CHAPTER - IV

VICTIMS OF CRIME
AND
COMPENSATION PRACTICES
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INDIAN SYSTEM
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4.1 INTRODUCTION

Apart from the specific provisions of the Statutes through the interpretation of which compensation may be ordered, the Courts in India have-developed a new compensatory jurisprudence according to which compensation is provided even though there is no specific provision contained in the Constitution with regard to this matter. The policy thus evolved by the courts is a significant development in the field of compensatory jurisprudence. It is based on the view that under the Public Law of our country the courts have the authority to forge new tools and devise new methods so that the Fundamental Rights guaranteed to the people become meaningful. In a large number of cases the courts have applied this theory and provided compensation to the victims of crime and abuse of power. But there are at the same time cases in which courts have refused to provide compensation though the facts of the case were identical with the cases in which compensation had been ordered.

The cases regarding compensation to victims of crime consists of two sections: the first section shows the judicial trend in compensatory jurisprudence discernible through interpretation of the General and the Special Laws. The second section shows the judicial trend in compensatory jurisprudence discernible through the interpretation of the Public Law, particularly, the constitution of India.
While the constitutional provisions take care of protection of Victim's rights and payment of compensation to the victims of abuse of power by the State, in appropriate cases, in case of private offences, the victims' chances of getting compensation are rather limited and depend much upon the courts attitude from case to case. The Criminal Procedure Code reflects the General Law concerning compensation to the victims of crime to some extent.

4.2 JUDICIAL TRENDS IN COMPENSATORY JURISPRUDENCE UNDER INDIAN CONSTITUTION

The Indian Constitution which has guaranteed certain Fundamental Rights to the citizens in Part III against the actions of the State, also equally provides for the constitutional remedies by way of writs under Article 32 of the Constitution to the Supreme Court and under Article 226 to move the High Court for the enforcement of Fundamental Rights. Under these articles the victim can not only get his rights enforced in an expeditious manner but also he can even claim compensation for the alleged violation of Fundamental Rights by the State. This claim in public law or compensation for unconstitutional deprivation of the guaranteed Fundamental Rights is a claim based on strict liability and is in addition to the claim available in private law for damages to the victim.

i. Payment of Compensation under Indian Constitution:

It is the primary responsibility of the state that is committed to the welfare of its citizens to maintain law and order and to ensure the safety and security of its members. For any injury whether physical or other caused to the citizen, due to the action or inaction
on the part of the state, the state is answerable for the same. This is particularly the case with the fundamental rights, which are guaranteed under part III of the constitution. Fundamental Rights occupy a pride of place in our constitution. Again of all the Fundamental Rights the right to life and personal liberty enshrined in article 21 are the most precious, sacrosanct, inalienable and fundamental of all the fundamental rights of the citizens. In India, the jurisprudentially basis for the award of compensation seems to be two-fold:

1. Under a controlling constitution like ours, the state has a legal duty to protect the rights that are guaranteed therein and therefore it must compensate the victims if it reaches the right. ¹

2. The writ powers that are available to the superior courts to ensure that the state does protect these rights are not to be used in a hyper-technical fashion and therefore in order to be really effective in securing redress to the victims must involve the payment of compensation. ²

In the modern age the activities of the state have vastly increased and became multifarious, they have a deep impact on almost all facets of an individual's life. Particularly, the cases of

¹ P.Leelakrishna. Compensation for Government Lawlessness, 27 Cochin University L.Rev., (1992), This rationale has been extended in a Judgment of far-reaching consequence in R.Gandhi V. State of Tamil Nadu, AIR 1989 Madras 205, where the State was made to pay compensation to those who had suffered damage to property in communal riots. The courts’ reasoning was to make the State accountable for the breach of its duty to protect these people and their properties.

² M.C.Mehta V. Union of India AIR 1987 SC. 1086.
abuse of power by the machinery and agencies of state have become the common phenomena sometimes, seriously jeopardising the citizen's fundamental rights.

Accordingly there is a need for the state not only to own liability for the tortious acts of its servants but also to compensate the victims of abuse of power by the state. Though there are legislative and constitutional safeguards against the abuse of power by the state they are inadequate and need to be strengthened.

In some defined classes of cases such as blinding cases, illegal detention of under-trial prisoners, the state may take upon itself the responsibility of compensating the victims of crime.

Though there is no express provision in the constitution of India for payment of compensation to the victims of abuse of power by the state, through its pragmatic judgments, the Supreme Court has imported into Article 21 of the constitution which guaranteed, personal liberty, a mandatory duty on the part of the state to pay compensation to the victims in appropriate cases who were denied the fundamental rights by the state machinery.

Recognising the importance being given to the concept of compensation/exemplar costs to those persons whose right was violated by the state and its administration the Supreme Court has on various occasions awarded compensation so as to make the right to life and personal liberty more effective.
The Supreme Court, while invoking Article 32 of the constitution has granted two types of monetary relief, namely, 'Compensation' and 'Exemplary costs' though the idea of compensation to the victims is implicit in both the concepts yet exemplary costs are essentially in the nature of punitive damages. 

Exemplary costs serve as a measure of punishment to the state and at the same time a measure of damages to the victim for the wrong done to him by the state.

Grant of compensation in proceedings under Articles 32 and 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under the Constitution is an exercise of the Courts under the Public Law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. When the constitutional rights are invaded, the invasion is not washed away merely by restoring of the Rights. In appropriate cases, the Supreme Court has jurisdiction to award monetary compensation by way of exemplary costs or otherwise. The persons who are unlawfully deprived of their personal liberty by the Official of the State are legally entitled to claim compensation/damages from the State for the harm done to them.

The active role played by the judiciary in enforcing the Fundamental Rights of the citizen has not only certainly brought to
light the lawlessness of the executive and administration, and checked it to some extent, but also contributed to development relating to victim rehabilitation by way of award of compensation in appropriate cases.

In the light of the cases of compensation decided by the Supreme Court, it becomes pertinent to discuss the scope of Article 32 of the Constitution. This Article confers the power on the Supreme Court to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of the Constitution the Supreme Court explained its jurisdiction to grant compensation/exemplary cost under Article 32 in Rudul Sah case. It resolved that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts, civil and criminal. It subjected itself to the important question of passing an order for payment of money if such an order is in the nature of compensation consequential upon the deprivation of a

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5. Article 32(2) of the Constitution.

fundamental right. It decided to pass an appropriate order for the payment of compensation in writ petition.

In course of time, the Supreme Court has added a new dimension to the interpretation of article 32. Thus in M.C. Mehra v. Union of India case spelling to the compass of Article 32 the Supreme Court held that this Article does not merely confer power on it to issue writs and directions but it also empowers it to forge new remedies and fashion strategies. In this case a writ petition by of Public Interest Litigation Article Supreme Court, inter alia, for determining the liability for larger enterprises engaged in manufacture and sale of hazardous products, and the basis of liability for fixing damages. The court observed that its power under Article 32 is "not only injunctive in ambit that it, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of fundamental right already committed. It has the power to award compensation in appropriate cases. It means compensation cannot be awarded in all cases. It has to be awarded where the infringement is gross and its magnitude is such as to shock the conscience of the court."
ii. Custodial death

The claim in public law for compensation for unconstitutional deprivation of fundamental rights to life and liberty, of the citizens the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. Public Law proceedings serve a different purpose from that of the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under the Constitution is a remedy available in Public Law since the purpose of public law is not only to civilian public power but also to assure the citizens that they live under a legal system wherein their rights and interest shall be protected and preserved.

The Andhra Pradesh High Court in a case has awarded Rs.10,000/- to the husband of the deceased victim and Rs.25,000/- to the cousin of the victim. In the instant case the victim lady, Mry Moa, has been apprehended by the Excise Personnel under the jurisdiction of Avanigadda, subsequently she died in the custody of the excise authorities.

In Smt. Chendabai Yadav v. State of Madhya Pradesh and others, the Madhya Pradesh High Court has awarded Rs.50,000/- as compensation to the heirs of the deceased who,

died in the custody of Jail Authorities, Indore. The deceased was a Milk worker, and was one among those workers of the Hutum Chand Mills Ltd., who were agitating against the closure of the said Mill. Earlier, as a part of the 'Jail Bharo' Andolan, the deceased, along with others were lodged in Central Jail, Indore, where certain riots broke out among the workers. During the riots the deceased received severe injuries and succumbed to injuries and died at the hospital.

In yet another case\(^\text{13}\) of abuse of power by the State, the Gujarat High Court has awarded Rs. 2 lakhs as compensation as a measure of interim compensation. In this case the deceased Narendrasinha, and AIO, CID Intelligence died in suspicious circumstances. Though the Police Officials have foisted a case of suicide, the Court did not believe this version and came to the conclusion that it is a case of custodial death.

Smt Solgabai Sunil Pawar v. State of Maharashtra & Others,\(^\text{14}\) is a significant case so far as the abuse of power by the State Officials is concerned, in this case one Sunil Pawar died in the police custody after judicial remand during the police investigation. On the facts of the case and evidence available on record the court has convinced that it is a clear case of custodial death, resulting from the high handedness and disregard of state officials for the constitutionally guaranteed rights of personal liberty and found it to be a fitting case for awarding compensation to the tune of Rs.1,50,00/- to be paid to the wife of the deceased. It is


also pertinent to note that in this case the Court has even recommended for launching of criminal prosecution against the officials responsible and even to recover the compensation amount from the purse of the Police personnel, who are responsible for and involved in the custodial death.

In Sebastian M. Hongray v. Union of India a writ of Habeas Corpus was issued to the Government of India requiring to produce two missing persons alleged to have been illegally kept in army custody. There was sufficient evidence that they were last seen in the custody of army and were not released. The Government failed to produce them before the court and also expressed its inability to do so. In fact the two persons had met an unnatural death. The court found that there 'as a willful disobedience of the writ of the court by authorities by presenting misleading facts'. The court considered the torture, the agony and mental oppression undergone by the wives of the persons directed to be produced. The court, instead of imposing a fine on the government for civil contempt of the court awarded exemplary costs to the tune of rupees one lakh each to the two wives of the missing persons.

The incidence of custodial violence, and custody death, continues unabated. Delhi and Gauhati High Courts recur with a disturbing frequency in this section, but cases from Rajasthan, Karnataka, Maharashtra, Uttar Pradesh, West Bengal and Andhra Pradesh testify to the prevalence of custodial violence across a spectrum of states.

The experience of courts with cases of custodial violence appears to have moved them to regard complaints with reduced suspicion, and enhanced credulity. In the 18 cases that were located within this arena of custodial violence, compensation was not denied in any case. The link between custodial violence and compensation is direct\textsuperscript{16} and Nilabati Behera,\textsuperscript{17} D.K. Basu\textsuperscript{18} and Rudul Sah\textsuperscript{19} have evidently set at rest any questions there might have been on the payment of compensation for violation of article 21 rights.

There is an increasing regularity in referring cases of custody death to the CBI, since it is not seen as realistic to expect that the police will carry out an unbiased investigation in a matter where the police are themselves in the dock.\textsuperscript{20} The prosecution of errant officers is not unknown in law;\textsuperscript{21} courts too may suggest prosecution where it is not already underway\textsuperscript{22} or to leave it “open

\textsuperscript{17} AIR, 1993, SC, p. 1960.
\textsuperscript{19} (1983)4 SCC 141.
\textsuperscript{22} Notle V. Union of India 2000 ACJ 786.
for the state authorities to proceed against the erring officers both departmentally and criminally..."23

The regularity with which cases of custodial violence and death have reached the courts has been one reason for the increasing credulity, and lessening disbelief, when complaints are made of police violence. The doctrine of res ipsa loquitur has been imported into this arena.24 And, in Kamala Devi V. NCT of Delhi25 the Delhi High Court has said: "When a person dies in police custody and the dead body bears telltale marks of violence or the circumstances are such that indicate foul play, the court acting under Article 226 of the Constitution will be justified in granting monetary relief to the relatives of the victim."26 While courts have generally ordered compensation to victims or their families or dependants, it has not yet become routine to direct recovery of the compensation amounts from the offending persons. In Mst. Madina v. State of Rajasthan,27 however, the Rajasthan High Court did order that "the respondent 1 shall recover the amount of Rs. 3 lakhs proportionately from respondents 3 to 7 (the offending

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25. The judgment, condemning the use of third degree methods to extract information as a violation of art.21, also says: "A comparison between a criminal and a policeman committing brutality will end where the latter violates the law of the land and tramples upon the human rights of a citizen... By using third degree methods the police get the information or statement from the person who suffers its brutality according to its liking. By adopting such methods an investigation cannot arrive at the truth..." 2000 Cri LJ 4867.


27. (2001) 1 Raj LW 266.
policemen).” In Kamla Devi\textsuperscript{29} the court left it “open to the state to recover the above said amount from the persons who are ultimately held responsible for the death of Madan Lal”.

The remedy of compensation as a “palliative”\textsuperscript{29} or, as it is more frequently being characterized, as an “interim” measure\textsuperscript{30} is now firmly rooted in the law. Any doubts that might have persisted about the state’s responsibility for the safety of persons in its custody has now been laid at rest by the decision of the Supreme Court in State of A.P V. Challa Ramkrishna Reddy.\textsuperscript{31} This affirms the decision of the Andhra Pradesh High Court in Challa Ram Konda Reddv v. State of A.P.,\textsuperscript{32} an early decision that went beyond situations of custodial violence perpetrated by instrumentalities of the state, to the responsibility of the state when persons are held in its custody, even where injury or death is caused by third persons. The remedy of compensation has been extended to these situations and, as later cases have shown,\textsuperscript{33} it has begun to be used in a range of other cases of death in custody

\begin{itemize}
\item [28.] 2000 Cri LJ 4867.
\item [29.] Rudal: Sah v. State of Bihar, 1983, 2, SCC.
\item [31.] (2000) 5 SCC 712.
\item [32.] AIR 1989 AP 235.
\end{itemize}
where the state or its instrumentalities may not have been directly
the cause of the harm caused.

In Challa Ramkrishna Reddy, a father and son accused in a
criminal case were apprehended and remanded to judicial custody.
About 10 days into their custody, a bomb was hurled into the cell
where they were housed, and the father died in the explosion. It
transpired that they had received threats to their lives, which they
had communicated to the circle inspector who, however, did not
treat the threats with any seriousness. In fact, on the night of the
attack, only two police personnel were on duty in the sub-jail
premises, although nine members were required to stay on guard.
They had also made representations to the collector and the home
minister, to little effect. The incident occurred in 1977. The sons of
the dead man sued the state for damages.

The state resisted the Suit on two grounds: limitation, and
sovereign immunity. The ground of limitation was overcome by
locating the case within article 113 (the residuary article) of the
Limitation Act, 1963 and not within article 72, which provides for
limitation of one year from the time the act or omission takes place.
The court explained this, saying: “In order to attract Article 72, it is
necessary that the suit must be for compensation for doing or for
omitting to do an act in pursuance of any enactment in force at the
relevant time... Where a public officer acting bona fide under or in
pursuance of an Act of the legislature commits a “tort”, the action
complained of would be governed by this article which, however,
would not protect a public officer acting mala fide under colour of
his office.” Finding that “the Police Sub-Inspector was also in the
conspiracy and it was for this reason that in spite of their requests,
adequate security guards were not provided," the court took away the "protection of shorter period of limitation" from the state.

While compensation as a public law remedy has developed as a direct response to custodial violence, the determination of the quantum is still uncertain ground. In Amitadyuti Kumar v. State of West Bengal, the Supreme Court enhanced the Calcutta High Court's award of Rs. 20,000/- to an "appropriate" sum of Rs.70,000/-. 

In Smt. Suguna v. State of Karnataka, the Karnataka High Court was confronted with the death of an auto driver, whose dependants were his wife, mother and a minor daughter. In "public law", the court held the state "obliged to pay compensation to the petitioners which is quantified at Rs. 3 lakhs." In Mst. Madina, the Rajasthan High Court held the petitioner "entitled to at least Rs. 3 lakhs by way of interim relief." These cases do not indicate the basis for determining the quantum. Where a court has ventured to explain it has, at best, been a sketchy exercise. So, in Govt. of NCT of Delhi v. Nasiruddin, the court held: "Taking into account the decisions of the apex court in the matter of Motor Vehicles statute, and the cases noted above, and also the fact that loss of dependencies, if any, is that of parents and their age...." But

36. The court directed that Rs. 2,50,000/- be deposited in the daughters name, and the money used "only for the purpose of her education and marriage".
37 (2001) 1 Raj LW 266.
38 (2001) 89 DLT 91 at 105.
Iqubal Begum,\textsuperscript{39} also decided in the Delhi High Court, adopts a contrary approach: "The reason for drawing attention to the judgments and various pronouncements of the Supreme Court is to show that it is not necessary that the criteria laid down in fatal accident cases and allied matters for awarding compensation should be followed by courts in awarding ex gratia compensation in custodial death cases. Such an interpretation would lead to treating citizens differently based on their economic strength when rights are violated by the state."

