter, the attention is focused on the general laws which deal with the compensation to victims of crime. Broadly speaking, the general law concerning payment of compensation to the victims of crime is mainly in the Code of Criminal Procedure, 1973 and Public law i.e. Constitution. Sub-part two of this chapter deals with Special laws i.e. Probation of Offenders Act, 1958, Motor Vehicle Act, 1988, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Protection of Human Rights Act, 1993, The Workmen Compensation Act, 1923, Personal Injuries (Emergency Provisions) Act, 1962, Personal Injuries (Compensation Insurance) Act, 1963 in which compensation is awarded. There are some other Special laws i.e. Environment Protection Act, 1986, Dowry Prohibition Act, 1961, Prevention of Food Adulteration Act, 1954, Protection of Civil Rights Act, 1955, in which there is no provision of compensation to be awarded to the victims. Whereas, only those special laws have been considered which are helpful to promote the present study although there are numerous laws in regard to compensation. The following figure presents both the general laws and special laws related to compensation in Indian Judicial System:

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1 Ss. 357, 357A, 357 B, 357 C, 358, 359 of Code of Criminal Procedure, 1973, Constitutional Remedies under Articles 32 and 226

LEGAL PROVISIONS RELATED TO COMPENSATION IN INDIA

COMPENSATION UNDER GENERAL LAWS

- CODE OF CRIMINAL PROCEDURE, 1973
- CONSTITUTION

COMPENSATION UNDER SPECIAL LAWS

- COMPENSATION AWARDED
  - THE VICTIM OF TERRORISM (PROVISION OF COMPENSATION AND WELFARE MEASURES) BILL, 2012
  - PROBATION OF OFFENDERS ACT, 1958
  - MOTOR VEHICLE ACT, 1988
  - THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989
  - PROTECTION OF HUMAN RIGHTS ACT, 1993
  - WORKMEN COMPENSATION ACT, 1923
  - PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT, 2005
  - RAILWAYS ACT, 1989

- COMPENSATION NOT AWARDED
  - DOWRY PROHIBITION ACT, 1961
  - PREVENTION OF FOOD ADULTERATION ACT, 1954
  - PROTECTION OF CIVIL RIGHTS ACT, 1955
I- COMPENSATION UNDER GENERAL LAWS


The provisions relating to compensation to victims of crime are contained in ss.357, 357A, 357 B, 357 C, 358, 359 and 250 of the Code of Criminal Procedure, 1973. And s.357 Code of Criminal Procedure as follows:

The scope and the object of the s.357 of the Code of Criminal Procedure were explained by Supreme Court in Sawarn Singh v. State of Punjab, wherein it was observed thus:

The law which enables the court to direct compensation to be paid to the dependants is found in s.357 of the Code of Criminal Procedure (herein after Cr.P.C.). The corresponding provision in the 1898 Code was s.545. According to s.357, the

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3 S.357 Order to pay compensation
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 recovered to be applied-
   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 caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under Fatal Accident Act, 1855 (13 of 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 restored 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 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.
4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers 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.

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4 AIR 1978 SC 1525
5 S.545 Power of court to pay expenses or compensation out of fine
(1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirm in appeal, revision or otherwise a sentence of fine, or a sentence (including sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-
   (a) in defraying the expenses properly incurred in the prosecution;
Court is enabled to direct the accused, who caused the death of another person, to pay 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 which the accused person has been so sentenced. The object of the section therefore, is to provide compensation payable to the persons who are entitled to recover damages from the person even though fine does not form part of the sentence.

Though s.545 enabled the court only to pay compensation out of the fine that would be imposed under the law, but by s. 357 (3) when a Court imposes a sentence, of which fine does not form a part, the Court may direct the accused to pay compensation. In awarding compensation it is necessary for the court to decide whether the case is fit one in which the compensation has to be awarded. If it is found that compensation should be paid, the capacity of the accused to pay compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default sentence for non-payment of fine would not achieve the object. If the accused is in a position to pay the compensation to the injured or his dependants to which they are entitled to, there could be no reason for the court not directing such compensation. When a person, who caused injury due to negligence or is made vicariously liable is bound to pay compensation it is only appropriate to direct payment by the accused who is guilty of causing an injury with the necessary mens rea to pay compensation for the person who has suffered injury.

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

(bb) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under Fatal Accident Act, 1855 (XIII of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(c) 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 bona fide purchaser of such property for the loss of the same if such property is restored 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.
While awarding the amount the compensation the Court must take into the account the nature of crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances. If there are more than one accused, quantum of compensation may be divided equally unless there is considerable variation in their paying capacity. The payment may also vary depending upon the acts of each accused. Reasonable period for payment for compensation, if necessary, by installments, may also be given. The Court may enforce the order by imposing sentence in default. Where power of speech of victim of offence is impaired permanently the amount of compensation may be enhanced.

In Smt. Bachahan Devi and Anr. v. Nagar Nigam, Gorakhpur and Anr. this Court while dealing with the use of the word “may” summoned up the legal position thus:

“...It is well-settled that the use of word ‘may’ in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word ‘may’ as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word ‘may’, the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word ‘may’ involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word ‘may’ should be interpreted to convey a mandatory force...”

Similarly in Dhampur Sugar Mills Ltd. v. State of U. P. and Ors., the Court held that the mere use of word 'may' or 'shall' was not conclusive. The question whether a particular provision of a statute is directory or mandatory, held the Court, can be resolved by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying

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7 Ibid
8 AIR 2008 SC 1282
9 (2007) 8 SCC 338
the provision, consequences likely to ensue or inconvenience likely to result if the
provision is read one way or the other and many more considerations relevant thereto.

It was held in Mangi Lal v. State of Madhya Pradesh,\textsuperscript{10} that s. 357 (1) deals
with situation when a Court imposes fine or sentence (including sentence of death) of
which fine also forms a part. It confers a discretion on the Court to order as to how the
whole or any part of the fine recovered is to be applied. For bringing in application of
s.357 (1), it is a statutory requirement fine is imposed and thereupon makes further
orders as to the disbursement of the said fine in the manner envisaged therein. If no
fine is imposed s. 357 (1) has no application. Sub- s. (3) of s.357 on the other hand
deals with the situation where fine does not form part of the sentence imposed by a
Court. In such a case the Court while passing a judgement can order the accused
persons to pay by way of compensation such amount as may be specified in the order
to the person who has suffered a loss or injury by reason of the act of which the
accused person has been so convicted and sentenced the basic difference between sub-
ss. (1) and (3) of s.357 is that in the former case, the imposition of the fine is the basic
and essential requirement, while in the latter even in the absence thereof empowers
the Court to direct payment of compensation. Such power is available to be exercised
by appellate Court or by the High Court or Court of Session when exercising
revisional powers. However, the appellate or revisional Court can award
compensation only after giving accused an opportunity of hearing. It was also made
clear that the power of Court to award compensation under s. 357 of Cr.P.C. is not
ancillary to power to award other sentences. It is in addition thereto.

In Pamula Saraswati v. State of A.P.,\textsuperscript{11} the ten accused persons allegedly
formed an unlawful assembly and committed murder of one Pamula Naranyan and
committed theft of Rs. 8000/- from the person of deceased and also caused injuries to
the wife of deceased (PW-1). It is alleged that respondent no. 2 has hacked the
deaded. The trial Court convicted three respondents under s. 302 Indian Penal Code
(hereinafter IPC) and also under ss. 324 and 371 of IPC. Other accused were
acquitted. In appeal the High Court found the appellants guilty under s. 324 of IPC
and set aside conviction under s. 302 but sentenced them for 2 years under s. 324 and
for 2 years under s.379 of IPC. The convicts prefer an appeal to the Supreme Court. It
was held that the accused persons were responsible for theft of Rs. 8000/- and ear

\textsuperscript{10} 2004 Cr.LJ 880 SC
\textsuperscript{11} 2003 Cr.LJ 2531 SC
studs of PW-1 (wife of deceased). They also caused death of husband of PW-1 who was the main earning member. It was also held that under these circumstances, the High Court should have invoked the provisions of s.357 of Cr.P.C. and awarded compensation. The Supreme Court, therefore, over and above the sentence imposed by the High Court imposed a fine on each of the accused in a sum of Rs. 10,000 (ten thousand) each and the fine so recovered was to be paid to PW-1 (wife of deceased).