A feature of these cases is the petty nature of the crime of which those killed in custody were often accused. In Mst. Madina,\textsuperscript{40} the victim had allegations of "theft of a guar gum bag" levelled against him. In Narayani Sharma v. State of Tripura,\textsuperscript{41} a schoolboy of 16 years was a victim of custodial violence after he was picked up in connection with a case of theft.\textsuperscript{42} In Gopal Ch. Sarmah v. State of Assam,\textsuperscript{43} there is no indication that the victim was in police lock up in connection with any offence: only that he was a member of a political party.\textsuperscript{44} This disproportionate use of force, even to the causing of death, seen in conjunction with the abuse of power that custodial violence represents, indisputably points to a deep

\textsuperscript{39} 2001 ACJ 2033.

\textsuperscript{40} (2001) 1 Raj LW 266.

\textsuperscript{41} 2000 ACJ 869.

\textsuperscript{42} The court records that his complaint to a magistrate of torture while in police custody went unheeded: 2000 ACJ 869.

\textsuperscript{43} (2000) 1 Gau LJ 643.

\textsuperscript{44} See also, Tarulata Devi, (2000) 1 Gau LJ 419, para 9.
malaise harming the system of criminal justice.\textsuperscript{45} The four aspects of compensation to the victim, recovering the compensation amount from the erring officers, disciplinary proceedings and criminal action against the accused will each have to be developed to produce a deterrent effect. The firming up of the links between liability and compensation could, in this context, be viewed as an imperative.

The award of monetary compensation for custodial violence has been justified as being “the only practicable mode of redress available for the contravention made by the state or its servants in the purported exercise of their powers...”\textsuperscript{46}

The issue of medical negligence resulting in the death of prisoners has been brought before the courts. In Murti Devi v. State of Delhi,\textsuperscript{47} the Supreme Court was confronted with the death of an under trial prisoner who had been seriously assaulted, allegedly by some convicts in jail, when he was in judicial custody in Tihar Jail. He died of the injuries suffered by him and after being admitted in a Delhi hospital: it was found that prompt and appropriate action in rendering medical aid was not taken. Indicting

\textsuperscript{45} See also, Surendra v. State of Maharashtra, (2001)4 Mah LJ 601 at 612, torture of journalist through misuse of chapter VIII powers “so that he should learn a lesson not to expose police officers of the region within whose jurisdiction he was residing.”

\textsuperscript{46} Smt Chanchala Swain v. State of Orissa, (1997) 84 Cutt LT 86 at 91 See also Dev Kala v. State of Himachal Pradesh, 1998 ACJ 632 at 643 (DB) where Nilabati Behera was quoted to like effect. See also Solgabai Sunil Pawar v. State of Maharashtra 1998 Cri LJ 1505 at 1508 (DB) The strict liability principle was reasserted, and the defence of sovereign immunity was rejected in this case.

jail authorities for "gross negligence", the court ordered compensation of Rs.2,50,000/- "as it was the bounden duty of the jail authorities to protect the life of an under trial prisoner....and the authorities had failed to ensure safety and security" to the victim.

Custodial violence is of concurrent interest to the courts - as a fundamental rights violation, and to the Human Rights Commissions - as a human rights issue. Both institutions may resort to directing compensation as a mode of redress. In Lawyers' Forum for Human Rights, the Calcutta High Court took into reckoning the interim compensation of Rs.25,000/- which the State Human Rights Commission had directed be paid when it directed the state to pay compensation of Rs. 1 lakh to the next of kin of the deceased. The major breakthrough in the field of victimology jurisprudence came in Rudal Shah v. State of Bihar. When the Supreme Court of India granted monetary compensation amounting to rupees thirty five thousand to an ordinary citizen against the lawless act of Bihar Government which kept him under illegal detention for more than fourteen years after his acquittal. This is the first judicial concern to repair the damage done by the officers of the state to the victimised citizens. The Apex Court for the first time deviated from the traditional approach of applying the law mechanically based on precedence and brought the law closer


49. See also Muktaram Sitaram Shinde, where the high court suggested that a nominee of the National Human Rights Commission be appointed as ex-officio visitor of prisons in the state, or be non-official visitors, particularly to safeguard the human rights of prisoners. See further. Annual Report 1997-98 of the NHRC 17. 18-19.

50. 1983 Cr.L.J 1644.
to life by reinforcing the legitimacy and credibility of the court particularly amongst the weaker sections of the people.51

The Supreme Court in A.S.Mittal v. State of Uttar Pradesh52 broadened the scope to Article 32 and granted compensation to the tune of Rs. Five thousand to each of the victim by way of interim relief on humanitarian consideration.

In Nilabati Behra v. State of Orissa53 the Supreme Court in continuation of the jurisprudence of the Rudal Shah trilogy, held that a claim in public law for the award of compensation, as a result of the violation of the fundamental rights guaranteed under the constitution, was a distinct remedy from the claim in private law for damages.

iii. Police atrocities

Excessive, or unwarranted, use of force by the police constitutes a ground for seeking relief—both compensatory and asking for investigation and prosecution—from the court. In the two cases the Andhra Pradesh High Court and the Bombay High Court at Aurangabad have deflected the issue from that of determining culpability and compensation to recognizing the imperative of investigation.54 In the Maharashtra case, the court declined to act

52. AIR 1989 Sc 1570.
since a commission of inquiry had been appointed to inquire into the alleged incidents of police violence, and it considered any intervention at that stage premature.

Where it was established that a constable had assaulted a person in the course of his duty, and that resulted in amputation of a limb, the state was held vicariously liable, and the doctrine of sovereign immunity was expressly rejected.\textsuperscript{55} Interestingly, the court was called upon to address a reversal of the contention that where an alternative remedy exists in civil law, public law remedy, in writ, should not be allowed—a position that has been negatived many times over. And it held: “The fact that a public law remedy lies under Articles 32 and 226 of the Constitution before the superior courts in respect of torts committed by police.... would not take away the power of civil court to grant relief of damages for violation of fundamental rights by the state agency committing such tort.”

The death of a woman who was assaulted by a constable during a prohibition raid while she pleaded that her nephew was on his way to buy medicines for her child and should not therefore be apprehended, is another instance of excessive use of force that has been brought to court. That enquiry into the incident was deliberately allowed to drag acted in aggravation. The court therefore directed initiation of “criminal proceedings against the police-constable concerned for his rude behavior in his pushing her


to the ground which subsequently ended in her death apart from expediting the departmental enquiry pending against him." The state was directed to pay Rs. 2 lakhs to her family with the "right to be indemnified by and take such action as may be available to them against the wrongdoer."  

In another writ petition under article 32 of the constitution in Saheli. A Women's Resource Centre through Ms. Nalini Bhanot v. Commissioner of Police. Delhi. The Supreme Court awarded compensation amounting to Rupees Seventy five thousand to the mother of the victim of the death of a nine year old child because of beating and assault by police officer.

iv. Encounter killing

Civil liberties groups have brought to court the issue of extrajudicial killings in staged encounters, In People's Union for Civil Liberties v. Union of India, it was alleged that the Imphal police had, on 3.4.1991, killed two persons of Lunthilian village of Manipur. The District and Sessions Judge, Churachandpur, in an inquiry conducted at the behest of the Supreme Court, in 1995-96, found that there had been no encounter as averred by the police, and that the two deceased persons had been killed in custody. The Supreme Court held that "the present case appears to be one where two persons along with some others were just seized from a hut, taken a long distance away in a truck and shot there." The

56. Mariyappan v. State of Tamil Nadu 2000 Cri LJ 4459 the incident was of November 1990.

court thereafter ordered that Rs. 1 lakh be paid to the families of each of the deceased.\textsuperscript{58}

The PUCL, Committee for Protection of Democratic Rights and the President of the Samajwadi Party moved the Bombay High Court asking for a judicial enquiry into the deaths which had occurred in alleged police encounters in Mumbai, to ask the state government to take action against the erring police officers, and to award compensation to the family of the deceased. The statistics given by the police stated that while in 1996, there had been 43 encounters resulting in deaths of 57 alleged criminals, in 1997 there had been at least 70 deaths and two alleged criminals injured in 47 incidents. The facts disclosed a need to institute an enquiry into instances specified in the writ petition and the sessions judge was directed to hold an inquiry.\textsuperscript{59}

In K.G.Kannabiran v. Chief Secretary, Govt. of Andhra Pradesh,\textsuperscript{60} a case brought to the court by an advocate who was also the President of the PUCL, it was the killing of an "unidentified PWG Naxalite" which was the immediate cause for concern. The court directed investigation of the case by the CBI. It is reported that, after judgment was delivered in the case, the government

\textsuperscript{58} The PUCL was paid costs assessed at Rs.10,000/- to be paid by the State of Manipur.

\textsuperscript{59} People's Union for Civil Liberties v. State of Maharashtra 1998 Cri LJ 2138. See also Samji Ladha v. State of Gujarat, 1998 Cri LJ 2746 where the petitioners were office bearers of an association called Action Committee for Prevention of Police Atrocities.

\textsuperscript{60} (1997) 4 Andh. LT 541 (DB).
designated courts of CJMs in all districts and courts of CMMs as human rights courts.

The police invariably averred that their attempt was to apprehend the alleged criminal; that they were fired upon with sophisticated weapons, and that they returned the fire in self-defence which resulted in the death of the person. Courts were inclined not to rely on this version of events at least in part because of the absence of injury on the person of the policemen and the injuries caused to the deceased were on vital parts of the body. "In no case," said the Bombay High Court. "the firing was made by the police officer with an intention to disable the concerned criminal."

It is significant that in each of the instances, insurgency, militancy or underworld criminality were advanced as reasons for what the Supreme Court termed "administrative liquidation".\footnote{People's Union for Civil Liberties v. State of Mahārashtra 1998 Cri LJ 2138.} \footnote{K.G Kannabiran v. Chief Secy. Government of AP (1997) 4 Andh LT 541.} Again, demoralisation in the police force\footnote{Art exception is Smt.Vandana Vikas Waglumare v. State of Mahārashtra 1998 Cri LJ 4295.} and a caution against the court laying "too much emphasis on the fundamental rights and human rights" or "such criminals may go scot-free" were advanced as reasons for non-interference in encounter killings through independent inquiry. Courts have, however, generally accepted the need to hold inquiries.\footnote{Art exception is Smt.Vandana Vikas Waglumare v. State of Mahārashtra 1998 Cri LJ 4295.}
The labeling of a person as a member of an extremist organization has provided a shield to the police and armed forces in cases of encounter killings or in fake encounters. The obstacles to enabling investigation in cases of alleged encounters were set out by Usha Ramanathan. 64 A death in custody as an encounter killing of a member of ULFA has since been reported in Gopal Ch. Sarmah V. State of Assam. 65 A single judge of the Gauhati High Court, basing his judgment on a judicial enquiry instituted by the court, gave a lie to the assertion of death in an encounter, and directed that Rs. 2,50,000/- be paid in compensation.

A reaction to extremist violence, where a heightened tolerance of state violence is seen, is found in the decision of a division bench of the Gauhati High Court in Siba Nath Gogoi v. Union of India. 66 Dealing with a challenge to the identity of a person who was killed, allegedly in an encounter, Sharma J. in his separate but concurring judgment added, as in a postscript: "... the question is whether one who distances from the societies, departs from the society and adopts gun culture, should receive equal treatment at the hand of the instrumentalities of the society... The society cannot be asked to cough up compensation for the death of a terrorist in encounter, because that will mean putting a premium on wrongdoings." The court did make an exception when it said: "Fake encounter, cold blooded killings apart, for the death..."
of a terrorist no compensation can be/should be granted by the court”

The judicial dictum adds an imperative to the registering, and investigation, of alleged encounter deaths, to determine the veracity or otherwise of charges that the encounter was staged, or fake.

v. Illegal detention

Today it has become almost a common practice to knock the doors of the courts either under Article 226 or under Article 32 of the Constitution on the ground of illegal arrests or detentions. The courts, being moved by such illegal arrest, detention torture and other form of injuries caused to the members of the public by the agencies of State, in juxtaposition to the constitutional guarantees enshrined under Articles 21 and 22 as also the procedural formalities envisaged in the Code of Criminal Procedure, 1973 left the courts with no option but to invoke their prerogative powers under Article 226 or 32 as the case may be, so as to ensure due and possible justice to the victims of police atrocities or tortures not only by awarding reasonable compensation, but also directing the State to initiate appropriate action on the erring police officials. While doing so the courts did not accept the defence of sovereign immunity to the inhuman acts of the police and made the State liable vicariously for the acts of its servants.

Thus, the State has a legal duty of not only protecting the rights of the citizens, but also a social duty to compensate for illegal arrest or torture. The compensation is seen as a tangible
expression of State's sympathy and concern for those who though no fault of their own suffer unjustifiable invasion on their personal integrity.67

In the nineties however, the apex court has taken or treated on a new dimension in the compensatory jurisprudence which has opened a new horizon in victimology which may soon lead to certain normative formulation from the legislative wisdom on this matter. In 1993, the Supreme Court while exercising power under Article 32 opined that the Supreme Court is not helpless and the wide powers given to it by Article 32 which itself is a fundamental right imposes a constitutional obligation on it to forge new tools, which may be necessary for doing complete justice and enforcing the fundamental right guaranteed in the Constitution, which enables the award of monetary compensation in appropriate cases, where that is the only mode of redress available.

When the Government of India ratified the ICCPR, 1966 in 1979, it made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention. This reservation is now of little relevance in view of the decision of the court in Nilabati Behera.67a

In three disturbing cases before the Andhra Pradesh High Court, illegal detention, even torture in custody, was used to bring recalcitrant persons to heel. In Gongula Venkateswara Rao v.  

SHO, Vissannapeta P.S., a 70 year old man was picked up by the police and taken away for interrogation in connection with a civil dispute between his son and another person. "A man of 70 years, who has nothing to do with the complaint given, was brought to the police station and was confined for two days, unauthorised," the court found, while directing the sub-inspector of police to pay a compensation of Rs.6,000/- to the detenue. In K. Yesupadam v. S.I. of Police, Penamaluru P.S., Vijayawada, the same division bench found, based on an enquiry by the district judge, that a woman was detained between 24.3.1997 and 1.4.1997 "only... to get her son arrested or surrendered, as he was absconding." "In view of the fact that the detenu is a woman and that she stands to lose her job (as ayah) in the hospital by the first respondent's act of illegal detention and also for the reason that the detenu was detained for eight long days," the court ordered the sub-inspector of police to pay her Rs.10,000/-.

An accused serving life imprisonment was acquitted in appeal before the high court. Non-communication of the order to the jail where he was lodged resulted in his continued detention for over three months between 21.4.1995 and 28.7.1995. A division bench of the Andhra Pradesh High Court in K.Umapathy v. Superintendent, Central Jail, Cuddapah holding that "his continued detention for whatever reasons (beyond April 21, 1995)

68. 1998 Cri LJ 14 (DB).
70. 1997 Cri LJ 1794.
has to be held illegal and violative of the fundamental rights," quantified compensation at Rs.6,000/-. The major breakthrough in the field of victimology jurisprudence came in Rudal Shah v. State of Bihar.\(^7\) When the Supreme Court of India granted monetary compensation, amounting to rupees thirty five thousand to an ordinary citizen against the lawless act of Bihar Government which, kept him under illegal detention for more than fourteen years after his acquittal. This is the first judicial concern to repair the damage done by the officers of the state to the victimised citizens The Apex Court for the first time deviated from the traditional approach of applying the law mechanically based on precedence and brought the law closer to life by reinforcing the legitimacy and credibility of the court particularly amongst the weaker sections of the people\(^7\)  

A claim in public law for compensation for contravention of human rights and fundamental freedom, the protection of which is guaranteed in the constitution is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The defence of Sovereign immunity being inapplicable, and to the concept of guarantee of fundamental rights, there can no question of such a defence being available in the constitutional remedy. It is

\(^7\) 1983 Cr.L.J 1644.

\(^7\) N.R.Madhava Menon "Government Law Lecture Supreme Court’s Break through Judgment", The Hindustan Times. 9 (10 Nov. 1983).
this principle which justifies award of monetary compensation for
contravention of fundamental rights guaranteed by the constitution
when that is the only practicable mode of redress available for the
contravention made by the state or its servants in the purported
exercise of their powers and enforcement of the fundamental rights
is claim by resort to the remedy in public law under the constitution
by recourse to article 32 and 226 of the constitution”. Thus, the
interpretation of article 32 and 226 of the constitution as to give
compensation to the victim in case of state lawlessness/
highhandedness excess has given a new dimension to
jurisprudence of victimology in India.

The court’s quandary when the excise police illegally
detained, assaulted and killed the wife of a suspect was witnessed
in Kommineni Sanjeeva Rao v. SI of Police.73 “Ordinarily, in such a
case, we would have chosen to award exemplary and penal
compensation”, the court said. But “we are ....reluctant to
recognise entitlement for such compensation in her husband...
.who, it seems, was wanted in connection with some offence and it
appears because he was absconding or not traceable.” So the
court awarded a token compensation of Rs.10,000/-. 

In Lawyers’ Forum for Human Rights v. State of West
Bengal74 the Calcutta High Court while awarding compensation of
Rs.1 lakh to be paid to the widow of a man who died in custody
explained the responsibility in terms of duty of care. “When a man

73. 1997 Cri LJ 3109 (AP).
74. (1997) 1 Cal HCN 485 (DB).
is taken into custody, it is the paramount duty of the police officials to protect his body"., the court said. "The police authorities have a duty of care to the arrested accused."75

The award of monetary compensation for custodial violence has been justified as being "the only practicable mode of redress available for the contravention made by the state or its servants in the purported exercise of their powers..."76

In 1983, the Supreme Court of India declared in a seminal ruling in Rudal Sah v. State of Bihar,77 that it could award in appropriate cases, monetary compensation, where there had been a violation of the guarantee of life and personal liberty under Article 21 of the Indian Constitution by the State. In this case the petitioner was illegally detained in the prison for more than 14 years even after his acquittal. A writ of habeas corpus was filed on behalf of the petitioner and compensation was paid for illegal detention. The Supreme Court ordered the State to pay to the petitioner a further sum of Rs. 30,000 as an interim measure in addition to the sum of Rs. 5000 already paid by it. It was further held that the order of compensation was in the nature of a

75. The court's position on the use of torture in custody is not as categorical: "It is one thing to use third degree method for the purpose of extracting confession and/or for getting information. But everything has got its own limit. But this third degree method which is not permissible cannot be used in such a manner which causes death to a prisoner" (1997) 1 Cal HCN 485 (DB).

76. Smt Chanchala Swain v. State of Orissa, (1997) 84 Cutt LT 86 at 91 See also Dev Kala v. State of Himachal Pradesh, 1998 ACJ 632 at 643 (DB) where Nilabati Behera was quoted to like effect. See also Solgabai Sunil Pawar v. State of Maharashtra 1998 Cri LJ 1505 at 1508 (DB). The strict liability principle was reasserted, and the defence of sovereign immunity was rejected in this case.

palliative and it did not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials.

The casual treatment meted out in matters of liberty has led courts to direct that compensation be paid to those detained beyond the prescription of the law. however, essentially viewed as a matter of state liability for compensating victims for infringement of fundamental rights, and it is not an unvarying direction to pass the liability on to the delinquent, even where such officer has been identified.78

vi. Disappearances

In a case,79 where an under-trial by name Umakanth Behera, has disappeared under mysterious circumstance from the custody of the jail authorities, since 24.1.1975. The High Court of Orissa has awarded Rs.1.5 lakh as compensation to the petitioner Mother.

Since the decision of the Supreme Court in Sebastian Hongray v. Union of India,80 in a writ seeking habeas corpus, the burden is on the police or the armed forces to prove their stand in cases of disappearances where it is shown that the person detained was last seen under their surveillance. control and


command. When two boys were picked up by the army in Imphal on 23.9.1980, a habeas corpus petition was filed on 9.4.1981 before the high court, and a report of the district judge to the Supreme Court concluded that there was no cogent evidence that the boys had been released, the court ordered that Rs.1,25,000/- be paid to the mothers of each of the boys.

In Civil Liberties & Human Rights Organisation v. GOC 'M' Sector, a 30 year old resident of Wunghon village in Ukhrul district was arrested by the Assam Rifles and his whereabouts were not known for at least eight years thereafter, the high court ordered that Rs. 2 lakhs be paid to the next of kin.

in Puspa Gurang v. Jr. Asst.. Dir( Welfare), CRPF, it was the disappearance of an army jawan whom the authorities did not attempt to trace which led the court to presume that there had been civil death; his wife and child were held entitled to all financial dues. On account of the negligence involved in the tracing out of the missing man, his wife and child were directed to receive Rs. 3 lakhs in compensation.

Cases of disappearances continue to crop up in the courtroom, coming from the strife torn years in the Punjab, and from the north eastern states. The disappearance of persons


83. The bodies of two others who had been arrested with him were recovered by the civil police the day after arrest Rs.2 Lakhs was ordered to be paid to each of their next of kin too.

picked up by the armed forces has raised presumptions of the disappeared being dead, unless the armed forces produce the person. It has also led to presumptions of the armed forces having disappeared the person. Yet, in constitutional tort, the remedy has been limited to directing the payment of compensation as an interim measure. The Supreme Court, in State of Punjab v. Vinod Kumar merely paused to explain that no trial court would take a cue about liability of delinquent officers from the interim compensation award passed, thus emphasising the distance between liability in the realm of civil remedy of compensation and criminal trial, and the influence the former may have on the latter.

vii. Abuse of Power

Since 1980’s, the Supreme Court and the High Courts have made a rich contribution to the progressive development of the law concerning payment of compensation to the victims of abuse of power by the State. A close study of some of the important decisions of the Courts, is necessary to establish the proposition that the judiciary is not lagging behind in its challenging role of protecting the citizen right and also providing them appropriate remedies, in the fast changing, socio-politico and economic scenario of the State which is playing a dominant role in several spheres of the citizen’s life.

There have been many occasions where the liberty has been used as a licence to anarchy and the government’s lawlessness.


86. (2000) 9 SCC 742 at 744.
Bhim Singh v. State of Jammu and Kashmir\textsuperscript{87} is such another example of the government's highhandedness. Here the victim was detained by the State Administration solely with the intention to prevent him from attending the session of the House. The petitioner, being a member of the Legislative Assembly was detained by the police when he was on his way to attend the session of the Legislative Assembly.

He was not produced before the Magistrate within the requisite period. On the petition filed by his wife under Article 32, the Supreme Court depredated the role of police and commented against the Magistrate and Sub-Judge who acted in a very casual way. The court deviated from the rule that the writ of Habeas corpus is a remedial and not punitive and awarded compensation amounting to Rs.50,000/- for his illegal detention. The Court observed:

"When a person comes to us with the complaint that he was arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights are invaded the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation."

The decision in Rudul Sah was further reiterated in two other cases\textsuperscript{88} all of which together formed a trilogy in which the Court

\textsuperscript{87} 1985, 4 SCC, p. 677.

granted compensation to citizens whose rights had been violated by the State. "These rulings were followed in an important decision of the Andhra Pradesh High Court which discarded the old concept of the defence of Sovereign Immunity. Ramakonda Reddy v. State of Andhra Pradesh, AIR 1989. AP., p. 235. This concept had been in vogue in India, since the days of the vintage decision of the Supreme Court of Calcutta in P.O. Steam Navigation Company v. Secretary, 1868 5 Bom. H.C.R. App 1. Where the State was held not to be liable in cases that fell within the domain of the sovereign immunity.

The Andhra Pradesh High Court distinguished this ruling and the decision of the Constitutional Bench of the Supreme Court, in Kasturi Lal v. State of Uttar Pradesh, AIR, 1962, SC, p. 933, which had affirmed the Steamship case. The Court in Ramakonda Reddy said that these precedents did not apply to a case in which there was a deprivation of life and personal liberty. Subsequently the Supreme Court in a case which did not involve a question of the breach of fundamental rights clarified the true scope and ambit of the doctrine of sovereign immunity. According to the Court the State could invoke this defence only in extreme situations like during war. This new dictum of the Supreme Court has considerably diluted the rigour of the doctrine of sovereign immunity which was earlier available as a shield against the tortuous acts of the government and its servants, see N. Nagendra v. State of Andhra Pradesh, 1994(3), p. 977."
Following Rudul Sah case the Supreme Court in People's Union for Democratic Rights v. State of Bihar\textsuperscript{89} awarded compensation to the victim of police firing while disposing off a petition under Article 32 of the Constitution. The decision used the term "compensation" to quantify the payments. In the same vein the Court in 1989 awarded Rs. 50,000/- as compensation to the family of one Swarup who was beaten to death by Police, when he along with other poor people demanded wages for the work they were forced to do in a police station by Police\textsuperscript{90}.

In cases involving abuse of power the important question often came for consideration for the judiciary is who should bear the burden of paying compensation, i.e. whether the State from its exchequer on the principle of vicarious liability or the concerned erring official who is responsible for such abusive act, which is definitely outside the purview of his official duties. Though the courts have generally accepted the need for fixing the responsibility on the erring official and hence liability to pay from his purse: There are instances also where the courts have directed the State to pay compensation, under the principle of vicarious liability.

The following few cases are illustrative of this trend.

In a far-reaching judgement the Supreme Court in Saudi v. Commissioner of Police\textsuperscript{91} awarded Rs. 75,000 as compensation to


\textsuperscript{91} AIR, 1990, SC, p. 513.
Mrs. Kamalesh Kumari whose nine year old son was beaten to death by the Delhi Police Officials and directed to recover the amount from the erring police officials. The Court said that 'the police is well known for using third degree methods and committing atrocities against an accused and at times even against individuals, but one is appalled at the outrageous conduct of the police in killing an innocent child of nine years who was not even accused of having committed any offence'.

In 1991, in State of Maharashtra v. Ravikanth S. Patil\textsuperscript{92} the Court holding that the delinquent police officer cannot be made personally liable, observed that the Inspector of Police has acted only as an official and even assuming that he has exceeded his limits and thus erred in taking the under-trial prisoner handcuffed, still we do not think that can be made personally liable. But the real question un-answered by the Court was, what is "an official duty"? Whether the alleged act of Inspector taking the under-trial prisoner hand-cuffed through streets subjecting him to unwarranted humility and mental torture be called an official duty? Certainly not. If a citizen is deprived of his life and liberty by the police not in accordance with procedure established by law it cannot be said that the act of deprivation is in discharge of his official duty. It is the wrongful and unlawful act committed in his individual capacity but not as a representative of police while discharging his official duty.

If police commits an unlawful act in individual capacity, then there is no reason why he should not be made personally liable. Why should the State pay from the tax payers money for police

\textsuperscript{92} 1991, 2 SCC, p. 373.
misconduct? If it is proved beyond doubt that the police are responsible for committing an unconstitutional act, then why should he escape from personal liability? In fact, the personal liability of policemen to compensate for their misconduct will be a step in the right direction for prevention of increasing police lawlessness in India. As rightly pointed out by S.P. Sathe, the Supreme Court decision in the instant case in absolving the Inspector of Police from personal liability appears erroneous and a retrograde step in compensatory jurisprudence.93

Thus, moved by the increasing cases of abuse of power, the Supreme Court has even took up the task of reviewing the law relating to compensation to the victims of abuse of power, particularly the police exigencies on various occasions and in this context laid much emphasis on the Human Rights and humanitarian dimensions of the problem. In Nilabati Behera94 the Supreme Court concerning a Custodial Death, following Article 9(5) of the Covenant on Civil and Political Rights, 1966 and decision of Privy Council in Maharaj v. Attorney-General of Trinidad, held that an enforceable right to compensation for contravention of Human Rights and fundamental rights is not alien to the concept of enforcement of a guaranteed right objecting to the defence of sovereign immunity in this case, Justice Verma, J.S. remarked.95

95. 1978, 2 All ER, p. 670.
"The defence of sovereign immunity being inapplicable and alien to the concept of fundamental rights, there can be no question of such a defence being available in the constitutional remedy."

In the majority of the cases the Supreme Court had shown a greater degree of judicial consciousness towards protection of individual rights and liberties by containing administrative lawlessness and providing compensative justice to the victims. The Court seems to realise to a greater degree than before the need to compensate monetarily the victims of atrocities committed by those invested with sovereign power to protect the victim instead of victimising them.96 All the cases discussed above relating to police lawlessness convey a lot about the character of contemporary Indian state97 concerning the State lawlessness, and raise the pertinent issue of victim compensation.

In Chiranjit Kaur v. Union of India98 an Army Officer died in service due to negligence of army officers resulting in great mental agony and physical and financial hardship to the widow of the deceased and two minor children. The Court awarded the widow of the deceased a compensation of Rs. 6 lakhs as well as special Family Pension and Children Allowance.

In Shakuntala Devi v. Delhi Electric Supply Undertaking\textsuperscript{99} the petitioner's husband died when he came in contact with the live electric wire while returning from the place of his employment and got electrocuted. The live electricity wire was lying open in the field in a rainy season and was not repaired in spite of many complaints. The Court held the Delhi Electric Supply Undertaking liable for negligence and awarded compensation of ex-gratia amount to the widow and her minor children.

In Kewal Pati v. State of Uttar Pradesh\textsuperscript{100} the Court awarded compensation to the widow of a convict who was killed in jail by a co-accused while serving his sentence under Section 302 of I.P.C. as it resulted in deprivation of his life, contrary to law and in violation of Article 21 of the Indian Constitution. A prisoner does not cease to have constitutional right except to the extent he has been deprived of it in accordance with law. His death was caused due to the failure of jail authorities to protect him. Accordingly, the Court directed the Government to pay a compensation of Rs. 1,00,000 to the widow and the children of the deceased.

In a landmark judgement in the case of Bodhisathwa Gautam v. Subhra Chakraborty\textsuperscript{101} the Supreme Court awarded an interim compensation of Rs. 1000 per month to the victim of rape until her charges of rape were decided by the trial court. The complainant Subhra Chakraborty was a student of the Baptist College, Kohima and the accused Sri Bodhisathwa was a lecturer in that college.

\textsuperscript{99} 1995, 2, SCC, p. 369.

\textsuperscript{100} 1995, 3, SCC, p. 600.

\textsuperscript{101} 1996, 1, SCC, p. 490.
college. According to FIR filed by the complainant, the accused riot only induced the complainant and cohabited with her giving her a fake assurance of marriage but also fraudulently went through a certain marriage ceremony with knowledge and thereby dishonestly made the complainant to believe that she was a lawfully married wife of the accused. Bodhisathwa married the complainant before the God he worshipped by putting her vermilion on her forehead and accepted her as his wife but later refused to recognise her as his life partner. The said ceremony made the complainant to believe that she was a lawfully married wife of the accused.

In Arvinder Singh Bagga v. State of Uttar Pradesh, the Supreme Court awarded compensation of Rs. 20,000 to the victim of police atrocities. In this case the police had arrested a married woman on the pretext of her being a victim of abduction and rape. She was threatened and commanded to implicate her husband and his family in a case of abduction and forcible marriage thereafter. The police officer subjected her to physical, mental and psychological torture to make her submit to the demand of the police and to abandon her legal marriage.

In this case, keeping pace with the proven fact's and circumstances of the case, the Supreme Court issued the following directions, namely:

1. that the State of U.P. will take immediate steps to launch prosecution against all the Police Officers involved in these sordid affairs,

2. that the State of L.J.P. shall pay compensation of Rs. 10,000 to Nidhi, Rs. 10,000 to Charanjit Singh and Rs. 5,000 each to the other persons illegally detained no fault of their, within three months from the date of the judgement, and

3. having paid the awarded compensation, it will be open to the state to recover such amounts from the concerned Police Officers personally.

Smt. Nilabati Behera alias Lalitha Behera Vs. State of Orissa\(^{103}\) is yet another case concerning payment of compensation to the victim of abuse of power by the State. In this case, a letter dated 19-9-1988, sent to the Supreme Court by Smt. Nilabati Behera alias Lalitha Behera was treated as writ petition under Article 32 of the Constitution for determining the claim of compensation made herein consequent upon the death of petitioner's son Suman Behera, who was about 22 years of age, in police custody. The deceased was taken from his home by the police at about 8 a.m. on 1-12-1987 by respondent No. 6, Sarat Chandra Barik, Asst. Sub-Inspector of Police of Jaraikela police out-post under P.S. Bisra, District Sundergarh in Orissa, in connection with the investigation of an offence of theft and detained at the police station. At about 2 p.m. the next day, i.e. on 2-12-1987, the petitioner came to know that the dead body of her son Suman Behera, was found with multiple injuries. It was felt to be an unnatural death by the Supreme Court based on the findings of the Enquiry Officers who conducted the enquiry on the directions of the highest court, and held the State of Orissa liable to pay compensation to the tune of Rs. 1,50,000 to the petitioner and a

further sum of Rs. 10,000 as Costs to the Supreme Court Legal Aid Committee, Dr. Anand, J. while concurring the judgement of Verma, J., observed to make an order of monetary amend in favour of the petitioner for the custodial death of her son by ordering payment of compensation by way of exemplary damages.

In the above case, the Apex Court also observed that State should be prepared to forge new tools and devise new remedies for the purpose of vindicating these precious Fundamental Rights. Article 32 which is itself a Fundamental Right can impose a constitutional obligation on the Supreme Court to forge new tools for doing complete justice and enforcing the Fundamental Rights which also enables to award monetary compensation in appropriate cases where that is the only mode of redress available. This remedy in public law i.e., under Article 32 has to be more readily available when invoked by the have not, who are not possessed of the wherewithal for enforcement of their rights of private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies as more appropriate.

In another case the Supreme Court lamented on a ghastly crime committed by none else than seven to eight army Jawans where six ladies were gang-raped in a running train that is Muri Express bound for Delhi on the threat that they will be thrown out of the running train if they raise a cry. Justice S. Mohan highly condemning the rising unfortunate incidents of violence against women called on the National Commission for Women to evolve a

scheme regarding the compensation and rehabilitation of victims of violence within a period of six months and directed the government of India to examine it and take necessary steps to implement it. The Supreme Court has also laid down broad parameters wherein it was suggested that having regard to the Directive Principles of State Policy contained under Article 38(1) of the Constitution which calls for the establishment of a just social order, will be a positive step towards consoling the victims of criminal violence by the human hands of law.