No compensation can be ordered to be paid by the state, only an accused person may be directed to pay compensation under s.357, Cr.P.C. Further, an accused may be directed to pay compensation to the victim and not to the state. Explaining the purpose of the provision under s. 357, Cr.P.C., it was observed by Supreme Court that:

“……… It is an important provision, but courts have seldom invoked it, perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by action of accused. It may be noted that this power of court to award compensation is not ancillary to other sentences, but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is measure of responding appropriately to crime as well as reconciling the victim with the offence. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.”

**Nature of injury to victim is a relevant factor**

The Court invoked this provision where the accused caused disfigurement of face of victim as a factor to be considered for awarding compensation. The Court should grant reasonable compensation to the injured. In a case of serious nature while reducing the sentence of death to imprisonment for life, the widow and her minor children should be compensated for the loss they have suffered. Where the accused for giving a single hammer blow on the head of the deceased convicted under

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12 State of Madhya Pradesh v. Mangu, 1995 Cr.LJ 3852 (MP)
13 NE Varghese v. State of Kerala & anor, 2002 Cr.LJ 1712 (Ker)
14 Supra note 6
15 Madan Lal v. State of H.P., 1990 Cr.LJ 310 (HP)
16 Sukhdev Singh v. Lal Chand, 1986 Crimes 495 (P&H)
17 Guruswamy v. State of T.N., AIR 1979 SC 1117
s. 302, part 2 had been in jail for some trial during trial, after conviction had been in jail for more than one year, the sentence imposed was reduced to the sentence already undergone, the Supreme Court further directed the accused to pay 20,000/- as compensation to the widow of deceased.18

**Person entitled to get compensation**

Ideally, all victims of all crimes should be entitled to get compensation.19 Under different laws and court verdicts persons have been declared entitle to get compensation for their suffering. The victim may be, the person himself or the successors are the persons, who are successor in interest and dependent upon the deceased. Justice requires that a person who has suffered (including dependents) must be compensated. Basically, the accused is responsible for the reparation of any harm caused to him. However, it might be that the accused, being too poor, is unable to make any payment or otherwise unable to compensate the victim. In such situations, the state that has failed to protect the life, liberty and property of its citizens should compensate the victim for loss and suffering.20

According to s.307 (1) of Cr.P.C., 1973 the persons who are entitled under the Fatal Accident Act, 1855, are also entitled here. S.1-A21 of the Act specifies certain relatives to whom compensation is awardable; it left it to the court to grant such compensation to all or any of such persons.22 Suit for recovery of damages under it can be maintained only by a person who is a dependent of the deceased under s.1-A or

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20 Id at 352
21 S.1-A Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong - Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime. Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor administrator or representative of the person deceased. and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.
22 AIR 1914 Lah 354 at 356
legal representative of the deceased.\textsuperscript{23} Mother is entitled to sue for compensation for death of her son, by negligent act of defendant.\textsuperscript{24} It is not every dependent who will be entitled to seek payment of compensation but only the dependents whom the deceased was bound in law to maintain and support Sisters of deceased will not be entitled to maintain action for compensation, especially in presence of widow and son of the deceased.\textsuperscript{25} The right of the children to get compensation cannot be defeated because of remarriage of their mother.\textsuperscript{26}

Under the Act the wife, husband, parent and child are all entitled to recover damages. There is no hard and fast rule as to what proportion the amount is to be divided among the number of person entitled to the amount.\textsuperscript{27} However, this can be accomplished only in a phased manner over a period of years depending on the resources of the State. To begin with, one may recommend compensation for crimes of violence where the victim suffered death or personal injury (physical and/or mental) of a serious nature. Obviously, it is difficult to define ‘personal injuries of serious nature’ applicable to all situations. Minor injuries or bruises alone will not qualify for an award. The ‘crime of violence’ should be the substantial cause of the injury. ‘Crimes of violence’ usually involve a physical attack on the body; like assaults, hurt and sexual offences. Sometimes a threat of violence may also be considered a crime of violence. Injuries may be caused by animals, fire, poisoning or by vehicles when vehicles are intentionally used as a weapon.\textsuperscript{28}

A victim should be eligible for compensation whether the offender is convicted or not or whether the offender is not responsible for the offence because of infancy, insanity, etc.\textsuperscript{29} Compensation may be withheld or reduced if the victim himself has a criminal record or he is injured because of his own conduct (excepting when it occurred whilst helping a police officer or apprehending an offender), or he failed in his duty to inform the police without delay, or refused to co-operate in the investigation and prosecution of the crime. The Committee may also deny or reduce compensation if the victim suppressed information or failed to co-operate in the legitimate processing of claims. In other words, the victim’s conduct before, during

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\textsuperscript{23} AIR 1982 M.P. 165
\textsuperscript{24} AIR 1963 H. P. 37 at 44
\textsuperscript{25} 1986 (2) Mad. LJ 342
\textsuperscript{26} AIR 1956 Nag. 86 at 91
\textsuperscript{27} AIR 1946 Mad 164 at 166
\textsuperscript{28} Supra note 19
\textsuperscript{29} Ibid
\end{flushright}
and after the event constitute material evidence for the authority to decide whether to entertain the application at all or to sanction it with a reduced amount.\textsuperscript{30}

In view of the principle that the offender should not benefit from the award given to the victim. In cases where the victim and assailant live in the same household as members of the same family it is necessary to prove that the relationship is broken, the offender is prosecuted and the assailant is unlikely to share the award.\textsuperscript{31} The scheme is to be liberally interpreted when the victim is a child. Child abuse must receive special attention and the scheme must be used in the best interests of the child. The applicant in the case of a child victim must be an adult with parental responsibility for the child.\textsuperscript{32}

\textbf{Compensation cannot Awarded on Acquittal or Discharge}

This section does not empower a court to award compensation for alleged offences other than those which form the subject matter of inquiry in the case which the order is made, still less for offences of which the accused has been acquitted nor where the accused is discharged and no fine is imposed.\textsuperscript{33} The High Court while dealing with an appeal against the acquittal, in a case of suicide under ss. 304B, 306 and 498A of IPC, express surprise that at the pre-trial stage, the accused persons were made to deposit certain amount in the court which was paid as compensation to the father of the deceased. The High Court, however, refrained from interfering with that order as the amount was already disbursed.\textsuperscript{34}

\textbf{State Liability to pay compensation}

The statutory liability to pay compensation to the complainant is on the accused. The State cannot be directed to pay compensation under s.357.\textsuperscript{35} Where the accused had caused knife injuries to the deceased, in Government hospital due to the negligence of the doctors the deceased developed gangrene and died, the High Court directed the State Government to pay Rs. 1.5 lac as compensation to the legal heirs of the deceased.\textsuperscript{36}

\begin{thebibliography}{99}
\bibitem{30} Id at 366-67
\bibitem{31} Id at 367
\bibitem{32} Ibid
\bibitem{33} Re Bastoo Dumaji, 1898 ILR 22 Bom. 717
\bibitem{34} State v. Srikant & ors., 2002 Cr.LJ 3605 (Kant.)
\bibitem{35} State of M.P. v. Mangu, 1995 Cri.LJ 3852
\bibitem{36} State of Karnataka v. Bhadraraya, 2004 Cri.LJ NOC 111 (Kant-DB)
\end{thebibliography}
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 Sarwan Singh and others v. State of Punjab,\textsuperscript{37} Balraj v. State of U.P.,\textsuperscript{38} Baldev Singh and Anr. v. State of Punjab,\textsuperscript{39} Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr.,\textsuperscript{40} 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 \textbf{Dilip S. Dahanukar’s case}\textsuperscript{41} 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 thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge.”

In \textbf{Ankush Shivaji Gaikwad v. State of Maharashtra},\textsuperscript{42} 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 of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on

\textsuperscript{37} (1978) 4 SCC 111
\textsuperscript{38} (1994) 4 SCC 29
\textsuperscript{39} (1995) 6 SCC 593
\textsuperscript{40} (2007) 6 SCC 528
\textsuperscript{41} \textit{Ibid}
\textsuperscript{42} Criminal Appeal no. 689 of 2013, decided on 3rd May, 2013 Retrieved from: www.supremecourtofindia.com
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 *NEPC Micon Ltd. and Ors. v. Magma Leasing Ltd.*, 43 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 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...”

In *State of Punjab v. Prem Sagar and Ors.*, 45 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:

“30....The High Court does not rest its decision on any legal principle. No sufficient or cogent reason has been arrived.