From the forgoing observations and decisions of the Apex Court it is obvious that the High Courts or the Supreme Court acting under Article 226 or 32 respectively can award compensation in case of violation of fundamental rights to life and personal liberty by the police in respect of those who are either under the police custody or in the process of arrest and detention, and that the doctrine of sovereign immunity in such cases does not apply for the State to avoid the liability of payment of compensation. Such a liability of the State is in addition to the rights of the victims to claim damages from the State under the Civil Law (as in the Rudul Sah case). Besides, criminal action can be initiated against the erring police and other officials responsible for the violation of the Fundamental Rights guaranteed by the Constitution.

In Challa Ramakonda Reddy v. State of Andhra Pradesh105 The A.P. High Court found that police negligence if not complicity was responsible for the death of the petitioner/father in a bomb attack while he was lodged in a Sub-jail in Andhra Pradesh. The

respondents plea was that the prisoner was put in Jail in exercise of sovereign function and therefore the State was under no obligation to pay compensation. The Court speaking through Justice B.P. Jeevan Reddy rejected the State's plea of sovereign function and consequent plea of inapplicability of Rudul Sah, Bhim Singh rulings, and said that the defence was advisedly not put forward in those cases. The Court said:

"Where a citizen has been deprived of his life or liberty otherwise than in accordance with the procedure established by law. It is no answer to say that the said deprivation was brought about while the officials of the State were acting in the discharge of the sovereign power of the State."

The Court held that the concept of sovereign power is not an exception to the right to freedom of life and constitutional guarantee of right to live overrides the theory of immunity of State action. The Court said that the archaic defence of sovereign function could not dilute the right to life in Article 21. The Court was fully aware that it was opening up a new vista for individual claims for damage against the State and adding to the present day difficult financial position of the state. The Court was, however, conviced that such a remedy is not only salutary but essential for good Government for ensuring "rule of law". The Court allowed the appeal and awarded Rs. 1,44,000 as damages.

Courts have variously viewed the device of compensation as a public law remedy, as an "interim" measure, as ex gratia, and as a welfare measure. In Dharmishtaben Narendrasing Rana v. State of Gujarat, the court ordered Rs.2 lakhs as compensation "by way of interim measure". In Jagruti v. S.G. Chaudhari, the Gujarat High Court awarded Rs.3 lakhs as compensation as an interim measure, and also "clarified that the compensation awarded would not be taken into account for adjustment in the event of any other proceedings taken by the petitioner for recovery of compensation on the same ground." This, it must be said, is not the norm. The Bombay High Court, on the other hand, negotiated an "ex gratia" payment of Rs.20,000/- to the legal heirs of a prisoner who had died due to lack of medical facilities. The existence of this remedy was drawn upon by the Gauhati High Court when looking at the "piteable condition" of the widow and aged mother of an alleged ULFA supporter who died in a mine explosion while leading the army to an ULFA camp. The court directed Rs.75,000/- to be paid to them. The court absolved the army of any laches.

106. 1998 ACJ 97 at 106 (Guj).
107. 1998 Cri LJ 3251 at 3255.
Even as the grant of compensation in constitutional tort has been established by judicial dicta, the quantum of compensation that should be awarded is still in the realm of discretion. In Arun Ch. Bhowmik v. State of Tripura,\textsuperscript{109} it was argued that Nilabati Behera was a precedent only for awarding exemplary compensation; anything further has to be pursued in a tort action. In this case a lawyer who was tortured in custody claimed compensation of Rs.5 lakhs. The Gauhati High Court appears to have accepted this argument when it held: "This being a proceeding under article 226 of the Constitution and not a civil suit or an appeal arising out of a civil suit, we can grant only compensation for violation of fundamental rights... and not any damages that he may have suffered in tort such as loss of reputation etc." The state was ordered to pay him Rs.1 lakh in addition to the cost of treatment which had already been reimbursed.

viii. Compensation in Criminal law

Section 357 of the Code of Criminal Procedure, 1973, is the main provision dealing with the compensation to crime victims.\textsuperscript{110} Section 545 of the old Criminal Procedure Code dealt with the same subject matter though it was somewhat narrower in scope. Section 357(1) lays down inter alia:

Whenever under any law in force for the time being a Criminal Court imposes a fine or a sentence of which fine forms a part, the

\textsuperscript{109} (1997) 1 Gau LT 555 at 557.
\textsuperscript{110} Other provisions having some bearing on the subject are Sections 237, 250 and 358 of the Code of Criminal Procedure, 1973.
court may, when passing judgement, order the whole or any part of
the fine recovered to be applied:

(a) In defraying 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 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 of having abetted the commission of
such an offence in paying compensation to persons who are,
under the Fatal Accidents Act, 1855, entitled to recover damages
from the person sentenced for the loss resulting to them from such
dea1

Sub-section (3) of Section 357 was added, as recommended by
the Law Commission in its 41st Report, in the new Criminal
Procedure Code of 1973 and it provides:

When Court imposes a sentence of which fine does not form
a part, the court may, when passing judgement, 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 reasons of the act for which the accused person has been
sentenced.

The court has thus, a very limited discretion under Section
357(1); it can award compensation only out of the fine, if imposed
on the offender. The Courts have, however, much more discretion

111. Under Section 1-A(b) of the Act, husband, wife, parents and children are
entitled to compensation.
under Sub-section (3) of Section 357, though only if fine does not form a part of the sentence. Theoretically, the power of the court is unlimited, though practical considerations would prevail. A Magistrate can order for higher compensation than the amount of fine he can impose.

It is interesting to note that the courts have generally been averse to the imposition of fine along with a severe or even substantial punishment by way of imprisonment. In Mohammed Sah and Others v. Emperor112 the offender was convicted under Sections 32, 149, and 148 of the Indian Penal Code. He was awarded one year imprisonment and a fine of Rs. 500, out of which Rs. 400 were awarded to the heirs of the victim. The Lahore High Court held imprisonment to be substantial and therefore, fine to be unwarranted. The court further held that compensation in any case would not have been payable to the heirs in view of the blame-worthiness on the part of the deceased. He was himself the aggressor and had encroached upon the land of the offender.

In another instance concerning compensation the Supreme Court has expressed its disapproval of combining the punishment of fine with the death sentence and even with life imprisonment. In the instant case,113 the High Court had reduced the punishment of death sentence to life imprisonment awarded by the trial court and imposed a fine of Rs. 20,000/- on the offender payable to the heirs of the deceased. The Supreme Court reduced the fine and compensation to Rs. 3,000/-.

112. AIR, 1934, Lah. p. 519.
The judicial attitude is, however, reflected somewhat differently in Guruswami v. State of Tamil Nadu,\textsuperscript{114} where it was held that in case of murder it is only fair that proper compensation should be provided for the dependents of the deceased. It was a case where the appellant had murdered his father and brother as a result of some family feud and was sentenced to death. On appeal, the Supreme Court reduced the punishment to life imprisonment and imposed a fine of Rs. 10,000 on the offender to be paid to the heirs of the deceased.\textsuperscript{115}

The Supreme Court has in recent years invoked the concept of victim restitution in appropriate cases. The court has realised the merit of compensating the victim for the losses incurred by them. There is an emergent trend in penology to reassure the victim that he/she is not a forgotten species in the criminal justice system; a measure of responding appropriately to crime as well as reconciling the victims with the offender. On the other hand, the courts felt that the amount affixed should be reasonable depending upon facts and circumstances of each case.\textsuperscript{116}

There is a movement in the courts to consider the time factor, in enhancing the fine imposed. Also this is to be done in such a fashion so as to bring maximum benefit to the victim. In Rattan Kumar v. Rajit Singh,\textsuperscript{117} understanding the plight of the

\begin{footnotesize}
\textsuperscript{114} 1979, 3 SCC, p. 799.
\textsuperscript{117} AIR, 1983. P &H, p. 160.
\end{footnotesize}
victim, declared the payment under Insurance, and that he/she should also be paid out of the fine, as compensation bears no kinship and cannot be equated to insurance payment.

The 1898 Code of Criminal Procedure was amended by the joint select committee on the premise that the victim or his heirs should be compensated for the loss incurred by the person responsible for it and it should extend even when death sentence is awarded or the person is entitled under Fatal Accidents Act to recover damages.

In Palantappa Gounder v. State of Tamil Nadu, where a death sentence was combined with a sentence of fine, the court remarked on this sparing use of power and a need was felt that the importance of the fine should be considered. The Court felt that in imposing a fine, it is necessary to consider the pecuniary circumstances of the accused and also note the existing factors like the nature of the crime and justness of the claim. Thus, in A.O. Dalal v. State of Bombay, the Apex Court held that when a substantial term of imprisonment is inflicted, an excessive fine be imposed only in exceptional cases. In extreme penalty cases it is better to give damages at the time of awarding judgement as it settles claims once and for all and does away with further claims.

In Sarwan Singh v. State of Punjab, it was said by the court that, in awarding compensation, the court should not just consider what compensation ought to be awarded to the heirs of

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120. 1978, 4 SCC, p. 111.
the deceased and then impose a fine which is higher than the compensation. The court laid down that the amount of fine should be determined on the basis of various factors including nature of crime, number of injuries and the paying capacity of the offender. In this case the two appellants were fined Rs. 3500 each, along with rigorous imprisonment of 5 years in view of sufficient funds being available with them.

In awarding compensation under the provisions of Criminal Procedure Code a major break through came in Han Singh v. Sikhbir Singh's case where the apex court recommended to all courts to exercise power of awarding compensation liberally to “meet the ends of justice”. The award of compensation under Section 357 Criminal Procedure Code is interpreted to be an award in addition to other sentences and not ancillary thereto. Thus, there are several instances, where, the trend of the courts is indicated towards liberal approach in interpreting the provisions of Criminal Procedure Code, in awarding compensation to the victims of crime.

The courts power in this area has been interpreted liberally, enabling it to exercise its power even at whim, sometimes. Thereby an allowance is made as to imposition of fine, and its extent is sometimes contrary to victim benefit.

Though the Courts have been active in awarding compensation involving the provisions of the Criminal Procedure

Code, a close study of the relevant provisions of the Criminal Procedure Code indicates that there are certain inherent weakness in the provisions.

It is evident that only marginal action is possible under Section 357 of the Code of Criminal Procedure to compensate the victims of crime. The various constraints and limitations which often come in the way of courts, in awarding the compensation, may be summed up as follows:

1. Much depends upon the paying capacity of the offender and, in most cases, this act as a bar against victim getting any compensation.

2. There is a general reluctance on the part of the criminal courts regarding the use of criminal law process for compensation purposes coupled with the indifference and even ignorance on the part of lawyers and clients and many opportunities are lost because of their default.

3. The courts are reluctant to impose fine along with substantial imprisonment in serious offences and the scope of fine in any case is very limited in terms of quantum in minor offences.

4. Maximum fines have been laid down for various offences which were fixed long time ago and their monetary value must now be a very small fraction of what it might have been at the time when these fines were introduced in the Penal Code.
5. Conviction is necessary for the payment of compensation. As is well known, conviction may not be possible in many cases irrespective of the merit of the case.

Various judicial decisions studied above clearly indicate that the judicial trends in compensating the victim is attaining new scales, with the courts with all their powers and wisdom are doing justice to the victims of crime with their dynamic and active approach in interpreting the provisions of law.

As rightly observed by the Supreme Court Section 357(2) is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Courts to award compensation to victims while passing judgement of conviction. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender.

ix. Award of Compensation in Rape Cases

The judiciary has actively responded in many a cases of rape, where the women victims in fact, needs a real moral, ethical, legal and economic support to face the trauma, in the prevailing social conditions. Some of the important decisions of the courts, where compensation was awarded to the victims of rape are present below.

In a dowry murder case, the Punjab and Haryana High Court has awarded Rs. 50,000 as compensation to the parents of
victim.\textsuperscript{124} Again considering the plight of the victim woman, the apex court in a case for mud-slinging and character assassination of wife, convicted the husband under section 498-A of IPC and the husband was fined Rs. 1 lakh and Rs. 36,000 to be paid to victim woman as compensation.\textsuperscript{125}

In M.J. Cherian's case\textsuperscript{126} the Supreme Court, directed the State of Uttar Pradesh to pay Rs. 2,50,000 as compensation to each of the victims of rape.

In another rape case of Nuns, both the rape victims were awarded Rs. 2.5 lakh as compensation and the other affected Nuns who were assaulted and molested were also paid compensation of one lakh each.\textsuperscript{127}

In a case\textsuperscript{128} where a woman Hanuffa Khatoon, a Bangladeshi national was gang raped by some persons, including some Railway employees, at the Rail Yatri Niwas at Howrah station on Feb. 26, 1998. Acting on a Public Interest Litigation petition filed by a woman lawyer, the Calcutta High Court had awarded Rs. 10 lakh as compensation to the victim on grounds that the incident had taken place in a building belonging to the Railways.

The Supreme Court directed the Railway Board to hand over the compensation amount payable to the victim, to the Bangladesh High Commission within 3 months.

\textsuperscript{124} Jaspal Singh v. State of Punjab (Punjab and Haryana), 1984, Cri.LJ.691.
\textsuperscript{125} Mukumda Martand Chatnis v. Madhuri, AIR 1992, SC, p. 1804.
\textsuperscript{126} Dudalure M.J. Cherian v. Union of India, 1995, SCC (Cr1), p. 925.
\textsuperscript{127} Times of India, February 8, 1995, p. 6.
\textsuperscript{128} Law teller, April, 2000, p. 171.
x. Cases where Compensation was not Awarded

It is pertinent to note that, there are also cases, in which the Apex Court refused to award compensation to the victims of State abuses, though the court has emphasised the need for development of compensatory laws. Following are some of the instances where the courts were not inclined to award any compensation, keeping in view the nature and circumstances of the case, before it.

It is interesting to observe that there are cases where the courts were somehow found to be reluctant to award compensation in cases involving abuse of power, though the justice demands otherwise. A few of such notable instances are discussed below.

In Khetri Vs, State of Bihar,129 where the Police authorities had blinded certain prisoners and the counsel for the blinded prisoners asserted a constitutional right to get compensation for the damage caused by Police excesses. For the first time in issue of constitutional importance was raised before the Supreme Court as to whether a person deprived of his right to life or personal liberty in violation of Article 21 by the State. The question raised was whether the Court can grant monetary compensation to such person. The Court imposed a liability upon the State to pay compensation to the victim for violation of the personal liberty under Article 21. The Court agreed that in the light of dynamic-constitutional jurisprudence such a claim of compensation could be

129. Popularly known as Bhagalpur Blinding's Case, AIR 1981 SC 928.
made. However, it is interesting to note that no compensation was paid to the victims in this case.

The issue of compensation to the victim of state excesses where the claim for compensation was rejected was again raised in Sant Bir v. State of Bihar\textsuperscript{130} where the victim was a criminal lunatic. He had become perfectly sane and fit for discharge but remained under detention illegally for over 15 years. The Court directed the release of prisoner and remarked that it was a matter of shame for the society as well as the administration to detain a person for over fifteen years without any justification. The Court appreciated the need to compensate the victims of lawless law enforcement but left the question again open. Thus, in both the above cases the Apex Court expressed its concern about the grant of any compensation to the victims of State excesses but failed to actually grant the same.

Similarly, in Shri Padma Dev and Others v. State of Himachal Pradesh and Others,\textsuperscript{131} the petitioner was detained illegally and confined unlawfully by the police authorities while abusing their powers. The High Court was satisfied regarding forgeries made in the police ziminis (general diary), but took rather a lenient view, on the plea that it was the first known lapse on the part of the respondent Police Officials and directed a departmental inquiry by the competent disciplinary authority and only Rs. 500 as cost of the petition was awarded to both the petitioners jointly in the ratio of Rs. 300 and Rs. 200. Thus no compensation was

\textsuperscript{130} AIR 1982 SC 1470.

awarded by the court for the illegal detention. It is rather disappointing that the High Court showed leniency to the offence of forgery indulged in by the Police Officials and did not award any compensation to the victim of the Criminal Law.

It is indeed distressing that even higher judiciary is not keen to provide compensation to the victims of Crimes and is satisfied only to get the victims of the Crimes freed from the clutches of the police and jail authorities.

In another case, where the prosecutrix, a young girl of 16 years studying in Class X, was abducted and gang raped under duress by some miscreants during her matriculation examination and worst of all the lower court acquitted the accused persons saying that there is no evidence and described the prosecutrix as a girl of loose character, the judicial conscience of the Apex Court was shocked to notice that such inference was drawn from no evidence on record. The Apex Court held, “We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault—it is often destructive of the whole personality of the victim. The courts therefore shoulder a great responsibility while trying an accused on charges of rape.

The Apex Court convicted the accused persons but did not allow compensation to the victim only because the Women's Commission failed to draw up a scheme for payment of compensation to rape victims. This is a step in retrograde which has blocked the advancement of compensatory justice.
Again the attitude of the Supreme Court towards the large number of people in jail without trial for petty offences has been that of indifference to the aspects of compensation. This is illustrated in the case of Matthew Areparntial and Others v. State of Bihar and Others.\textsuperscript{132} The Supreme Court confined itself to laying down the conditions for release of such persons and did not give any direction for compensation to the victims of the criminal process. The Supreme Court did not bother to issue any direction for disciplinary proceedings against the police and prosecution for not getting the offenders dully tried by a Court of Law. They could easily prescribe a time limit for the trial of such cases. The Supreme Court contented itself in issuing directions for immediate release of the persons.

From a brief resume of the few cases described above one cannot escape the Impression that the judiciary has persistently evaded to award any compensation to the victims of the criminal process, for violating human rights, particularly the right to personal liberty. Therefore, the prosecution agency has also not lagged behind as the lower judiciary has invariably condoned the indulgence of the prosecution in this regard. The legislature by confining the power of compensation only to the Magistrate hearing the case had left no scope for higher judiciary to intervene in the matter except under writ jurisdiction.

A review of the judicial trend concerning the payment of compensation to the victims of State lawlessness, by and large reveals that, the award of compensation to the victims of abuse of

\textsuperscript{132} 1985, Cri. L.J. SC, p. 357.
power by the state is not a rule of exception but is a rule itself. The interpretation of Article 32 of the Constitution enabling the courts to award the compensation to the victim in case of State lawlessness/highhandedness/excesses has given a new dimension to jurisprudence of victimology in India. For a long time this proposition of giving compensation to the victims was never invoked by the Supreme Court. In the light of the cases discussed above it has been found that court did not generalise the provision of granting compensation. It has granted compensation/exemplary costs only in cases of extreme necessity, where the infringement is gross and patent, incontrovertible and glaring. No general yard stick to measure such hardships has been laid down.

It is pertinent to quote the British Home affairs charter’s guiding principles. Published in February, 1990,\(^1\) which lend support to the philosophy of Compensatory Jurisprudence.

"The public interest must come first, but the harm done to the victim is that usual cause of action and in considering the public interest no one should overlook or disregard the interests and wishes of the victim."

By and large, the judicial trend in awarding compensation to victims of crime and abuse of power indicate a strong urge on the part of the judiciary to award compensation to the Victims of crime almost not as a rule of exception but as a rule itself.

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4.3 COMPENSATION UNDER THE SPECIAL LAWS

Besides the Code of Criminal Procedure, there are some other enactments which contain provisions for compensation to the crime victims. Thus, Section 5 of the Probation of Offenders Act authorises a court releasing an offender on probation, to direct him to pay such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence and such costs of the proceedings as the court thinks reasonable. Probation system may be quite often the condition for release of an offender on probation. Compensation by the prisoners out of their earnings during imprisonment has also been suggested as a good strategy; an appropriate sanction in view of the fact that prisoners are given wages for the work done in prison.

Similarly, there are certain laws, which provide for the imposition of punitive tax on the community as a whole in an area where riots occur or members of an unlawful assembly commit some offences. Bombay Police Act, 1951 is such an enactment. This remedy is perhaps the only effective remedy indicated in large scale violence involving a large number of offenders and victims. This remedy is particularly useful in the context of the communal riots in the country since hardly any person is convicted, not even prosecuted, regarding the participation in communal disturbances due to various political and legal constraints and expediency. Similar legislation is needed for other parts of the country in view of the recurring nature of the communal riots.

Thus, there are also special laws which provide for compensation to the victims of crime in specific cases. However,
the fact remains that, there is psychological and socio-economic dimensions to the problem of victim compensation. While the laws act only as the means, the ends can be achieved only through active involvement of the social groups, the State agencies and above all. An active role of the judiciary, as Ahmed Siddique rightly remarks:

"Compensation by the State to the victims of crime is the only proper remedy but it is very unlikely for such a scheme to materialise in India and other developing and poor countries. The fact, however, remains that ineffective means of preventing and controlling the crime are the main factors leading to victimisation. There is a great need for the constant evaluation and improvement of law and enforcement procedures in order to reduce the crime victimisation to the minimum level. Government and non-governmental agencies have to perform effective roles in providing to victims both emergency and prolonged medical, psychiatric, psychological and social services which are altogether lacking at present in the country."

i. Compensation under the Motor Vehicle Act

As per Chapter VII-A introduced through the M.V. (Amendment) Act, 1982, where the death or permanent disablement has been caused due to a motor accident, the owner of the vehicle is liable to pay compensation, the amount being Rs. 15,000/- in case of death and Rs. 7500/- for permanent disablement. The claimant is not required to plead or establish wrongful act, neglect or default on the part of the owner of the

vehicle. The claim has to be made on the police enquiry report, hospital report, etc. This does not set aside the claimant’s right to claim compensation under other provisions of the M.V. Act or any other law in force. The amended Act provides for expeditious disposal of these cases. These provisions have been introduced as a social welfare measure.

Here again, our discussions indicate that the evidence is, at times, manipulated. Undue delay may also be involved because of disputes regarding identity of the legal heirs of the deceased or the extent of disfiguration of face or head. In such cases of dispute the amount Es deposited with the Claims Tribunal pending settlement.

**Solatium For Hit And Run Cases Under The Motor Vehicle Act**

As per Sections 109-A to 109-C introduced in the 1982 amendment, to the Motor Vehicle Act special provisions have been made for victims of hit and run cases which have occurred on and after 15th October 1982, where the offender cannot be traced. It is estimated that about 60,672 deaths taken place due to negligence in the country in the year 2003 (Crime in India, 2003). The scheme has been formulated by the Government of India to give effect to the recommendations of the Law Commission and the assurance given to the Parliament.

A special fund known as the *Solatium Fund* has been provided for, to give solatium to such victims. The District Magistrates of the area in which the accident has occurred has been given powers to process the claims and disburse the claim amount. He will seek reimbursement through the State. The term “*Grievous Hurt*” has
been taken to mean the same as defined in Section 320 of the IPC.

The Solatium Fund is constituted from out of:
(a) contributions from insurance companies, the quantum to be decided by the Government of India from time to time,
(b) such sums as the Central Government may provide from time to time,
(c) such sums as the State Governments may contribute from time to time,
(d) such other sums as may be received, such as refund, gift, donation, etc.

The compensation is payable, subject to availability of funds and is recoverable from any compensation the victim or the dependents as the case may be, get from other claims.

ii. Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989

Section 23 (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 empowered the Central Government to make rules by notification in the official Gazette for carrying out the purpose of this Act.

In exercise of powers conferred by the Section 23 (1) of this Act, the Government of India has framed the SC & ST (Prevention of Atrocities) Rules, 1995 which were notified on 31st March, 1995.
(i) Rule 12 (4) of these notified rules provides scales for the monetary relief to the victims of crime in a Schedule appended to these rules. Details of the norms as indicated in the Schedule for providing relief to the victims of crimes are given as under:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Crime</th>
<th>Minimum Amount of Relief in Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Section 3(1) (i) forces a member of Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance</td>
<td>25000</td>
</tr>
<tr>
<td>2</td>
<td>Section 3(1) (ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;</td>
<td>25000</td>
</tr>
<tr>
<td>3</td>
<td>Section 3(1) (iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;</td>
<td>25000</td>
</tr>
<tr>
<td>4</td>
<td>Section 3(1) (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;</td>
<td>25000</td>
</tr>
<tr>
<td>5</td>
<td>Section 3(1) (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;</td>
<td>25000</td>
</tr>
<tr>
<td>6</td>
<td>Section 3(1) (vi) compels' or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;</td>
<td>25000</td>
</tr>
<tr>
<td>7</td>
<td>Section 3(1) (vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;</td>
<td>25000</td>
</tr>
<tr>
<td></td>
<td>Section 3(1) (viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of Scheduled Caste or a Scheduled Tribe:</td>
<td>25000</td>
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<tr>
<td>---</td>
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<tr>
<td>9</td>
<td>Section 3(1) (ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe</td>
<td>25000</td>
</tr>
<tr>
<td>10</td>
<td>Section 3(1) (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;</td>
<td>25000</td>
</tr>
<tr>
<td>11</td>
<td>Section 3(1) (xi) assaults or uses force to any woman belong to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;</td>
<td>50000</td>
</tr>
<tr>
<td>12</td>
<td>Section 3(1) (xii) being in a position to dominate the will of a woman belong to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;</td>
<td>50000</td>
</tr>
<tr>
<td>13</td>
<td>Section 3(1) (xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Caste or a Scheduled Tribe so as to render it less fit for the purpose for which it is ordinarily used;</td>
<td>100000</td>
</tr>
<tr>
<td>14</td>
<td>Section 3(1) (xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstruct such member so as to prevent him from using having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;</td>
<td>100000</td>
</tr>
<tr>
<td>15</td>
<td>Section 3(1) (xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence,</td>
<td>25000</td>
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</tbody>
</table>
### Section 3(2) (I)

Section 3(2) (I) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death.

<table>
<thead>
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<th>Section</th>
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</thead>
<tbody>
<tr>
<td>16</td>
<td>Section 3(2) (I) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;</td>
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<td></td>
<td>100000</td>
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</tbody>
</table>

### Section 3(2) (ii)

Section 3(2) (ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a terms which shall not be less than six months but which may extend to seven years or upwards and with fine.

<table>
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<td></td>
<td>100000</td>
</tr>
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### Section 3(2) (v)

Section 3(2) (v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

<table>
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<tbody>
<tr>
<td>18</td>
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<td></td>
<td>50000</td>
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</table>

### Section 3(2) (vii)

Section 3(2) (vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

<table>
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<tbody>
<tr>
<td>19</td>
<td>Section 3(2) (vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.</td>
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### Compensation to Physical as well as mental Handicapped persons

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) On 100% handicapped</td>
<td></td>
</tr>
<tr>
<td>i Non-earning member of the family</td>
<td>100000</td>
</tr>
<tr>
<td>ii Earning member of the family</td>
<td>200000</td>
</tr>
<tr>
<td>(b) Less than 100% handicapped</td>
<td></td>
</tr>
<tr>
<td>i Non-earning member of the family</td>
<td>15000</td>
</tr>
<tr>
<td>ii Earning member of the family</td>
<td>30000</td>
</tr>
<tr>
<td></td>
<td>Murder/Death</td>
</tr>
<tr>
<td>---</td>
<td>--------------</td>
</tr>
<tr>
<td>i</td>
<td>Non-earning member of the family</td>
</tr>
<tr>
<td>ii</td>
<td>Earning member of the family</td>
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<tr>
<td></td>
<td>Permanent disability due to Murder/Death/Mass killing/Rape/Gang Rape/Dacoity.</td>
</tr>
<tr>
<td>i</td>
<td>To the Widow or any dependent</td>
</tr>
<tr>
<td></td>
<td>(I) Rs. 1000/- Per Month or employment for one member of the aggrieved family or agricultural land or a house, if needed within months of the incidence. (II) Maintenance and education the children of victims of crime (III) Arrangements of utensils, rice, wheat, pulses etc. within 3 months of the incidence.</td>
</tr>
<tr>
<td>ii</td>
<td>Earning member of the family</td>
</tr>
<tr>
<td>23</td>
<td>Destruction and arsinoing of house</td>
</tr>
<tr>
<td></td>
<td>Arrangements for the construction new house on Govt. Expenses</td>
</tr>
</tbody>
</table>

**Stages of Payment**

The above referred schedule indicated that the monetary relief proposed to be given to the victims of crime in one or two installments depending upon the nature of offence. Generally 25% of the monetary relief is provided at the time of submission of charge sheet and 75% at the time of conviction by the lower courts but in case of heinous crimes like, murder, the victims are provided 75% monetary relief after the post-mortem and 25% at the time of conviction by the lower court. In case of assault on the woman with intention to dishonour or outrage her modesty and exploit her sexually, 50% of the monetary relief is given at the time of medical examination and the remaining 50% of the relief is given at the end of trial irrespective of the outcome thereof.
iii. Compensation To The Victims Of Violence By Left Wing Extremists

Ministry of Home Affairs has evolved a special scheme namely Security Related Expenditure (SRE) to Naxal Affected States. To pay ex-gratia in the form of ex-gratia to the victim of crime at the hands of Left wing Naxalism as per the revised scale laid down vide MHA's Letter No.II-18015/4/03-IS.III dated 11th February, 2005 read with letter No II-18015/4/03-IS.III dated 3 March, 2005. The scale of ex-gratia payment provided therein is given below:

(I) To the family of a civilian killed - 100% with a maximum ceiling of Rs. 1 lakh

(II) To the family of a security personnel killed - 100% with a maximum ceiling of Rs. 3 lakhs

It may be pertinent to mentioned here that a total of 76 Districts in the states of Andhra Pradesh, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Maharashtra, Orissa, Uttar Pradesh and West Bengal affected by Left Wing Extremism are covered by this scheme.

iv. Compensation To The Victims Of Communal Violence

The National Foundation for Communal Harmony, an autonomous organization with the Ministry of Home Affairs, Government of India, New Delhi provides assistance for the physical and psychological rehabilitation of child victims of communal, castes, ethnic or terrorists violence in respect of their care, education and training besides promoting communal harmony, fraternity and national integration. Towards this, an amount of Rs. 13 crores has been provided by the Government of India which constitutes the
corpus of the foundation. A Group Personal Accident Insurance is being run for child victims of communal and terrorist violence for their rehabilitation. This scheme covers with following benefits for child victims:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Event</th>
<th>Compensation Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Death</td>
<td>25,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Loss of 2 limbs or one limb and one eye</td>
<td>25,000.00</td>
</tr>
<tr>
<td>3</td>
<td>One hundred percent permanent disablement other than those mentioned above</td>
<td>25,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Loss of one limb or one eye</td>
<td>12,500.00</td>
</tr>
<tr>
<td>5</td>
<td>Reimbursement of medical expenses incurred by a child treatment in a hospital or nursing home and as an indoor patient for an injury sustained in an accident (based upon medical certificate from the consulting doctor)</td>
<td>500.00</td>
</tr>
</tbody>
</table>

Policy cover is effective for 24 hours.

In addition to it, the National Foundation for Communal Harmony also provide financial assistance to the orphan or destitute children up to the age of 18 years (extendable up to 21 years in certain cases) whose parents or their bread earner is killed or permanently incapacitated due to communal, caste, ethnic or terrorists violence. The scale of assistance is given as under:

- **General education**: in class A & B cities Rs. 650/- per month per child In other places Rs. 600/- per month per child

- **Professional/vocational education**: Rs. 150/- per month per child in addition to assistance for general education.

Critical evaluation of the various statutory provisions prevailing in India for payment of compensation or ex-gratia or relief amount
to the victims of crime are very limited in scope except the provisions falling under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the scheme introduced by National Foundation for Communal Harmony for the Child Victim of communal, castes, ethnic or terrorists violence. The procedure for the award and receipt of compensation under the Cr.P.C. is quite cumbersome and is either generally not availed of or is limited to very a small amount for the fine, which can be imposed under Penal provisions. Therefore, we may conclude that the payment of Compensation to the victim of crime in India is conspicuous by its absence for all practical purposes.

v. The Special Laws Where No Compensation Is Provided For Victims

a. Prevention of Food Adulteration 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 a machinery to inspect, investigate and thus prevent the adulteration of food. Section 16 of the Act enables a Magistrate to impose penalties and imprisonment to the offender.

Section 5 of the Act prohibits import of adulteration or misbranding of food, and Section 7 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 Criminal Procedure Code or the General Civil Laws to claim compensation for the loss or injury by them. This means additional burden on the victims.

b. 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 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 Sections providing for abolition of Untouchability 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.

c. The 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. Sec. 2 of the Act defines the concept of dowry. Sections 3 and 4 respectively pertain to the offences of giving and taking of dowry. Section 5 declares all agreements entered into for giving or taking of dowry void. Sec. 6 deals with what happens to the dowry once received. Sections 7 and 8 make the offences under the Act cognizable.

No where, provision exists in the Dowry Prohibition Act for payment of compensation to the victims of the dowry offences.
Though Sections 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.

d. Environment Protection Act, 1986

Environment Pollution has become a matter of serious concern to the world. The pressure of population along with the impact of development in various spheres of life including industrialisation and urbanisation has resulted in ruthless exploitation of natural resources thereby effecting the eco-system and quality of life. Ever since the Stock home Conference (1972) the countries of the world have taken up legislative measures on war footing to combat the environmental pollution both at the regional and international levels. India is one of the pioneering countries to provide constitutional status to the idea of environmental protection by inserting special provisions in Part IV of the Constitution providing for environmental protection.

Environmental pollution as a subject matter of legislation did not find a place until as late as 1974. Prior to that the only recourse available to the citizens against pollution of any nature was under the provisions of the Indian Penal Code, the Criminal Procedure Code and the Civil Procedure Code. Suits claiming damages for tortuous liability were also possible. However, there was nothing in the nature of regulatory or preventive enactments as far as environmental pollution was concerned. Environmental pollution is in
the Constitution and the new legislation
environmental pollution was concerned. All that the law provided for was to proceed under the Civil or Criminal Law after the damage to environment took place.