31. 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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43 (1999) 4 SCC 253  
44 (2000) 7 SCC 75  
45 (2008) 7 SCC 550
Although speaking in the context of capital punishment, the following observation of this Court in Sangeet & Anr. v. State of Haryana\textsuperscript{46} 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. In Maya Devi (Dead) through LR and Ors. v. Raj Kumari Batra (Dead) through LR and Ors.,\textsuperscript{47} 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:

“28. ...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.

29. 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...”

\textsuperscript{46} (2013) 2 SCC 452
\textsuperscript{47} (2010) 9 SCC 486
Similarly, in *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 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...”

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

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48 (2004) 5 SCC 573  
49 (1998) 2 SCC 242  
50 (2008) 5 SCC 539
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.\(^{51}\)

**Limit of compensation**

The Court can award compensation to the complainant for which no limit is prescribed in s.357,\(^{52}\) but in fixing the amount of compensation the Court has to consider what would be reasonable compensation payable to the complainant.\(^{53}\) 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.\(^{54}\) 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.\(^{55}\)

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.\(^{56}\) 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.\(^{57}\) In *R. Vijayan v. Baby*,\(^{58}\) 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 a

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51 Supra note 42
55 *Maganlal Jain v. Abhijeet Kumar Das*, 2004 CrLJ 2415 at 2416; See also, Supra note 37
56 *Varghese v. Varghese*, 2000 (1) KLT 489 at 493 (Ker.)
57 *D. Prasantham v. K. Sateesh*, 2008 AIR 5411 at 5414
58 AIR 2012 SC 528
part, 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).”

**VICTIM COMPENSATION SCHEME**

Thus looking at the practical limitations, in the provisions of s.357 regarding compensation to the victims of crime which worked as hindrance in the minds of the judges in awarding compensation to victims of crime, the Parliament has incorporated s.357A\(^59\) in the Parent Act of the Code of Criminal Procedure by way of amendment in 2008. S. 357A is indeed an advanced step for improving the plight of victims. The Amendment Act, 2008\(^60\) also provides for right to appeal against an order imposing inadequate compensation.

**Budgetary 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

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59 S.357A Victim Compensation Scheme
(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 in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

60 Received the assent of the President on 7th January, 2009, Act Published in the *Gazette of India* 9-1-2009, Part II Schedule I *Extraordinary* p. I (No. 6)
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. The statutory provisions are shown as under:

Table 3.1 – Victim Compensation Schemes under section 357 A in different states

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Particulars of Loss or Injury</th>
<th>Maximum Limit of Compensation in Delhi (02.02.2011)*</th>
<th>Maximum Limit of Compensation in Gujarat (20.03.2012)**</th>
<th>Maximum Limit of Compensation in Meghalaya (05.01.2013)***</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Loss of Life</td>
<td>Rs. 5 Lakh</td>
<td>Rs. 1.5 Lakh</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Rape</td>
<td>Rs. 3 Lakh</td>
<td>Rs. 1 Lakh</td>
<td>Rs. 0.50 Lakh</td>
</tr>
<tr>
<td>3</td>
<td>Loss of Limb or part of body resulting in 80% permanent disability or above</td>
<td>Rs. 3 Lakh</td>
<td>Rs. 1 Lakh</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Loss of an limb or part of body resulting in above 40% and below 80% permanent disability</td>
<td>Rs. 1.5 Lakh</td>
<td>Rs. 0.50 Lakh</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Loss of any limb or part of body resulting in below 20% permanent disability</td>
<td>Rs. 1 Lakh</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Loss of any limb or part of body resulting in below 20%</td>
<td>Rs. 0.50 Lakh</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
permanent

<p>| | | | | |</p>
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<thead>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Victims of human trafficking, child abuse and kidnapping</td>
<td>Rs. 0.50 Lakh</td>
<td>Rs. 0.25 Lakh</td>
<td>Rs. 0.25 Lakh</td>
</tr>
<tr>
<td>8.</td>
<td>Simple loss or injury to child victim</td>
<td>Rs. 0.10 Lakh</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Rehabilitation</td>
<td>Rs. 0.20 Lakh</td>
<td>Rs. 0.50 Lakh</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Victims of Acid Attack</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. In case of disfigurement of face</td>
<td>Rs. 3 Lakh</td>
<td>Rs. 1 Lakh</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Other cases of Injury</td>
<td>Rs. 0.50 Lakh</td>
<td>Rs. 0.50 Lakh</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Sodomy</td>
<td></td>
<td></td>
<td>Rs. 0.25 Lakh</td>
</tr>
</tbody>
</table>

Note - *Respective date of notification in Delhi,
**Respective date of notification in Gujarat,
***Respective date of notification in Meghalaya.

Table 3.1 depicts that s.357 A is notified in three states only and in Chandigarh, Haryana and Punjab notification is proposed whereas rest of the states are silent. Although the Cr.P.C. has been amended in 2008 and it gives the directions to all the state govts in India to make the victim compensation scheme but the trend shows that the states are reluctant in implementing the s. 357 A in their states. Table also exhibits that the different states give different compensation for same offence like: in Delhi the rape victim will get Rs. 3 lakh, in Gujarat Rs.1 lakh and in Meghalaya Rs. 50,000 as compensation. It also reveals that each state gives list of offences for which the compensation is provided like Delhi govt. considers ten offences, Gujarat govt. nine offences and Meghalaya govt. only two offences. Thus there is no uniformity neither in subject matter nor in amount of compensation.

Thus though theoretically the power of the court is unlimited, but lots of practical considerations prevail. The judicial trend is still controversial on this aspect even after the Criminal Procedure (Amendment Act), 2008 as is reflected in the following two case laws decided in year 2009. In Ahmmed Kutty v. Abdulla
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., *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. 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.

**ADDITIONAL COMPENSATION**

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.64

**TREATMENT OF VICTIMS**

S.357 C- 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 section 326 A, 376, 376 A, 376 B, 376 C, 376 D or section 376 E of the Indian Penal Code, and shall immediately inform the police of such incident.”65
COMPENSATION TO PERSONS GROUNDLESSLY ARRESTED

S. 358\(^{66}\) correspond to s. 553\(^{67}\) of the old Code. There have been some changes in sub-ss (1) and (2). In sub-s. (1) the words “In a presidency town” have been omitted to that the section has been extended to all places and sub-s (2) the words “one hundred” (now one thousand after amendment) have been substituted for “fifty” enhancing the amount of compensation.

In this s.358, there must be direct and proximate nexus between the complaint and the arrest for the award of compensation.\(^{68}\) Before making an order for compensation, an opportunity to show cause must be given to the complainant. Principles of natural justice have to be read in s.358.\(^{69}\) Where in kidnapping case, there was no evidence at all showing the involvement of the petitioner, on the other hand he tried to intervene in the matter to see that the kidnapped person was set free, his prosecution and detention being illegal, the State was directed to pay Rs. 15000/- as compensation to the accused petitioner.\(^{70}\) While s.357 provides for payment of compensation to the complainant or other persons affected by the crime, this section

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66 S.358 Compensation to Persons Groundlessly Arrested
   i) 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 ground 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.
   ii) 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 thousand rupees, as such Magistrate thinks fit.
   iii) All compensation, 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 thirty days as the Magistrate directs, unless such sum is sooner paid.

67 S.553 Compensation to persons groundlessly given in charge in presidency-town
   1) Whenever any person causes a police officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground 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.
   2) 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 fifty rupees, as such Magistrate thinks fit.
   3) All compensation, 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 thirty days as the Magistrate directs, unless such sum is sooner paid.

68 Mallappa v. Veeralasappa, 1977 CrLJ 1856 (Kant.)
69 Shah Chandulal v. Patel Ranchhoddas, 1980 CrLJ 514 (Guj.)
70 Surendra Choundhary v. State of Bihar, 2003 CrLJ 2596 (Pat.)
provides for the payment of compensation to a person arrested at the instance of another, if there was no sufficient ground for such arrest.

The person at whose instance the arrest has been made may be required to pay a sum not exceeding thereof may be recovered Rs.1000 to every one of the persons arrested, and the amount thereof may recovered as if it were a fine, who would also be liable to be sentenced to simple imprisonment for a period not exceeding thirty days unless the amount to be recovered is paid sooner.

**ORDER TO PAY COSTS IN NON-COGNIZABLE CASES**

S.359\(^{71}\) corresponds to s.546-A\(^{72}\) of the old Code. There has been some change in sub-s (1) of this section. Under this sub-s, the court may direct payment of ‘in whole or in part, the costs incurred by him (the complainant) in the prosecution’ and ‘such costs may include any expenses incurred in respect of process-fees, witnesses and pleader’s fees which the court may consider reasonable.’ And there is no change in sub-s (2), which reproduces sub-s (2) of s. 546-A of the 1898 Code.

Sub-s. (1) of s.546-A of the 1898 Code merely provided for the refund of process fees in non-cognizable cases when paid, but did not authorise their payment.\(^{73}\) That section was limited in terms to process and petition-writer’s fees.\(^{74}\) An order for the payment of costs was not competent this section when the case was not one of a

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71 S.359 Order to Pay Costs in Non-Cognizable Cases
1) Whenever any complaint of non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay, to the complainant, in whole or in part, the cost incurred by him in the prosecution, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days and such costs may include any expenses incurred in respect of process-fees, witness and pleader’s fees which the Court may consider reasonable.

2) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

72 S.546-A Order of payment of certain fees paid by complainant in non-cognizable cases
1) Whenever any complaint of non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay, to the complainant-
   (a) the fee (if any) paid on the petition of complaint of for the examination of the complainant, and
   (b) any fees paid by the complainant for serving processes on his witnesses or on the accused,
   and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

2) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

73 King-Emperor v. Mg San Nyein, AIR 1926 Rang 13
74 TM Mohamed Cassim v. GST Shaik Thumby Sahib, AIR 1940 Rang 33 at 34
non-cognizable offence.\textsuperscript{75} In awarding costs the court could take in to consideration only the costs set out in sub-s (1), cl(1) and (b) of that section.\textsuperscript{76}

The present section specifically authorises the award of costs incurred by the complainant in whole or in part, including of course, the expenses incurred by him in respect of process fees, witnesses and pleader’s fees, which the court may consider reasonable. Where the complainant did not pay any process fees for the issue of process on his witnesses or on the accused, nor any fee on the petition of the complaint, it was held that he was not entitled to recover such sum under sub-s (1).\textsuperscript{77}

The appellate court while releasing the appellant-accused on probation is competent to remit the limitation on expenses imposed by the trial court.\textsuperscript{78}

**COMPARISON BETWEEN OLD AND NEW PROVISIONS ON PAYMENT OF COMPENSATION**

The incisive study of the provisions of the Codes of Criminal Procedure, old and new, relating to payment of compensation reveals certain changes in the provisions of compensation in different areas like order to pay compensation, in matter of costs, conviction, on passing the judgement, etc. The new Code 1973 has made certain improvements in the provisions concerning the payment of compensation over the corresponding provisions which existed in the old Code of 1898.\textsuperscript{79}

Under s.357 compensation can be awarded irrespective of whether the offence

\textsuperscript{75} Nur-ud-Din v. King-Emperor, AIR 1925 Oudh (1) 109

\textsuperscript{76} Swee Ing v. Koon Han, AIR 1935 Rang 163 at 164

\textsuperscript{77} Emperor v. Maung Po Hla, AIR 1935 Rang 209

\textsuperscript{78} Bhagwan Singh v. State of Punjab, 1987 Cr Cas 418 (P&H)

\textsuperscript{79} A- S.357 of Code 1973 and s.545 of Code 1898

1. (a) The present heading of s.357 has been substituted for the heading of s.545 (1).
   (b) The Words “Whenever under any law in force for the time being a Criminal Court imposes a fine or confirm in appeal, revision or otherwise a sentence of fine,” occurring in s.545(1) have been replaced in s.357 sub-s (1) by the words “When a Court imposes a sentence of fine.”
   (c) The word ‘substantial’ preceding the word ‘compensation’ in clause (b) of s.545 (1) has been omitted.
   (d) Clauses (a), (c) and (d) of s.357 sub-s (1) are verbatim reproduction of clauses (a), (b) and (c) of s.545 (1) respectively.

2. The present s.357 sub-s.(2) is a verbatim reproduction of sub-s.(2) of old s.545.

3. Sub-ss (3) and (4) of s. 357 of new code are provisions.

4. The present s. 357 sub-s.(5) corresponds to s.546 of the old Code. It omits the heading of s.546 and substitutes the words ‘this section’ for the word and figure ‘s.545’ occurring in the old provision.

B- S.358 of Code 1973 and s.553 of Code 1898

1. The words ‘given in charge in presidency-town’ occurring in the heading of s.553 of old Code has been replaced by the word ‘arrested’.

2. The words ‘in a presidency-town’ occurring after the words ‘another person’ in s.553(1) have been omitted and the words ‘fifty rupees’ have been replaced by the words ‘one hundred rupees’ in sub-sections (1) and (2).
is punishable with fine, 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. It is purely within the discretion of the Criminal Courts to order or not to order payment of compensation and in practice they are not particularly liberal in utilizing this provision.

Thus there are many changes between s.357 and s.545. S.357 in the first place enables a court to appropriate the whole or any portion of any fine imposed for the purpose of defraying expenses properly incurred in the prosecution, and of compensating any person for any loss or injury caused by the offence. With this provision s.359 should be read. When any person is convicted of a non-cognizable offence, regarding which a complaint has been made, the Court may, in addition to any penalty imposed upon him, order the accused to pay to the complainant in whole or in part the cost incurred by him in the prosecution and any further order that in default of payment the accused shall suffer simple imprisonment for a period not exceeding 30 days, and such costs may include any expenses incurred in respect of process fee, witnesses and pleader’s fees which the court may consider reasonable. It

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3. The present sub-section (3) is a verbatim reproduction of sub-section (3) of s. 553. This section provides for compensation to persons groundlessly arrested. S. 553 of the old Code (corresponding to s. 358 of the present Code) was confined to arrest in presidency-towns. The present provision is extended to all places.

S.359 of Code 1973 and s. 546-A of Code 1898

1. The words ‘of payment of certain fees paid by the complainant’ occurring in the heading of the old section have been replaced in the present heading by the words ‘to pay costs’.

2. The words ‘in whole or in part, the costs incurred by him the prosecution’, have been substituted for Clauses (a) and (b) of the old provision and ‘…” occurring after the word ‘complainant’ in the old sub-section (1) has been replaced by “…’ in the present sub-section (1). The comma occurring after the words ‘further order that’ has been omitted.

3. The words’ and such costs may include any expenses incurred in respect of process – fees, witnesses and pleader’s fees which the Court may consider reasonable’ have been added in the present sub-section (1) after the words ‘thirty days’ appearing in the old sub-section (1), of s.546-A.

4. The commas occurring after the words’ Appellate Court’ and ‘High Court’ in sub-s.(2) of s. 546-A have been deleted and the words ‘Court of Sessions’ have been inserted in s. 359 of sub-section (2) after the aforesaid words ‘High Court’.

The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort.


is discretionary with a court to direct the payment of these fees. Under s. 359 an order can be made whatever the nature of the penalty imposed, whereas under s.357 no order can be made unless a sentence of fine has been passed. In both cases discretion is left to the Court, in both cases also powers are exercisable by Courts of Appeal and Revision. The converse case of payment of compensation to the accused when the court finds the accusation was false and either frivolous or vexatious, is provided for by s. 250.

On conviction of the accused person has been made a precondition for the award of compensation under the provisions of both the new and the old Codes. But in exceptional cases, compensation can be awarded while the accused is acquitted. At the time of passing judgement an order for compensation under s.357 must be passed by a Court of first instance. Appeal or Revision, when passing judgement, that is, in the presence of the parties and in consideration of the case then before it. It cannot be passed afterwards.

COMPENSATION FOR ACCUSATION WITHOUT REASONABLE CAUSE
S.250 corresponds to s.250 of the old Code. Object & Scope: The object of the section is not to punish the complainant, but, by a summary order, to award some

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82 Supra note 62
83 Queen v. Gour Dass, II. W.R.C. 53, Queen-Empress v. Yamuna Rao, I.L.R. 24, Mad., 305; Bujanga, Bombay High Court, 24, October, 1993; 3 Bom L.R. 976.
84 S.250 Compensation for Accusation without Reasonable Cause
(1) If, in any case instituted upon complaint or upon information given to a police officer or to a 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 the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one ; or, if such person is not present, direct the issue of a summons to him to appear and show cause as 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 reasons 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 undergo simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned 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.
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 taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

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, as if such complainant or informant had been convicted on a trial held by such Magistrate.