The procedural requirements of a regular civil action made relief very difficult. Very often cases were lost on account of mere procedural and technical irregularities. It was only in the year 1974 that the Water (Prevention and Control of Pollution) Act, 1974 was enacted which was followed by the Air (Prevention and Control of Pollution) Act, 1981.

The Environmental Protection Act, 1986 is a comprehensive legislation with regard to environmental pollution. It has evoked encouraging response and support from all environmental groups. it is widely acclaimed as the first legislation to tackle the problem of pollution. But the Act itself is not very comprehensive in its scope.

The act contains 26 Sections. It has been passed with the objective of protection and improvement of environment, which job is entrusted to the Central Government authority. Under the Act the authorities are required to plan nationwide programmes against environmental pollution. Further, under the Act the authorities are required to lay down the standards for equality of environment.

It is interesting to note that the remedial measures for protection of environment are made available in cases of emergencies due to accidents or unforeseen events only. The Act imposes penalties in the form of imprisonment and fine upto Rs:1,00,000/-.
Though the Environment Protection Act was passed with laudable objectives it could not be effective for the inherent loopholes present in it. More importantly at a time when industrial disasters have become rampant and ravage of the environment continues unabated causing heavy loss and damage to the people in large scale, the Act proves to be helpless not only in averting pollution but also in providing compensation to the victims of environmental pollution.

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 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 this lacunae in the Special Laws either by way of necessary amendments making room for payment of compensation or by enacting a comprehensive and common victim compensation code.

4.4 Rules Embodied For Compensation And Protection Of The Victims

i. Compensation for Loss or Injury Caused by the Commission of an Offence:

The Probation of Offenders Act, 1958 is inadequate from the victims' point of view. The award of compensation and costs is at the discretion of the court. The court allows compensating and costs only when it thinks reasonable. The procedure laid down for realisation of the compensation caused by the wrongful act,
neglect or default, etc. The dependents may be paid compensation from within the fine amount which a Magistrate may impose on the accused under Sec. 357 of the Criminal Procedure Code. The Act also enables the court directing release of an offender under Sections 3 and 4, in its discretion to grant 'reasonable compensation' to a person for 'loss or injury' caused to him by commission of the offence and 'costs' of the proceedings. The Act is a compact legislation consisting of 4 Sections only. While Section 1(A) recognises the right of the family members of the victim to receive compensation, Section 2 enables the executor, administrator, etc. of the deceased person to make a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, etc.

ii. Compensation in the Case of Groundless Threats of Legal Proceedings:
Compensation is provided in cases where there is a threat of groundless legal action or an unlawful proceedings are instituted against a person. Previously, such a situation could be redressed under the principles of Law of Torts treating, the unlawful action as Abuse of Legal Process. Now it is provided under certain statutes, an illustration of which is the Copyright Act, 1957, Section 60 of the Act reads thus,

"60 Remedy in the Case of Groundless threat of legal proceeding"

iii. Compensation for Vexatious Proceedings:
Certain special laws lay down the punishment of fine if an offence is committed, which means the Court convicting a person with fine
may order a part of the fine to be paid in compensation to the victims of the offence. The following special laws are examples of such a principle followed in compensatory jurisprudence:—

The Opium Act, 1878 has, as its primary aim the protection of public welfare by preserving health and eliminating undesirable social and moral effects is commonly associate with the indiscriminate use of the drug. Section 4 of the Act penalizes persons who contravene the Act or the rules made under it, and possess opium or transport opium or import and export opium; sell opium or omit to warehouse opium. Sections 14 and 15 of the Act empower the officers to arrest and seize opium unlawfully kept in any enclosed place, or to seize opium kept in open places. Section 18 of the Act penalizes vexatious entries, searches, seizures and arrests made by the law enforcement officers under the Act. It says,

"Section 18—Vexatious entries, searches, seizures and arrests

Any Officer of any of the said departments, who, without reasonable ground of suspicion, enters or searches or causes to be entered or searched, any building, vessel or place, or vexatiously and unnecessarily seized the property of any person on the pretense of seizing or searching for any opium or other things liable to confiscation under this Act, or vexatiously and unnecessarily detains, searches or arrests any person, shall for every such offence, be punished with fine not exceeding five hundred rupees."
A similar provision is found in the Standard of Weights and Measures (Enforcement) Act, 1985, Section 58 of the Act says,

"58. Vexatious search: An Inspector or any other officer exercising powers under this Act or any rule or order may there under who knows that there are no reasonable grounds for so doing, and yet;
(a) searches or causes to be searched, any house, conveyance or place, or
(b) searches any person, or
(c) seizes any weight, measure or other moveable property shall, for every such offence, be punished with imprisonment, for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both."

iv. Compensation to Person for Misconduct

Certain special laws provide for compensation to persons who suffer on account of the misconduct of other persons. An illustration of this is the rule laid down in the Police Act, 1861.

The Police Act has the object of making the Police a more efficient instrument for the prevention and detection of crime. The entire Police establishment under a State Government is deemed to be one Police force and consists of such number of officers and men and is constituted in such a manner as is from time to time ordered by the State Government.

According to Section 15 of the Police Act, it shall be lawful for the Government by proclamation to be notified in the official gazette, and in such other manner as the State Government shall direct, to declare that any area subject to its authority has been found to be
in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area, or of any class or section of them, it is expedient to increase the number of police. Thereupon, it shall be lawful for the Inspector General of Police or other officer authorised by the State Government in this behalf, with the sanction of the State Government to employ any police force in addition to the ordinary fixed complement to be quartered in the areas specified in such proclamations. The cost of such additional police force shall be borne by the inhabitants of such area. The cost shall be apportioned among the inhabitants who are liable to bear the same and who shall not have been exempted from payment of the cost.

Section 15-A of the Act provides for compensation to persons who suffer from misconduct when such a Proclamation is in force. The provisions of this Section read as follows:

"15-A Awarding compensation to sufferers from misconduct of inhabitants or persons interested inland:

(1) If in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage, to property has been caused by or has ensured from the misconduct of the inhabitants of such area or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims, to have suffered injury from such misconduct to make, within one month from the date of the injury or such shorter period as may be prescribed, an application for compensation to the Magistrate of the district or of the subdivision of a district within which such area is situated."
(2) It shall thereupon be lawful for the Magistrate of the district with the sanction of the State Government, after such enquiry as he may deem necessary and whether any additional police force has or has not been quartered in such area under the last preceding section, to—

(a) declare the persons to whom injury has been caused by or has ensued from misconduct;

(b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them; and

(c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the appellant who shall not have been exempted from liability to pay under the next succeeding such section.

v. Compensation to Victims of Emergency:

An illustration of the Special Laws providing for compensation to victims of war, aggression, hostilities and emergency situation is the Personal Injuries (Emergency) Provisions Act, 1962, which seeks to enforce a certain scheme of compensation in respect of the victims of Emergency situations which are not owing to the act of any private individual but the result of State action.

According to Section 2(6) of the Act, 'personal injury' means a physical or mental injury and includes any disease whether manifesting itself immediately or subsequently (a) caused by—

(i) the discharge of any missile (including liquid or gas or both), or
(ii) the use if any weapon, explosive or other noxious thing, or
(iii) the doing of any other injurious act, either by the enemy or in
combating the enemy or in repelling an imagined attack by the enemy; or

(b) caused by the impact, on any person or property, of any enemy aircraft or any aircraft belonging to or hold by any person on behalf of or for the benefit of the Government of India or any allied power, or any part of, or anything dropped from, any such aircraft; or

(c) caused by any explosion or fire which involves any explosives or ammunition or other dangerous things, required for the purposes of defence against the enemy which happens or its caused by, through, or in connection with the manufacture, storage or transportation of any such explosive, ammunition or other dangerous things....

Under Section 3 of the Personal Injuries (Emergency Provisions) Act, 1962 the Central Government may make a scheme or schemes in accordance with the provisions of this Act providing for the grant of relief in respect of the following injuries sustained during the period of the emergency, namely

(a) Personal injuries sustained by gainfully occupied persons (with such exceptions, if any, as may be specified in the scheme) and by persons of such other classes as may be so specified; and

(b) personal service injuries sustained by civil defence volunteers;

Provided that different schemes may be made in relation to different periods of emergency.
vi. Compensation to Workmen under Social Security Laws:

An illustration of insurance schemes adopted as part of the Social Security measures is the Personal Injuries (Compensation Insurance) Act, 1960. This act imposes on employers a liability to pay compensation to workmen sustaining personal injuries and provide for the insurance of employers against such liability. An employer means any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship means the later person while the workman is working for that other person.

Section 4 of the Act provides for compensation to be payable by the employer. It says, "There shall, subject to such conditions as may be specified in the Scheme, be payable by an employer in respect of personal injury sustained by a gainfully occupied person who is a workman to whom this Act applies, compensation in addition to any relief provided under the Personal Injuries (Emergency Provisions) Act, 1962 of the amount and the kind provided by Section 7".

vii. Cases In Which The Victims Of Crime Are Protected In Various Other Ways

Though compensation is not provided by the Dowry Prohibition Act, 1961 to the victim of dowry offences, the victim is
taken care of in yet another way, and that is by providing that the
property received as dowry shall be transferred to the victim. This
is evident from the provisions of Section 6, Sub-section 3-A which
was added by an amendment to the Act in the year 1986, and
which reads as follows:—

3-A : Where any person convicted under sub-section 2 for
failure to transfer any property as required by subsection (12) for
sub-section (3) has not, before his conviction under that sub-
section, transferred such property to the woman entitled thereto or
as the case may be, her heirs (parents or children) then the Court shall,
in addition to awarding punishment under that sub-section, direct,
by order in writing that such person shall transfer the property to
such woman or, as the case may be, her heirs, parents or children
within such period as may be specified in the order and if such
person fails to comply with the direction within the period so
specified, an amount equal to the value of the property may be
recovered from him as if it were fine imposed by such Court and
paid to such woman or, as the case may be, her heirs, parents or
children.

In addition, certain special laws protect the name, dignity and honour of
the victims of crime though they do not provide for compensation
to them. An illustration of this is the Criminal Law (Amendment)
Act, 1983, whereby the Indian Penal Code has been amended to
punish persons who disclose the identity of the victim of certain
offences. Section 228-A of the Penal Code read as follows:—

Section 228-A : Disclosure of identity of the victim of certain
offences, etc.
(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under Sec. 376, Sec. 376-A, Sec. 376-B, Sec. 376-C or Sec. 376-D is alleged or found to have been committed (hereinafter in this section referred to as the victim) shall be published with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim of such printing or publication is—

(a) by or under in writing of the officer-in-charge of the police station or the police officer making investigation in to such offence acting in good faith for the purpose of such investigation; or

(b) by or with the authorisation in writing of the victim; or

(c) where the victim is dead or minor or of unsound mind, by or with the authorisation in writing of, the next-of-kin of the victim;

Provided that no such authorisation shall be given by next of-kin to anybody other than the chairman or the secretary, by whatever name called, of any reorganized welfare institution or organization.

Explanation: For the purposes of this sub-section "recognised welfare institution or organization" means a social welfare institution or organization recognized in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in
sub-section (1) without the previous permission of such Court shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation: The printing or publication of the judgement of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

4.5 ROLE OF NATIONAL HUMAN RIGHTS COMMISSION OF INDIA

In the wake of criticism of India for suppression of human rights that the President of India promulgated an ordinance on September 28, 1993 with a view to provide for the setting up of a National Human Rights commissions in States. and Human Rights courts for better protection of Human Rights and matters connected therewith or incidental thereto. Later on parliament embodied the provision of the ordinance into the protection of Human Rights Act, 1993 (Act no 10 of 1994).

It is an internationally recognized principle that enforceable right to compensation is not alien to the concept of enforcement of guaranteed right. Generally, the concept of monetary compensation is to make good the loss suffered through a wrongful act, in the form of money. In cases of irreversible damage it remains a sole effective remedy for enforcement of a right. On violation of human rights through the agency of a state, their redress through monetary compensation has acquired peculiar

135. Article 9(5) of the International covenant on civil and political Rights, 1966. It reads: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."
significance than mere making good the loss suffered by an aggrieved person.\textsuperscript{136}

In this context an attempt is made to perceive the compensatory jurisprudence evolved by the National Human Rights Commission (NHRC) with in four years of coming into existence, under the protection of Human Rights Act, 1993.

Since its establishment in October 1993, the Commission has directed interim relief to the extent of Rs.10,07,12,634/- to be paid in 617 cases. During the year 2004-05, the Commission recommended that interim relief amounting to Rs.23,27,000/- be paid in 46 cases, including 12 cases of deaths in police/judicial custody\textsuperscript{137}.

These compensation statistics amount to an average compensation recommendation of just over Rs.160,000 per case over the life of the Commission, and an average compensation recommendation of some Rs.50,600 per case during 2004-2005. Although these averages do obscure some variability in award amounts, even the more sizable awards recommended for families of those killed by security forces only amounted to Rs. 200,000 per family during the 2004-2005 period. In contrast, a 17-year-old girl gang raped by police officers received a recommendation for an


\textsuperscript{137}Human Rights Features; HRF 174/07, dt.26-9-2007.
awards just under the average size of awards in 2004-2005—Rs.50,000.

The objectives of the Act make it manifest that the Act was enacted, inter alia, for better protection of human rights and for matters connected there with or incidental there to. In order to achieve these objectives the Act vests the NHRC with vast functions and powers. Irrespective of its powers and functions the effectiveness of any commission ultimately depends upon the ultimate fate of its recommendations. The relevant provision in this regard is section 18 of the Act, which reads as under:

The commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:

1. Where the inquiry discloses the commission of violation of human rights, or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority the initiation of proceedings for prosecution or such action as the commission may deem fit against the concerned person or persons:

2. Approach the supreme court or the High court concerned for such directions, orders or writs as the court may deem necessary:

3. Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary.

...
From the above quoted section is clear that the commission can only make recommendations and cannot award any relief including monetary relief. The Act does not make their recommendations binding on the concerned government or authority. But the commissions follows up its recommendations and the Act lays down a time frame within which the government or the authority must inform the commission about the action taken on its recommendations, ordinarily within one month. The reasons for non-acceptance of recommendations are also to be given. All this accords some prestige and authority to the recommendation as the commission. The prognostic observations about the fate of these recommendations by Honorable Justice V.S. Malimath, Member (as he then was). NHRC at the seminar-on Human Rights at Jammu are worth quoting. He observed:

The government cannot wash away the recommendations made by the commission. The commission’s role may be recommendatory, advisory, yet the Government considers the cases forwarded by it. He added, It is therefore improper to say that the commission is powerless. It enjoys great material authority and no government can ignore its recommendations.

i. Compensation to Victims of Crime and National Human Rights Commission

The National Human Rights Commission, an agency of the State and a statutory body created under the Act of Parliament, namely the National Human Rights Act, 1993 has ever since its formation

and functioning been actively engaged in the work of not only enquiring into the cases of violation of Human Rights and fundamental freedoms, but also even awarding compensation to the victims of violation of Human Rights. Some of the important decisions of the National Human Rights Commission of far reaching importance are discussed below.

In a case from Orissa the National Human Rights Commission has directed the State to pay Rs. 6,25,000 as compensation to 125 Tribal families whose children had died of malnutrition and malaria in Phulbani district in October, 1994. 139

Again, at the instance of National Human Rights Commission, the Andhra Pradesh Government has enhanced compensation to the victims of extremist violence. Orders have been issued providing for payment of Rs. 50,000 to the legal heirs of persons killed by naxalities, Rs. 20,000 to those permanently incapacitated and Rs. 10,000 to those seriously injured with effect from 1.4.1994.

In yet another case, the National Human Rights Commission has recommended the Tamil Nadu Government to pay a sum of Rs. 50,000 as compensation to the parents of a 15 year old boy Raja alias Murugan who died in Police custody, Hosur Police station in 1995 in Dharmapuri District 140.

Similarly in a case, the National Human Rights Commission has recommended the Andhra Pradesh Government to pay a sum of Rs. 45,000 towards treatment of Kankati Sailu, who sustained

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serious injuries at the hands of Naxalities in Karimnagar District in 1994.\textsuperscript{141}

In another case, the Commission has recommended the Tamil Nadu Government to pay a sum of Rs. 25,000 to the next of kin of Anthony Swami who died in police custody and has also given necessary directions for recovering this amount from the delinquent, police officials in 1995.\textsuperscript{142}

In yet another case, upon the recommendation of the commission, the Bihar Government paid Rs. 1,00,000 as compensation to Mrs. Ashma of Dhanapur, Bihar whose husband was shot dead in the riots following demolition of Babri Masjid and also a substance allowance of Rs. 1,500 per month to the widow during her life time.\textsuperscript{143}

In case involving the custodial death of one Mr. Nagaho Sema of Nagaland, while holding 9 Warders responsible for the act and recommending prosecution, the Commission has recommended the payment of Rs. 50,000 as compensation to the next of kin of the deceased. Further\textsuperscript{1}; the Commission asked the State Government to recover this amount from the errant personnel so that the state ex-chequer might not be forced to bear this unnecessary burden.\textsuperscript{144}

In yet another case, upon the recommendation of the Commission, the Kerala Government has sanctioned payment of compensation of Rs. 10,000 to each of the seven boys who were
stripped and forced to spend two nights in the company of girls in
the police lock-up at Tirunelvelli in Wayanad District. Necessary
action has also been initiated by the State Government for
recovering, through departmental proceedings, the total
compensation amount of Rs. 70,000 from the delinquent police
officers, who have been placed under suspension.145

In a significant verdict, the National Human Rights
Commission has directed the Uttar Pradesh Government to pay
immediate interim relief of Rs. 10 lakh to a victim of Police torture
and bear all expenses for his treatment and rehabilitation. The
Commission has also recommended disciplinary action against
five officers including the Asst. Superintendent of Police and the
Superintendent of Police of Varanasi, responsible for the torture of
Rakesh Kumari Vij, rendering him incapable of leading a normal
life.146

In another case, in 1995 the National Human Rights
Commission has recommended the payment of interim
compensation of Rs. 5 lakh to the father of the victim in a case of
custodial death of a youth in Balia District of Uttar Pradesh as a
politically motivated one and an instance of police high
handedness.