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 has elapsed, or, if an appeal is presented, before the appeal has 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 date of the order.

The provisions of this section apply to summons-cases as well as to warrant-cases

If in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

The Magistrate shall record and consider any cause which such complainant or informant may show and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding twenty-five thousand rupees or, if the Magistrate is a Magistrate of the third Class not exceeding two thousand and five hundred rupees as he may determine be paid, by such complainant or informant to the accused or to each or any of them.

The compensation payable under sub-section (2) shall be recoverable as an arrear of land-revenue.

When any person is imprisoned under sub-section (2-A) the provisions of Sections 68 and 69 the Pakistan Penal Code shall, so far as may be, apply.

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 taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the Second or Third Class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has 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 date of the order.

[Rep. by the Code of Criminal Procedure (Amendment) Act, 7923 (XVIII of 1924), S. 69.]
accusation is made, leaving it to him to obtain further redress against the complainant, if he seeks for it, by a regular civil suit or criminal prosecution.\textsuperscript{86} When two accused are guilty of the same offence, no compensation can be given by one accused to the other accused.\textsuperscript{87} The provision is restrictive in character and operates against the person upon whose complaint or information the accusation was made and enables the concerned Court to make award of compensation. They enact conditions, in that when there was a reasonable ground for making the accusation, an order for compensation as stated therein could well be made. It is enacted to further restitutive justice, so that the process of the Court is not abused and innocent people thereby are not harassed.\textsuperscript{88}

The proceedings and resultant compensation under s.250 Cr.P.C., would be justified if the accusations were made without any reasonable cause. Mere acquittal of the accused would not be ipso facto, sufficient to attract the provisions of s.250 Cr. P.C.\textsuperscript{89} This section may be applied in summons –cases, whether tried summarily or not.\textsuperscript{90} Where a complaint alleges an offence which is exclusively triable by the Court of Session as well as an offence which is triable by a Magistrate, and after enquiry the Magistrate finds that the complaint was not justified, he has power to award compensation under this section in respect of that part of the complaint which he has full power to deal with.\textsuperscript{91}

**CRITICAL ANALYSIS OF COMPENSATION TO VICTIMS OF CRIME**

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.\textsuperscript{92} 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

\textsuperscript{86} Beni Madhub Kurmi v. Kumud Kumar Biswas, 1902 (30) Cal 123,128 (FB).
\textsuperscript{87} Govindan, Re, 1958 Mad 665.
\textsuperscript{90} Basava, 1887 (11) Mad 142.
\textsuperscript{91} Mool Chand, 1994 (20) Luck 49.
\textsuperscript{92} S. 356 (1) and S. 357 (3) of Cr.P.C.
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 immediate needs caused due to the loss.\(^\text{93}\)

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.\(^\text{94}\) 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 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 Stats, 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.\(^\text{95}\)

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.\(^\text{96}\)

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,\(^\text{97}\) but also observed; it is regrettable that our court do not exercise their statutory powers under this section as freely and liberally as could be desired.\(^\text{98}\) The available empirical studies,\(^\text{99}\) reveals a very rare use of the legal

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\(^{93}\) *Nanak Singh v. State of Punjab*, 1983 CrLJ (NOC) 232 (P&H)

\(^{94}\) *State of Madhya Pradesh v. Mangu*, 1995 CrLJ 3852


\(^{97}\) *Supra* note 81

\(^{98}\) *Forty Second Report, Law Commission of India on Indian Penal Code*, 52 (1971)

\(^{99}\) Rajan V.J. & Krishna K.P., *Victims of Homicide*, 73 (1981); Khan & Krishna, *Victims of*
provisions in awarding compensation and inadequacy of the compensation awarded. 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.

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. 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.

**B- COMPENSATION UNDER CONSTITUTION**

Instead of this, the Courts have also granted monetary compensation as a palliative in writ petition under Articles 32 and 226 of the Constitution, where a
person’s fundamental right to life and personal liberty\textsuperscript{105} was infringed by the police and other state agencies. Similarly giving a new orientation to Article 21, 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 \textit{Rudal Shah v. State of Bihar}\textsuperscript{106} reveals "a sordid and disturbing state of affairs"\textsuperscript{107} 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 \textit{habeas corpus} was moved on his behalf to releasing, the detenue 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

\begin{flushright}
\textbf{ARTICLE -226  
Power of High Courts to issue Certain Writs}
\end{flushright}

1) Notwithstanding anything in article 32 (***) , every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of \textit{habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose}].

2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories].

3) Where any party against whom an interim order whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-
   \begin{itemize}
   \item[(a)] furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
   \item[(b)] giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Courts, is open and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.
   \end{itemize}

3) The power conferred on a High Court by this article shall not be inderogation of the power conferred on the Supreme Court by clause (2) of article 32.\textsuperscript{105}

\begin{flushright}
\textbf{Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.}
\end{flushright}

\textbf{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.}\textsuperscript{106}

\textit{Jain & Jain, Principles of Administrative Law, 779 , 14th Ed (2001)}\textsuperscript{107}
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. 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 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 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.

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108 Supra note 108 at 1089
109 Ibid
111 Art. 50; Also see Krishnan Venu Gopal, “A New Dimension to the Liability of the State under Article 32,” Indian Bar Review, 369 Vol. 11(4) (1984)
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 *D.K. Basu v. State of West Bengal*.113 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.114 In all matters the monetary compensation is an 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.115 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

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113 AIR 1997 SC 610
114 *Id* at 618
115 *Id* at 628
compensation depends upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf.”

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.

II- COMPENSATION UNDER SPECIAL LAWS

A- COMPENSATION AWARDED

1 THE VICTIMS OF TERRORISM (PROVISION OF COMPENSATION AND WELFARE MEASURES) BILL, 2012

The objective of the Bill states, ‘A BILL to provide for payment of compensation to and provision of certain welfare measures for the victims of terror attacks’. The objective of the Bill, no doubt, is to help the victims of terror attack; however the phraseology of the Bill does not seem to be so. And S. 3 of the bill provides the compensation to victims of terror attack.

Notwithstanding anything contained in any other law for the time being in force, the Central Government shall pay compensation to and take the following welfare measures for the victims of terror attack in the following manner:—

(i) in case of loss of life,
   (a) an *ex gratia* grant to the next of kin of the deceased which shall not be less than five lakh rupees;
   (b) financial assistance at such rate, as may be prescribed, to the next of kin of the deceased; and
   (c) preference in Central Government jobs to the next of kin of the deceased;

(ii) in case of serious injury leading to incapacitation,—
   (a) medical treatment free of cost till full recovery; and
   (b) payment of an *ex gratia* amount to the victim, which shall not be less than three lakh rupees;

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116 *Ibid*
(iii) in case of minor injuries payment of an *ex gratia* amount, which shall not be less than one lakh rupees; and

(iv) in case of damage to the dwelling unit as a result of torching or bombing, repair of the dwelling unit, if viable or construction of a new dwelling unit.

The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.118

2 PROBATION OF OFFENDERS 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.119 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 sub-section (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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119 S 5 Power of court to require released offenders to pay compensation and costs

1) The Court directing the release of an offender under section 3 or section 4 may, if it thinks fit, make at the same time a further order directing him to pay-

a) Such compensation as the Court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

b) such costs of the proceedings as the Court thinks reasonable.

2) the amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

3) A civil courts trying any suit, arising out of the same matter for which the offender is prosecuted shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.
THE MOTOR VEHICLES ACT, 1988

This Act provides to increase in the number of motor vehicles, poor maintenance of roads and negligence by drivers has led to substantial increase in the road accidents resulting in death or injuries to victims. S.40 of this Act embodies the idea of compensatory jurisprudence for the benefit of victims of accidents arising out of motor vehicles and states that the owner of the vehicle is obliged to pay a specific sum of compensation if his negligent act has culminated in the death or permanent disablement of a person. The following section guarantees a speedy recovery of such compensation by categorically stating that such claims “shall be disposed of as expeditiously as possible”. S. 163 provides for a scheme of payment of compensation in case of hit and run motor accidents which shall contain the form, manner, and the time within which applications for compensation may be made, to whom it may be made, and the procedures to be followed by administrative authorities constituted under the Act.