The National Human Rights Commission has directed the
State of Uttar Pradesh to pay Rs. 20,000 each to three women for

146 Eenadu Daily, Newspaper, dt. 23-12-1999.
causing unnecessary harassment' and the same to be recovered from the erring officials.\textsuperscript{147}

In yet another landmark decision, the National Human Rights Commission has ordered the Karnataka Government to pay an interim relief of Rs. 2 lakhs to the kin of a victim who died in a police lock-up. The victim, Thimmaiah, had allegedly committed suicide using a nylon rope in a Kolar district Police Station. The National Human Rights Commission said that the State government would be at liberty to recover the sum from the Policeman.\textsuperscript{148}

The cases narrated above are but only a few instances of the atrocities committed by the Police as agents of the State and in which compensation was awarded by the courts through their activism in interpreting the provisions of the constitution and other statutes. However, there are still several cases, where a citizen became victims of abuse of power but which fails to reach the courts, seeking redressal for the reason that the prevailing socio-economic conditions and complexity of the law makes them often the helpless victims of the State excesses.

\textbf{ii. Cases Involving Custodial Deaths:}

\textbf{(a) Death in Police Custody}

Commission indicated that it had, sumoto, taken cognizance of the death of Madanlal, 22 years of age, in police custody. Upon perusing the reports received from the government of the National

\textsuperscript{147} Law teller, p. 356.
\textsuperscript{148} Law teller, October, 2000, p 443.
capital Territory of Delhi, the commission decided to have an investigating undertaken of section 14(1) of the protection of Human Rights Act, 1993. It accordingly appointed Shri R.C. Chopra, a member of the Higher Judicial service to investigate the matter.

Shri Chopra submitted a report on 11 March 1994 concluding that Shri Madanlal had died as a result of a physical assault on his person while he was in custody within a police station. Shri Chopra held an Assistant sub-inspector and three constables prima facie responsible for the death the commission in its order of 14th May 1994 accepted the conclusions and recommendations of the investigating officer and in turn, made the following recommendations to the Administration of the NCTD:

i) The investigation in the instant case should be handed over to the CBI at the earliest.

ii) Departmental action should be taken against the ASI of a neighboring police station who was allegedly pressurizing members of the family of the deceased.

iii) Reasonable protection should be given to the members of the family and also to order witnesses until the regular trial takes place; and

iv) Interim compensation of Rupees 59,000 should be paid to the dependents of the deceased within one month without prejudice to the amount of compensation that may be claimed in accordance with law.
On 30 May 1994, the government of the NCTD conveyed its acceptance of the recommendations of the commission.

One Bikram Lama was taken to Deomali police station in Arunachal pradesh on suspicion of his involvement in a theft case in 1996. He was found dead, hanging from the handle of the toilet door with a leather belt. Though the inquiry officer had on the basis of post-mortem report held it a case of suicide, the commission found it the fact that the handle of the door was only three feet six inches from the ground level. The commission recommended the state government to pay an interim compensation of Rupees 50,000 to the dependants of the deceased. The payment was made accordingly.149

iii. Lodging Mentally ill in Jail is a Violation of Human Rights:

The chairperson of the National Human Rights Commission (NHRC). Mr. Justice J.S.Verma, has written to the Chief Ministers of all the states asking them to prevent lodging of the mentally ill in jails.

Mr. Justice Verma has said the malpractice of lodging of such persons in prisons was a glaring and gross violation of human rights and against the provisions of the Mental Health Act, 1987. He said that according to the information received by the commissions, the number of such prisoners was as follows: Assam 38; Jammu and Kashmir, 24; Karnataka, 69; TamilNadu, 8; Delhi, 38; West Bengal, 112; orissa, 63; Rajasthan. 92: ManipūM26 and Sikkim, 1.

While Andhra Pradesh, Bihar, Goa, Maharashtra, Meghalaya, Mizoram, Tripura, Chandigarh, Lakshadweep, Pondicherry had stated that there were no mentally affected persons in their jails, the other states had not furnished any information.

Mr. Justice Verma has requested the Chief Ministers to instruct the respective Chief Secretaries to put an end to this malpractice and to safeguard the rights of the unfortunate and helpless people lodged in jails. He said the commissions special representatives would visit some of the jails to monitor implementation of the recommendations.150

(c) Personal Liability of Errant Police Personnel for Custodial Deaths:

In a move to bring about the quick and appropriate sensitization of police personnel and others the commission has taken the view that the compensation in cases of custodial deaths be immediately borne by the state but recovered from the delinquent public servant subsequently. This is in order not to burden the exchequer with the liability of paying compensation resulting from the unauthorized, unlawful and illegal acts of Public servants.150

Deaths:

In respect of three separate incidents resulting in the custodial deaths in Tamil Nadu, Orissa and Rajasthan, the Commission suggested to the State governments to consider the

recovery of compensation amount from offending officials. These suggestions were complied with by the respective states.\textsuperscript{151}

iv. Cases Involving Killings in Police Firings:

The commission has awarded monetary compensation for those killed and injured CPI (ML) activists in police firing in Begusarai of Bihar. In 1993, during the course of Panchayat elections in a village in Firozpur district of Punjab, a constable fired in air to disperse an unruly mob in the process of which one Harjinder Singh was killed. Since the firing was intended to be in air, the commission observed that the killing of Harjinder Singh was a clear case of gross negligence. In this case the compensation of Rupees 100,000 be paid to the widow of the deceased and also a subsistence allowance of Rupees 1500 per month during her life time.

v. Cases involving victims of Blasts, Riots, etc.:

In an explosion at a fire cracker factory in Rothak, Haryana in May, 1995, 23 persons including 13 women, 6 children were killed. After perusing the state government’s report the commission concluded that the local officials were either negligent on account of their ignorance or were supporting an unlicensed Fire works factory to operate in that area. Stating that this was a clear case of non-implementation of the law, the commission recommended an interim relief to the next of the kin of the deceased persons and that this money be collected either fully or partly from the factory owner and from the delinquent officers.

\textsuperscript{151} Annual Report of NHRC, 1995-96, p.50.
The commission has seen that compensation was paid to the heirs of the deceased in communal violence in Surat, Gujarat following the demolition of Babri Masjid.

The Kerala government sanctioned payment of compensation to each of the seven boys who were striped and forced to spend two nights in the police lock-up at Tirunelli.

vi. Cases involving Prison Administration:

The commission took serious note of negligence and dereliction of duty on the part of authorities of Kalyan district prison and asked the Maharashtra Government to pay an interim compensation of Rupees twenty five thousand to the next of the kin of an under trial who died due to the lack of affording reasonable, prompt and adequate medical facilities. In this case the jail hospital had failed to diagnose the tuberculosis disease from which the under trial was suffering. Lack of timely treatment resulted in or at least hasten the death of under trial.

Ruling that an under trial prisoner cannot be put to hard labour, the Commission asked the Uttar Pradesh Government to pay Rupees one lakhs to the parents of one Mr. Ashok Kumar who died after sustaining injuries while carrying a load at the behest of the Roorkee sub-jail authorities. The commission also has asked the state government to conduct an inquiry to fix responsibility and recover compensation money from those found responsible for the

death of Ashok Kumar.\textsuperscript{153} The NHRC has ordered the Kerala Government to pay Rupees 10,00,000 to an ISRO scientist as compensation for violation of “his human rights by public servants”

Mr. S. Nambinarayan, “falsely implicated” in a case of espionage, had complained to the NHRC seeking compensation for mental agony, torture and violation of human rights. Though it was strongly resisted by the State Government, the commission found a prima facie and awarded Rupees 10,00,000 relief to the scientist.\textsuperscript{154}

The range of issues represented in the Section on constitutional tort find their place in the Annual Reports of the NHRC for the years 1996-97 and 1997-98 (AR 1996-97 and AR 1997-98). During the year 1995-96, 136 deaths were reported in police custody and 308 in jail custody. This shows a steep climb to 188 deaths in police custody and 700 deaths in judicial custody in 1996-97 and a further rise to 193 deaths in police custody and 819 deaths in judicial custody in 1997-98. The NHRC attributes the continued escalation of custody deaths to increased reporting to the NHRC.\textsuperscript{155} The annual reports do not moot the possibility of increased incidence of custody deaths.

The AR 1997-98 speaks of district-wise analysis being undertaken by the NHRC to examine if a pattern of violence exists, and to assess if any state or district deserves special attention.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{153} “Commission recommends Rupees 1,00,000 /- compensation for man who got killed during prison labour”. Human Rights News letter, Vol.5., No.1 Jan. 1998, p.3.
\item \textsuperscript{154} J. Venkatesan, The Hindu, Bangalore ed., p11.
\item \textsuperscript{155} AR 1996-97 at 15 and AR 1997-98 at 11.
\end{enumerate}
\end{footnotesize}
The spurt in reported deaths in custody in Maharashtra is perhaps the most striking - 21 deaths in police custody (PC) and 180 in judicial custody (JC) in 1996-97, an increase from the 34 deaths in custody (9 - PC; 25 - JC) reported in 1995-96. In 1997-98 while the numbers have fallen somewhat, it is still a large figure at 19 deaths in PC and 115 in JC.

One explanation for the rise in deaths in judicial custody is found in the AR 1997-98. "An analysis of the causes of deaths (occurring in prisons) revealed that 76% of such deaths in prisons were attributed to tuberculosis", the report says. In the illustrative cases set out in AR 1997-98, the NHRC records the custodial death of Somnath Verma, a 32-year old under trial prisoner as having been because of "negligence in according timely medical treatment (which) resulted in the death of the under trial prisoner he was suffering from tuberculosis."156

While recommending the identification and prosecution of those responsible for custody deaths, the NHRC continues to recommend sums as compensation to the kin of the victim. Compensation ranging from Rs.50,000/- to Rs.1.50 lakhs were recommended for payment in 55 cases in 1996-97.157 In 1997-98, the amounts vary from Rs.25,000/- in Laxman Somnath's case158 which was a case of medical negligence to Rs.50,000/- for the death of Babu Kalu Shilke; to Rs.1 lakh for the death of an under trial prisoner who died while doing hard labour in Roorkee

156. See, in this context Muktaram Sitaram Shinde 1997 Cri L. J. 3458; See also AR 1996-97 at 77: instances of deaths occurring in juvenile homes, however, constitute a different class of concern: AR 1997-98 at 19.
157. AR 1996-97 at 60.
158. AR 1997-98 at 57.
sub-jail; to Rs. 2 lakhs for the death of Usman Ansari after he was taken away by four constables “to prepare food for a party that was organised to celebrate the promotion of a head constable as sub-inspector”; and Rs.5 lakhs for the custodial death of Atal Bihari Mishra.”

The AR 1996-97 statistically records reported cases of disappearances,159 illegal detentions,160 false implication,161 complaints regarding jail conditions,162 terrorist/naxalite violations163 and what is termed “other police excesses”.164

The AR 1997-98 shows a lot of variation from the category of cases admitted for disposal by the NHRC in 1996-97 in reported instances of disappearances,165 illegal detention,166 false implication,167 terrorist/naxalite violation.168 The problem of jail

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159. Bihar - 27; J&K - 10; UP - 74; Delhi - 12.

160. AP-13; Bihar-6; Maharashtra-6; Rajasthan-6; TamilNadu-40. UP174; Delhi 10.

161. Bihar . 41; Rajasthan . 12; UP . 128; Delhi - 24.

162. Bihar . 42; MP - 19; Maharashtra - 14: Orissa -9; Rajasthan - 25, UP – 92; West Bengal – 17; Delhi -12 .

163. A.P.-3; Assam - 3; Bihar l.l. J&K -40; Manipur -5 : Nagland - 3, Punjab - 2.

164. AP-.26; Assam-11; Bihar - 175; Gujarat -10; Haryana-34; HP-8; J&K-11; Karnataka-20; Kerala .45; MP -61; Maharashtra- 31; Nagaland - 2; Orissa - 36. Punjab - 39. Rajasthan - 67; Tamil Nadu -51; Tripura -2; UP 876; West B.–18; Delhi - 116; Arunachal Pradesh, Manipur, Meghalaya and Chandigarh-1 from each state.

165. A total of 12 Cases .

166. 330 in all, of which 244 complaints emanate from UP.
conditions - a probable cause of death in jail custody - is highlighted by the number of complaints admitted for disposal by the NHRC in 1997-98. Other police excesses" range high in UP (705 cases), with the UTs (102), MP (85), Bihar (97), Haryana (44), Maharashtra (40), Punjab (43), Tamil Nadu (44) and West Bengal (16) totting up a total of 1413 cases admitted for disposal in 1997-98.

The remedy of compensation, often termed as being "interim" is awarded by the NHRC in cases of illegal detention,170 false implication in a criminal case171 and in a case of rape of minors aged between 14-16 years by a teacher in a government secondary school in Rajasthan.172

Complaints of "fake" encounters were considered by the NHRC. The complaints were from state of A.P. and in two separate instances, from Bihar. While the NHRC appears

167. 237 in all, of which 137 are from UP; 18 from Haryana; 17 from the Union Territories (UTs) The AR 1997-98 breaks away from the earlier reports in clubbing the UTs as one without disaggregation.

168. There are no cases in this category.

169. AP and West B - 1; Bihar - 41; Goa and Gujarat - 2; Haryana - 10; Karnataka - 5; Kerala - 8; MP-11; Maharashtra -90; Punjab - 5; Rajasthan -11; Tamil Nadu - 6; UP - 61 and the UTs 41.

170. E.g, Rs.10,000/- as interim relief recommended to be paid for illegal detention between 9 11.1993 and 2.12.1993. Also see where Rs. 5,000/- each to three persons illegally detained between 22.6.1995 and 24.6.1995: AR 1997-98 at 64 and 66. In a case of illegal detention and torture, the NHRC recommended that Rs.15,000/-, Rs.20,000/- and Rs. 5,000/- be paid to three detenues: AR 1997-98, at 68.

171. Rs. 25,000/- AR 1997-98 at 71-72.

172. Rs:1 lakh to the victim named in the complaint to the police: AR 1997-98 at 72.
convinced that the explanation of the police was difficult to accept, there was only a passing mention of compensation in one of the three recorded cases.\textsuperscript{173}

Culpable inaction finds place in the AR 1997-98 in a case relating to the killing of 29 bus passengers in Peren sub-division of Nagaland. A report of the Ministry of Home Affairs, Government of India, did not dispute that the deaths occurred as a result of violent activities of insurgents. The NHRC therefore "considered it reasonable to infer that the state government had failed to protect the lives of innocent citizens." The state government had sanctioned an ex gratia of Rs. 10,000/- to the dependants of the deceased, Rs.5,000/- to those seriously wounded and Rs.2500/- to those who sustained minor injuries. The NHRC recommended enhancing the ex gratia from Rs.10,000/- to Rs.50,000/- to the families of the 29 persons killed in the incident. The state government is reported to have paid accordingly.

4.6 THE IDEA OF COMPENSATION TO VICTIMS OF CRIMES AND ABUSE OF POWER DEVELOPED BY THE INTERNATIONAL ORGANIZATIONS:

In the 19\textsuperscript{th} century the concept of compensation to the victims of crime was revived by eminent criminologists like Garofalo and Ferri in Italy and Bentham in England. Under the influence of these theories a system of compensation was evolved whereby the victim had to be compensated out of the fines imposed on the offender, the States also had accepted the responsibility of paying compensation in varying degrees. Thus, in 1926 Sweden introduced a system in which victims were paid

\textsuperscript{173} AR 1996-97 at 61-65.
compensation out of the fine imposed on the offenders; some concrete progress was made in Europe, USA and some other countries commencing from early sixties. The schemes to pay the victims out of public funds were introduced in the Southern and Western countries of Europe, Canada, Australia, New Zealand and Switzerland\textsuperscript{174}.

Yet another development of far reaching significance has been that in recent years the idea of state authorities paying compensation to the victims of crime and abuse of power has received an impetus at the hands of International Organizations. The International Organizations have evolved new principles expanding further the idea developed at the national level by the Municipal laws. The principles of International Law comes from the Municipal Systems; therefore, a reference is made therein first to the schemes of compensation adopted by the States under the Municipal Laws, and then of the principles evolved by International Organizations in relation to victims of crimes in general, and abuse of power in particular.