And s 163-A provides for compensation on a structured-formula basis as indicated in a tabular form in the Second Schedule forming part of the Act. In a claim

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**3. S.163. Scheme for payment of compensation in case of hit and run motor accidents.** – (1) The Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation.

(2) A scheme made under sub-section (1) may provide that –
(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;
(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;
(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939 (4 of 1939) as it stood immediately before the commencement of this Act. Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

**A.121. Special provisions as to payment of compensation on structured formula basis.** – (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. – For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923.
for compensation under this provision the claimant is not required to plead or establish that death or permanent disablement was due to "any wrongful act or neglect or default of the owner of the vehicle". In other words, the claimant is entitled to compensation in accordance with the Second Schedule on the principle of no-fault liability. The figures of compensation indicated in a tabular form in the Second Schedule show that the compensation awardable under s.163-A of the Motor Vehicles Act is quite substantial compared to compensation under s.140 which is limited to Rs 50,000 in case of death and Rs 25,000 in case of permanent disablement. Thus prior to insertion of s.163-A in the Motor Vehicles Act, 1988 when the victim or his heirs approached Motor Accident Claims Tribunals, they were required to prove negligence by the driver of the offending vehicle in order to make the owner liable to pay compensation. This at times was a daunting task for the heirs of the deceased who did not witness the accident. Even in case of the injured victim she/he could hardly be expected to recall the exact manner in which the accident occurred. Denial of compensation on the ground that negligence of the driver of the vehicle was not established was highly unfair to the victim, particularly in a welfare State. Realising

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

122 S140. Liability to pay compensation in certain cases on the principle of no fault. – (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under subsection (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of 86[twenty – five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163 – A.
4. **THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989**

The sole objective behind this legislation is to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes, and for the relief and rehabilitation of the victims of such offences. Section 21 of this Act imposes an obligation on the State Government to effectively implement the provisions stipulated therein. The use of words “shall take such measures as may be necessary” removes the possibility of any discretion and mandates the government to, among other things’, provide (a) adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice; (b) provide for the travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences; and (c) provide for the economic and social rehabilitation of the victims of atrocities. Moreover, on 31 March, 1995, in exercise of the powers conferred by subsection (1) of section 23 of the Act, the Central Government passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Rule 12 is titled “Measures to be taken by the District Administration” and Rule 12(4) provides that the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependants. Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities, and other essential items necessary for human beings. Rule 12 (4) Norms for Relief Amount:

<table>
<thead>
<tr>
<th>Name and Section Number of Offense</th>
<th>Minimum amount of relief</th>
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<tbody>
<tr>
<td>1. Drink or eat inedible or obnoxious substance [Sec.3 (1)(i)]</td>
<td>Rs. 25,000 or more depending upon the nature and gravity of the offense to each victim and also commensurate with the indignity, insult and defamation suffered by the victim. Payment to be made as</td>
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<td>2. Causing injury insult or annoyance [Sec.3(1)(ii)]</td>
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| 3. Derogatory Act  
[Sec.3(1)(iii)] | follows: 25% when the chargesheet is sent to the court, 75% when accused are convicted by the lower court. |   |
| 4. Wrongful occupation or cultivation of land etc.  
[Sec.3(1)(iv)] | At least Rs. 25,000 or more depending upon the nature and gravity of the offense. The land/premises/water supply shall be restored where necessary at Government cost. Full payment to be made when chargesheet is sent to the Court. |   |
| 5. Relating to land, premises and water [Sec.3(1)(v)] |   |   |
| 6. Beggar or forced of bonded labor [Sec.3(1)(vi)] | At least Rs. 25,000 to each victim. Payment of 25% at First Information Report stage and 75% on conviction in the lower court. |   |
| 7. Relating to right to franchise  
[Sec.3(1)(vii)] | Upto Rs. 20,000 to each victim depending upon the nature and gravity of offence. |   |
| 8. False, malicious or vexatious legal proceedings  
[Sec.3(1)(viii)] | Rs. 25,000 or reimbursement of actual legal expenses and damages whichever is less after conclusion of the trial of the accused. |   |
| 9. False and Frivolous information  
[Sec.3(1)(ix)] |   |   |
| 10. Insult, intimidation and humiliation  
[Sec.3(1)(x)] | Upto Rs. 25,000 to each victim depending upon the nature of the offense. Payment of 25% when chargesheet is sent to the court and the rest on conviction. |   |
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<td><strong>11. Outraging the modesty of a woman</strong> [Sec.3(1)(xi)]</td>
<td>Rs. 50,000 to each victim of the offense, 50% of the amount may be paid after medical examination and remaining 50% at the conclusion of the trial.</td>
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<td><strong>12. Sexual exploitation of a woman</strong> [Sec.3(1)(xii)]</td>
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<td><strong>13. Fouling of water</strong> [Sec.3(1)(xiii)]</td>
<td>Upto Rs. 1,00,000 or full cost of restoration of normal facility, including cleaning when the water is fouled. Payment may be made at the stage as deemed fit by District Administration.</td>
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<tr>
<td><strong>14. Denial of customary rights of passage</strong> [Sec.3(1)(xiv)]</td>
<td>Upto Rs. 1,00,000 or full cost of restoration of right of passage and full compensation of the loss suffered, if any. Payment of 50% when chargesheet is sent to the court and 50% on conviction in lower court.</td>
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<tr>
<td><strong>15. Deserting one from their place of residence</strong> [Sec.3(1)(xiv)]</td>
<td>Restoration of the site/right to stay and compensation of Rs. 25,000 to each victim and reconstruction of the house at Govt. cost, if destroyed. To be paid in full when chargesheet is sent to lower court.</td>
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<td><strong>16. Giving false evidence</strong> [Sec.3(2)(i) and (ii)]</td>
<td>At least Rs. 1,00,000 or full compensation of the loss or harm sustained. 50% to be paid when chargesheet is sent to Court and 50% on conviction by the lower court.</td>
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<td><strong>17. Committing offenses under the Indian Penal Code punishable with imprisonment for a term of 10 years or more</strong></td>
<td>At least Rs. 50,000 depending upon the nature and gravity of the offense to each victim and or his dependents. The amount would vary if specifically</td>
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<td>Provided for otherwise in the schedule.</td>
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<tr>
<td>18. Victimization at the hands of a public servant</td>
<td>Full compensation on account of damages or loss or harm sustained. 50% to be paid when chargesheet is sent in the Court and 50% on conviction by lower court.</td>
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<tr>
<td>19. Disability</td>
<td>At least Rs. 1,00,000 to each victim of offense. 50% on FIR and 25% at chargesheet and 25% on conviction by the lower court.</td>
</tr>
<tr>
<td>(a) 100% incapacitation.</td>
<td>- At least Rs. 2,00,000 to each victim of offense. 50% to be paid on FIR/ medical examination stage, 25% when chargesheet sent to court and 25% at conviction in lower court.</td>
</tr>
<tr>
<td>(i) Non earning member of a family</td>
<td>The rates are laid down in (i) and (ii) above shall be reduced in the same proportion, the stages of payment also being the same. However, not less than Rs. 15,000 to a non earning member and not less than Rs. 30,000 to an earning member of the family.</td>
</tr>
<tr>
<td>(ii) Earning member of a family</td>
<td></td>
</tr>
<tr>
<td>(b) Where incapacitation is less than 100%.</td>
<td></td>
</tr>
<tr>
<td>20. Murder/Death</td>
<td>-At least Rs. 1,00,000 to each case. Payment of 75% after postmortem and 25% on conviction by the lower court.</td>
</tr>
<tr>
<td>(i) Non earning member of a family</td>
<td>-At least Rs. 2,00,000 to each case. Payment of 75% after postmortem and 25% on conviction by the lower court.</td>
</tr>
<tr>
<td>(ii) Earning member of a family</td>
<td></td>
</tr>
<tr>
<td>21. Victim of murder, death, massacre, rape, mass rape and gang rape, permanent incapacitation and dacoity.</td>
<td>25% on conviction by the lower court.</td>
</tr>
<tr>
<td>In addition to relief amount paid under above items, relief may be arranged within three months of date of atrocity as follows:-</td>
<td></td>
</tr>
<tr>
<td>(i) Pension to each widow and/ or other dependents of deceased SC/ST at Rs. 1,000 per month, or employment to one member of the family of the deceased or provision of agricultural land, a house, if necessary by outright purchase.</td>
<td></td>
</tr>
<tr>
<td>(ii) Full cost of the education and maintenance of the children of the victims. Children may be admitted to the Ashram Schools/ residential schools.</td>
<td></td>
</tr>
<tr>
<td>(iii) Provision of utensils, rice, wheat, dals, pulses etc. for a period of three months.</td>
<td></td>
</tr>
<tr>
<td>23. Complete destruction/ burnt houses</td>
<td>Brick/stone masonry house to be constructed or provided at Government cost where it has been burnt or destroyed.</td>
</tr>
</tbody>
</table>

Further rule 15 mandates the State Government to prepare a model contingency plan for implementing the provisions of the Act and shall contain, among other things’, a package of relief measures including, (a) scheme to provide immediate relief in cash or in kind or both; (b) allotment of agricultural land and house-sites; (c) the rehabilitation packages; (d) scheme for employment in Government undertaking to the dependant of one of the family members of the
vict; (e) pension scheme for widows, dependent children of the deceased, handicapped or old age victims of atrocity; (f) mandatory compensation for the victims; (g) scheme for strengthening the socio-economic condition of the victim; (h) provisions for providing brick/stone masonry house to the victims; and (i) such other elements as healthcare, supply of essential commodities, electrification, adequate drinking water facility, burial/cremation ground, and link roads to the Scheduled Castes and the Scheduled Tribes.

6 PROTECTION OF HUMAN RIGHTS ACT, 1993

In India, National Human Rights Commission was set up under the Act 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. 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,

124 herein after NHRC
125 S.12. Functions of the Commission- The Commission shall perform all or any of the following functions, namely:
   a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court], into complaint of
   (i) violation of human rights or abetment thereof; or
   (ii) negligence in the prevention of such violation, by a public servant;
   (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
   (c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;
   (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
   (e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
   (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
   (g) undertake and promote research in the field of human rights;
   (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
   (i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
   (j) such other functions as it may consider necessary for the protection of human rights.
spread human rights literacy, encourage social activism and review the existing human rights laws and recommend measures for their effective implementation.\textsuperscript{126}

The Commission enjoys the powers of a civil court while inquiring into the complaints under the Act.\textsuperscript{127} It enjoys investigation power and can utilize the services of any governmental investigative agency.\textsuperscript{128} NHRC has recommended

\begin{itemize}
\item[(1)] S.13. Powers relating to inquiries- (1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely :
\begin{enumerate}
\item summoning and enforcing the attendance of witnesses and examining them on oath;
\item discovery and production of any document;
\item receiving evidence on affidavits;
\item requisitioning any public record or copy thereof from any court or office;
\item issuing commissions for the examination of witnesses or documents;
\item any other matter which may be prescribed.
\end{enumerate}
\item[(2)] The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.
\item[(3)] The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.
\item[(4)] The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.
\item[(5)] Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
\item[(6)] Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act; Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.
\item[(7)] Every complaint transferred under sub-section(6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.
\end{itemize}

\textsuperscript{126} Ibid. 
\textsuperscript{127} S.14. Investigation - (1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

\begin{itemize}
\item[(1)] For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under subsection (1) may, subject to the direction and control of the Commission:
\begin{enumerate}
\item summon and enforce the attendance of any person and examine him;
\item require the discovery and production of any document; and
\end{enumerate}
\end{itemize}
Rs.62933000/- as monetary relief in 398 cases including 5 disciplinary actions against public officials for their administrative wrongs while doing their duty.  

7 **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 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.

8 **PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT, 2005**

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

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(c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit. 

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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\textsuperscript{130} by Magistrate can be given in the favour of aggrieved woman. The monetary relief\textsuperscript{131} 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

\begin{itemize}
\item[(a)] committing any act of domestic violence;
\item[(b)] aiding or abetting in the commission of acts of domestic violence;
\item[(c)] entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
\item[(d)] attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
\item[(e)] alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
\item[(f)] causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
\item[(g)] committing any other act as specified in the protection order.
\end{itemize}

\begin{itemize}
\item[(a)] the loss of earnings;
\item[(b)] the medical expenses;
\item[(c)] the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
\item[(d)] the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.
\end{itemize}

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.
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.\footnote{S. 22 of the Protection of Women against Domestic Violence Act, 2005}

The appeal can be made to Sessions Court within 30 days from the order of concerned Magistrate.\footnote{S.29 Appeal.-There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.}

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.\footnote{S.31 Penalty for breach of protection order by respondent.- (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both. (2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused. (3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.}

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.\footnote{S.33 Penalty for not discharging duty by Protection Officer.-If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.}

\section{RAILWAYS ACT, 1989}

S.124A\footnote{S.124A When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the department of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only of loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to (a) suicide or attempted suicide by him; (b) self-inflicted injury; (c) his own criminal act; (d) any act committed by him in a state of intoxication or insanity; (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident. Explanation.-For the purpose of this section, "passenger" includes (i) a railway servant on duty; and} is titled “Compensation on account of untoward incidents” and provides that when in the course of working a railway an untoward incident occurs, then
whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger (includes a railway servant) who has been injured or the dependant of the passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall be liable to pay compensation. Section 124 entitles a passenger to compensation when an accident occurs either by derailment or collusion between trains irrespective of whether there has been any neglect, wrongful act, or default on the part of the railway administration.

B- COMPENSATION NOT AWARDED

1 DOWRY PROHIBITION ACT, 1961

The Dowry Prohibition Act had been enacted in the year 1961 with a view to curb the social evil of dowry. As there was rapid increase in the dowry-related offences the Criminal Law Amendment Act, 1983 had been enacted to make the law more stringent. By this amendment certain new provisions had been added to the Indian Penal Code and the Indian Evidence Act, 1872 whereby certain new offences like Dowry Deaths, abatement of Suicide and Cruelty to Married Women had been created to tackle the problem more seriously.

The Dowry Prohibition Act, 1961 is a progressive piece of legislation which is penal in nature and punishes both the giver and receiver of dowry. The Act is quite compact and consists of ten sections. S. 2 of the Act defines the concept of dowry. Ss 3 and 4 respectively pertain to the offences of giving and taking of dowry. S.5 declares all agreements entered into for giving or taking of dowry void. Sec. 6 deals with what happens to the dowry once received. Ss. 7 and 8 make the offences under the Act cognizable.

(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]

S.124 Extent of liability.-When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.--For the purposes of this section "passenger" includes a railway servant on duty.
In Dowry Prohibition Act there is no provision exists for payment of compensation to the victims of the dowry offences. Though ss. 3 and 4 contemplated collection of fine in huge amounts, no attempt has been made to divert any of the fine amount as compensation to the victim women. Thus, whatever injury or loss is suffered or mental agony is suffered by the victim of dowry, for recovery of damages or compensation she has to fall back upon the civil remedies pertaining to damages and compensation.

2  **PREVENTION OF FOOD ADULTREATION ACT, 1954**

The Prevention of Food Adulteration Act, 1954 is an important social legislation which is meant to safeguard the health of consumers of food. The Act consists of 25 sections and provides for machinery inspect, investigate and thus prevent the adulteration of food. This Act has been enacted to curb and remedy the widespread evil of food adulteration, and to ensure sale of wholesome food to the people. The Food Adulteration Act is intended to protect the public from using adulterated articles to achieve this is object the Act lays down specific procedure for purchasing sample of suspect adulterated goods, for getting them examined from public analysts, for getting sanction from the prosecution and for prosecuting the accused thereafter.

(1) Subject to the provisions of sub-section (1A) if any person—
(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any article of food—
(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;  
(ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder; or
(b) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any adulterant which is not injurious to health; or
(c) prevents a food inspector from taking a sample as authorised by this Act; or
(d) prevents a food inspector from exercising any other power conferred on him by or under this Act; or
(e) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any adulterant which is not injurious to health; or

(f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a public analyst or any extract thereof for the purpose of advertising any article of food; or

(g) whether by himself or by any other person on his behalf, gives to the vendor a false warranty in writing in respect of any article of food sold by him, he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees:

Provided that—

(i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of sub-clause (k) of clause (ix) of section 2; or

(ii) if the offence is under sub-clause (ii) of clause (a), but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of subsection (1A) of section 23 or under clause (b) of sub-section (2) of section 24. The court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years, and with fine which shall not be less than five hundred rupees:

Provided further that if the offence is under sub-clause (ii) of clause (a) and is with respect to the contravention of any rule made under clause (a) or clause (g) of subsection (1A) of section 23 or under clause (b) of sub-section (2) of section 24, the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees. This Act enables a Magistrate to impose penalties and imprisonment to the offender.  

(1A) If any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes,—

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138 S.16 of Prevention of Food Adulteration Act, 1954
(i) any article of food which is adulterated within the meaning of any of the subclauses (e) to (l) (both inclusive) of clause (ia) of section 2; or
(ii) any adulterant which is injurious to health, he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees:

Provided that if such article of food or adulterant when consumed by any person is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine which shall not be less than five thousand rupees.

(1AA) If any person in whose safe custody any article of food has been kept under sub-section (4) of section 10, tampers or in any other manner interferes with such article, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than one thousand rupees.

(1B) If any person in whose safe custody any article of food has been kept under sub-section (4) of section 10, sells or distributes such article which is found by the magistrate before whom it is produced to be adulterated within the meaning of sub-clause (h) of clause (ia) of section 2 and which, when consumed by any person, is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), then, notwithstanding anything contained in sub-section (1AA), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine which shall not be less than five thousand rupees.

(1C) If any person contravenes the provisions of section 14 or section 14A, he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than five hundred rupees.

(1D) If any person convicted of an offence under this Act commits a like offence afterwards, then, without prejudice to the provisions of sub-section (2), the court, before which the second or subsequent conviction takes place, may order the cancellation of the license, if any, granted to him under this Act and thereupon such
license shall, notwithstanding anything contained in this Act, or in the rules made thereunder, stand cancelled.

(2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender’s name and place of residence, the offence and the penalty imposed to be published at the offender’s expense in such newspapers or in such other manner as the court may direct. The expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

And s.5 \(^{139}\) of the Act prohibits import of adulteration or misbranding of food, and S.7 \(^{140}\) imposes a prohibition on manufacture and sale etc. of adulterated or misbranded food. It is interesting to note that an important social legislation like the Prevention of Food Adulteration Act does not have any provision for claiming compensation directly from the offender. This being the case the victims of food adulteration have either to rely upon the Code of Criminal Procedure or the General Civil Laws to claim compensation for the loss or injury by them. This means additional burden on the victims.

3 PROTECTION OF CIVIL RIGHTS ACT, 1955

The Protection of Civil Rights Act, 1955 is a significant social legislation which aims at protecting the civil rights particularly of those sections of society who

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\(^{139}\) S.5. Prohibition of import of certain articles of food — No person shall import into India—
- (i) any adulterated food;
- (ii) any misbranded food;
- (iii) any article of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence; and
- (iv) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

\(^{140}\) S.7 Prohibitions of manufacture, sale, etc., of certain articles of food — No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—
- (i) any adulterated food;
- (ii) any misbranded food;
- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; or
- (vi) any adulterant.

Explanation.—For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.
were once branded as the Untouchables, which is a glaring evil of Hindu caste system. The hierarchical caste system prevalent in Indian society has created a socially, politically and economically disadvantage class, depriving them of even the basic Human Rights and prevented them from leading a normal social life. With the launching of several social revolutions by social reformers during the 20th century and on the advent of the Indian Constitution in 1950 guaranteeing the Fundamental Rights under Part III of the Constitution the question of protecting the Civil Rights of this class has come into the forefront.

Particularly, in pursuance of Articles 14, 17 and 21 of the Indian Constitution guaranteeing Social Justice, life and personal liberty, the State has passed laws to protect the Civil Rights of this section of society. The Protection of Civil Rights Act, 1955 is one such legislation. This Act contains 17 ss. providing for abolition of Untouch ability in several matters of social life. It makes punishable any act of social disability including the religious disabilities, perpetrated by the society. While Section 3 of the Act provides punishment for enforcing religious disabilities, Section 4 provides for punishment for enforcing social disabilities. Again like several other social legislations the Protection of Civil Rights Act also fails to provide for any scheme of compensation to the victims of offenders. However, under these Acts the Supreme Court has evolved compensatory jurisprudence in few cases.\[141\]

Thus, a review of the Special Laws which directly or indirectly deal with the subject of compensation to the victims of crime reveals that, on the whole, Special Laws are not adequately taking care of the victims’ sufferings and foes and are not foolproof in their coverage of victim compensation schemes. Then there are certain important social legislations like Prevention of Food Adulteration Act, Protection of Civil Rights Act, Environmental Protection Act, etc. which ignore the serious suffering of the victims. Accordingly, there is need to fill these lacunae in the Special Laws either by way of necessary amendments making road for payment of compensation or by enacting a comprehensive and common victim compensation Code.

CONCLUDING REMARKS

The foregoing discussion leads to conclude that legal framework governing the payment of compensation to victims of crime in India reveals that law in India was fragmentary and inadequate to compensate victims of crime. But on the recommendations of Law Commission of India, recently the Code has been amended by the Criminal Amendment Act, 2008. It further strengthens the scope of law relating to compensation. Through this amendment s.357A has been introduced in the Code which is the need of the hour. Because the law is to be victim friendly so that the individuals also experience the real justice existing in the modern complex Indian society. Real and natural justice guarantee the rehabilitation and ultimate removal of hardships of aggrieved, which to an extent, can be achieved through compensation. And by introducing the victim compensation scheme it gives the platform to victims to get compensation from the accused if he is found otherwise in case of unidentified or untraced accused the District/State Legal Authorities will pay the adequate compensation to the victim for his/her sufferings after the inquiry which should be completed within two months.

In spite of that s.357A has also certain draw backs; it is not exhaustive in nature because the co-ordination between the centre and state is a pre-requisite for providing funds for the purpose of compensation scheme. Though there is lack of co-ordination due to the opposition of political parties at the centre and state level or for any other person and because of this the benevolent object of these provisions may be defeated. Clause (2) of s.357A provides that the recommendation for the

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42nd Report, Supra note 81, admitted that our Courts are not particularly liberal in utilizing these provisions; they do not exercise their statutory powers, under this section as freely and liberally as could be desired. Supreme Court also carried the same impression and appealed to all Courts in India to exercise their powers liberally to meet the end of Justice in a better way. It may be noted that the power of Courts to award compensation is not ancillary to other sentences but is in addition thereto. This power was intended to do something to re-assure the victim that he is not forgotten in criminal justice system. It is, to some extent, a constructive approach to crimes. In 152nd Report (152nd report of Law Commission of India (Govt. of India) on Custodial Crime (1994)) the Commission has recommended the introduction of s. 357-A of Cr.P.C. prescribing that compensation be awarded at the time of sentencing to the victims of the crime Rs.25,000/- in the case of bodily injury not resulting in death, Rs. One Lac in the case of death. In 154th Report (154th report of Law Commission of India (Govt. of India) on Cr.P.C (1996)) it went one more stage ahead and recommended for s. 357-A of Cr.P.C. to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts.

Supra note 60
Supra note 59
Id, cl (5) of S. 357A
compensation is firstly made by the Court (who decides the matter) and thereafter the District/State Legal Authorities shall decide the quantum of compensation which may generates the delay and denial the justice to victim of crime. Ultimately the sufferer again is the victim of crime. Thus it is completely clear that even if several amendments have been introduced in Cr.P.C yet there is dearth of proper comprehensive laws related to compensation that can bring actual relief to the victims of crime. It validates our first hypothesis that states existing legal framework providing for compensation by offender to his victim for loss suffered or injury caused by commission of offence is inadequate.

Apart from it, there are number of special laws which have proclaimed to award compensation for victims but the present study reveals that these statutes have been made for different purposes and there is no clear cut direction available from legislature as well as judiciary. These laws are less helping and more confusing to the victim. These Acts are providing compensation to their own victims of crime only.

Thus insertion of ss. 357 A, 357 B, 357 C is only one step in the direction of recognizing a range of victim’s rights in criminal justice. The criminal justice system has for too long been preoccupied with safeguards and protections of the accused. The case for a viable, social justice-oriented and effective scheme for compensating victims is very widely felt because the victim of crime being a component of criminal justice administration is entitled to social justice contained in Constitution.

On the other hand, it is vivid that the power of Supreme Court under Art. 32 to deviate from the traditional jargon and to formulate new horizons in granting relief for violation of fundamental rights particularly the right to personal liberty.