In the course of time several states have developed principles and doctrines concerning payment of compensation to the victim of crime. The compensation schemes followed by some of the important states under the Municipal Law Systems need a close study, as the principles evolved by the Municipal Law System often becomes a feeding ground for the evolution of International Law on the subject.

1. Table Of Compensation Schemes In Different Countries

\textsuperscript{174} Ahmed Siddiquie, Criminology, Problems and Perspectives, 1993, P.551.
<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Country</th>
<th>Name of the Programme</th>
<th>Eligibility for making Compensation</th>
<th>Claimants Eligibility for Compensation</th>
<th>Head of Compensation in different Countries</th>
<th>Total Limit of Compensation</th>
<th>Sources of funding</th>
<th>Applicant in report to police</th>
<th>Period of applicable filling</th>
<th>Name of the Office/Department handling the Compensation Scheme</th>
<th>Emergency Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Australia</td>
<td>Australian Crime Victim Compensation Program (by State)</td>
<td>To Victims of violent crime are state based in Australia</td>
<td>Victims of crime; Dependents of homicide victims; Relatives of victims of crime - eligible in some states, Foreign citizens; eligible in most states</td>
<td>Medical expenses, Mental health counseling, Lost wages, Funeral, Travel expenses, Loss of enjoyment of life, incidental</td>
<td>Most states can pay a maximum combined award of between $AUS50,000 and $AUS60,000.</td>
<td>Compensation schemes in Australia are funded from consolidated revenue of the State</td>
<td>Yes</td>
<td>1 year</td>
<td>New South Wales-61-2-9375-6488 The Victims of Crime Bureau Level 5, 130 Elizabeth Street Sydney, NSW 2000</td>
<td>Some states in Australia provide emergency awards or expedite processing for victims faced with an extraordinary financial hardship</td>
</tr>
<tr>
<td>2</td>
<td>Bermuda</td>
<td>Crime victim compensati on program</td>
<td>To Victims of violent or personal crime</td>
<td>Victims of crime; Dependents of homicide victims; Foreign citizens</td>
<td>Medical expenses, Mental health; Lost wages for disabled victims; Lost support for dependents of deceased victims; Funerals; Travel, Rehabilitation for disabled victims, Services to replace work in the home previously performed by the victim</td>
<td>The maximum award in $B is 200,000.</td>
<td>The program is funded through tax revenue</td>
<td>Yes</td>
<td>Within 1 year</td>
<td>Criminal Injuries Compensation Board c/o The Supreme Court 113 Front Street Hamilton HM12 Bermuda Phone: (441) 292-1350 Fax: (441) 292-2268</td>
<td>The program may give a prepayment if the award decision is delayed due to no fault of the claimant, and it would be reasonable to do so.</td>
</tr>
<tr>
<td>Country</td>
<td>Program Description</td>
<td>Eligibility</td>
<td>Maximum Award Benefits</td>
<td>Timeframe</td>
<td>State/Dependents</td>
<td>Maximum Award Limit</td>
<td></td>
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<tr>
<td>3 Canada</td>
<td>Expedited compensation is offered for aged or terminally ill victims</td>
<td>The program does not provide emergency compensation awards. The maximum award benefits range between $5,000 and $25,000 Canadian Dollars.</td>
<td>State</td>
<td>Yes</td>
<td>Within 1 year</td>
<td>Expedit</td>
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<tr>
<td>4 Denmark</td>
<td>Expedited compensation is offered for aged or terminally ill victims</td>
<td>The program does not provide emergency compensation awards. The maximum award benefits range between $5,000 and $25,000 Canadian Dollars.</td>
<td>State</td>
<td>Yes</td>
<td>Within 1 year</td>
<td>Expedit</td>
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<tr>
<td></td>
<td>Country</td>
<td>Program Type</td>
<td>Eligibility</td>
<td>Benefits</td>
<td>Compensation Period</td>
<td>Payment Terms</td>
<td>Contact Details</td>
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<tr>
<td>5</td>
<td>Finland</td>
<td>Crime victim compensation program</td>
<td>To victims of violent or personal crime; Dependants of victims of crime; Foreign Citizens; Victims of Finland victimized in a foreign country</td>
<td>Medical expenses; Mental health; Lost wages for disabled victims; Lost support for dependents of homicide victims; funerals; Any clothing, articles for daily use, spectacles and dental plates damaged by the crime; Litigation expenses to revoke compensation from the offender</td>
<td>Personal injury: 270,000; Property damage 135,000 - Loss of income 660 a day</td>
<td>State</td>
<td>No time limit; 10 years; exceptions are made</td>
<td>The State Treasury/Victim Compensation Scheme P.O. Box 68, 00531 Helsinki, Finland Phone: 358-0-77251 Fax: 358-0-7725334</td>
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<tr>
<td>6</td>
<td>France</td>
<td>Crime victim compensation program</td>
<td>To victims of violent or personal crimes</td>
<td>Medical and Mental health expenses; Lost wages; Lost support; funeral expenses; pain and suffering; Disfigurement. Any clothing, spectacles and dental damages; physical therapy, vocational rehabilitation; Rehabilitation for disabled victims; Services to replace work in home previously performed by the victim.</td>
<td>There is no maximum award limit.</td>
<td>State</td>
<td>Yes</td>
<td>S.O.s. Attentats Francoise Rudetzki, President Hotel National des invalides 6, bid des invalides Paris France Phone: 33 (0) 47 04 20 00 Fax: 33(0) 1 45 55 55</td>
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</tbody>
</table>

The program does not offer emergency compensation. However, the act obliges the State Treasury to pay advance compensation where the applicant's right to compensation is evident and the decision is delayed.
<table>
<thead>
<tr>
<th>Country</th>
<th>Compensation Program</th>
<th>Victims of crime</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong-SAR</td>
<td>Crime Victim Compensation Program</td>
<td>To victims of violent or personal crime</td>
<td>Burial Grant; Death Grant; Disability Grant; Injury Grant; Interim Maintenance Grant</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Victims of crime who suffer serious injuries; Dependents of deceased victims</td>
<td>Compensation will be based on the same rates of compensation as are paid under the Emergency Relief Fund; Burial Grant: HK$10,700; Death grant: HK$84,000 to HK$119,000; Disability Grant: up to HK$41,770; Interim Maintenance Grant: up to HK$7,000 per month for 6 months.</td>
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<td>State</td>
<td>Yes; no time limit.</td>
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<td>Within 2 years from the date of the crime</td>
<td>In the event of homicide, payment may be ordered for funeral expenses to be made expeditiously in case of need and urgency</td>
</tr>
<tr>
<td>Israel</td>
<td>Financial compensation to victims of terrorism</td>
<td>Victims of crime; Dependents of victims; Foreign citizens</td>
<td>The maximum award for funeral expenses is NIS4400 unless the victim is a foreign citizen and is buried abroad in which case the maximum is U.S&gt;$1,300. Other compensation is case specific.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>State</td>
<td>Yes; within 1 year</td>
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<tr>
<td></td>
<td></td>
<td>Within 1 year after the terrorist act</td>
<td>Emergency or expedited claims are handled on a case-by-case basis.</td>
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<tr>
<td></td>
<td>Country</td>
<td>Scheme Type</td>
<td>Eligible Victims</td>
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<tr>
<td>9</td>
<td>Italy</td>
<td>Crime victim compensation program</td>
<td>Victims of crime; Dependents of deceased victims if they legally reside in Japan; Foreign citizens if the victim was a legal resident of Japan when the crime occurred</td>
</tr>
<tr>
<td>10</td>
<td>Japan</td>
<td>Crime victim compensation program</td>
<td>To victims of violent or personal crime.</td>
</tr>
</tbody>
</table>

If the program does not provide for emergency compensation awards.
<table>
<thead>
<tr>
<th>11</th>
<th>Luxembourg</th>
<th>Crime victim compensation program</th>
<th>To victims for losses resulting from personal crime.</th>
<th>Citizens of Luxembourg who are victims of crime; Dependents of homicide victims; Luxembourg citizens victimized in a foreign country</th>
<th>Medical expenses; Mental health; lost wages for disabled or incapacitated victims; Funeral expenses; Family home aid for disabled victims.</th>
<th>The maximum award limit Luxfrs 2,000,000 (US. $ 7,000)</th>
<th>State</th>
<th>As soon as possible, but within 1 year.</th>
<th>Within 1 year; exceptions are made</th>
<th>The Service D'Accueil et D'information Juridique Bureau 102, 12 Cote D'Elch Luxembourg Phone: 475981-345</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Netherlands</td>
<td>Crime victim compensation program</td>
<td>To victims of violent or personal crime.</td>
<td>Victims of crime who suffer serious injuries; Dependents of homicide victims; Foreign citizens</td>
<td>Medical expenses; Mental health; Lost wages for disabled victims; Lost support for dependents of homicide victims; Funerals; Travel; Rehabilitation for disabled victims; Services to replace work in the home previously performed by the victim; Removal expenses; Legal aid; Any other expense reasonably related to the injury</td>
<td>Material damage 50,000; Immaterial damage (not for dependents of deceased victims): 20,000</td>
<td>State</td>
<td>Within 3 years; exceptions are made</td>
<td>No time limit.</td>
<td>Schadefonds Geweldsmisdrijven P.O. Box 20021 2500 EA DEN Haag Phone: 01131-70-3813990 Fax: 01131-70-3813313</td>
</tr>
</tbody>
</table>
| No. | Country          | Crime victim compensation program | Victims of crime | Dependents of homicide victims | Foreign citizens | Victims of crime | Dependents of homicide victims | Foreign citizens
|-----|------------------|------------------------------------|------------------|------------------------------|----------------|------------------|------------------------------|------------------
<p>| 13  | Norway           | Yes, no time limit                  | No time limit    | No time limit                | No time limit   | Yes, no time limit | Yes, no time limit          | Yes, no time limit        |
| 14  | Philippines      | Yes, within 6 months of the crime. | Yes, no time limit | Yes, no time limit          | Yes, no time limit | Yes, no time limit | Yes, no time limit          | Yes, no time limit        |
| 15  | Poland           | Yes, no time limit                  | Yes, no time limit | Yes, no time limit          | Yes, no time limit | Yes, no time limit | Yes, no time limit          | Yes, no time limit        |</p>
<table>
<thead>
<tr>
<th>Country</th>
<th>Compensation Program</th>
<th>Eligibility</th>
<th>Costs Covered</th>
<th>Limitation</th>
<th>Contact Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sweden</td>
<td>Crime victims</td>
<td>To victims of violent or personal crime</td>
<td>Medical expenses; Mental health; Loss wages for disabled victims; Lost support for dependents of deceased victims; Funerals; Travel; Rehabilitation for disabled victims; Services to replace work in the home previously performed by the victim; Pain and suffering; Violation of personal integrity, Inconveniences resulting from the injury</td>
<td>Personal Injuries: limited to twenty time the basic amount or SEK 704,000. Property Damage: half of the above sum.</td>
<td>The Ministry of Justice, Minister of Justice Laila Freivalds (Justitiedeparte mentet, Justitieminister Lalila Freivalds) 103 33 Stockholm Sweden Phone: 46 8 405 10 00 Fax: 46 8 20 27 34</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>Crime victims</td>
<td>To victims of violent or personal crime</td>
<td>Information regarding compensable costs is not currently available</td>
<td>There is no maximum award limit.</td>
<td>United Arab Emirates Ministry of Justice ABU DHABI, P.O.Box 753, U.A.E</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Crime victims</td>
<td>To victims of violent or personal crime</td>
<td>Medical expenses; Mental health; Loss wages for disabled victims; Lost support for dependents of homicide victims; Funerals; Travel; Rehabilitation for disabled victims; Pain and suffering; Bereavement; Loss of parental services</td>
<td>The maximum award in Pounds is 500,000.</td>
<td>Criminal Injuries Compensation Authority (CICA) Try House 300 Bath Street. Glasgow Scotland 92 4JR Phone: 014-133-12726 Fax:014-133-12287</td>
</tr>
</tbody>
</table>

When the victim is in urgent need of medical care, therapy, or has been infected by HIV, an emergency award can be made.

Interim payments may be made where a final decision as to the appropriate award is uncertain, for example, when the victim's medical prognosis is unclear.
<p>|   | United States | Crime Victim Compensation program | To victims of violent or personal crime. | Victims of crime; Dependents of homicide victims; Relatives of victims of crime; Foreign citizens eligible in most states | Medical expenses; Mental health counseling; Lost wages for disabled victims; Lost support for dependents of homicide victims; Funeral; Travel for medical treatment; services to replace work previously performed by the victim; Cleaning of homicide scene if a residence; Essential personal property; Rehabilitation | Most states can pay a maximum of between $15,000 and $25,000. A few states have higher or lower maximums | Both state and offenders and other sources | Usually within 72 hours; exceptions are made for good cause | One year is typical; time limits vary from State to State. | U.S. Department of Justice, Office for Victims of Crime 810 Seventh Street, Nw. Washington, D.C. 20531 Phone: (202) 307-5983 Fax: (202) 314-6383 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 19 | Austria | Crime Victim Compensation program | To victims of violent or personal crime. | Victims of crime who suffer serious injuries; Family of homicide victims; Citizens of EEC countries unless victim is eligible to receive similar compensation in his/her own country. | Medical expenses; Mental health expenses; Burial - up to $27,500; Lost wages; Lost support; Assistance for family of victim; General social aid to foreign citizens; Travel expenses (Summons-related) Rehabilitation; Disabilities | There is no maximum award limit | Fines imposed on convicted offenders and other sources | Yes | 6 months from the month in which the crime occurred for current costs; 2 years for the cost of medical help. | Weisser Ring Dr. Udo Jesionek Maroukaner gasse 312 1030 Vienna Austria Phone: 022-271-21405 Fax: 022-271-1511 |
| 20 |   |   |   |   |   |   |   |   |   | Some states provide emergency awards or expedite processing for victims faced with an extraordinary financial or health crisis. |   |</p>
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Crime victim compensation program</th>
<th>To victims who suffer serious criminal injuries</th>
<th>Victims who suffer serious criminal injuries except when the result of manslaughter, property crimes, and traffic offenses; Foreign citizens</th>
<th>Medical expenses; Lost wages Serious disability</th>
<th>Fines imposed on convicted offenders and other sources</th>
<th>1 year after the sentence or 1 year after conclusion of the instructing magistrate if the offender is unknown</th>
<th>Commission d'aide de l'Etat aux victimes d'actes intentionnels de violences Ministere de la Justice Boulevard de Waterloo 115 1000 Bruxelles Belgium</th>
<th>The program does not provide emergency compensation awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>Belgium</td>
<td>Crime victim compensation program</td>
<td>To victims who suffer serious criminal injuries</td>
<td>Victims who suffer serious criminal injuries except when the result of manslaughter, property crimes, and traffic offenses; Foreign citizens</td>
<td>Medical expenses; Lost wages Serious disability</td>
<td>There is no maximum award limit</td>
<td>Yes</td>
<td>1 year after the sentence or 1 year after conclusion of the instructing magistrate if the offender is unknown</td>
<td>Commission d'aide de l'Etat aux victimes d'actes intentionnels de violences Ministere de la Justice Boulevard de Waterloo 115 1000 Bruxelles Belgium</td>
</tr>
<tr>
<td>22</td>
<td>Colombia</td>
<td>Compensation program for civilian Colombian citizens</td>
<td>To victims of crime; Victims of a terrorist act, guerrilla attack, Combat, or massacre; Dependants</td>
<td>Victims of a terrorist act, guerrilla attack, Combat, or massacre; Dependants</td>
<td>Medical expenses; Rehabilitation and transportation expenses; Replacement or repair of lost or damaged property; Funeral expenses; Family housing allowance</td>
<td>Compensation is awarded on a case specific basis</td>
<td>Yes within 1 year of the incident</td>
<td>Yes within 1 year of the incident</td>
<td>Red De Solidaridad Social Carrera 10a No.26-71 Int. 106 piso 11 Línea Gratuita 9800 13740 Phone: 336-2400 ext.19-50</td>
</tr>
<tr>
<td>23</td>
<td>Cyprus</td>
<td>Crime victim compensation program</td>
<td>To victims of violent crime</td>
<td>Victims of crime; Victims of homicide victims; foreign citizens</td>
<td>Medical expenses; Hospitalization expenses in Public institutions; Lost wages; disability and dependents Pension; Funeral expenses</td>
<td>Compensation is awarded on a case specific basis</td>
<td>Within 5 days after the crime</td>
<td>As soon as possible; within 2 years</td>
<td>Department of Social Insurance Ministry of Labor and Social insurance Byron Avenue Nicosia Cyprus Phone:(3567)(2)450-907 Fax:(357)(2)463-984</td>
</tr>
<tr>
<td>No.</td>
<td>Country</td>
<td>Program Description</td>
<td>Eligibility</td>
<td>Compensation Period</td>
<td>Information Available</td>
<td>Phone Number</td>
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<td>24</td>
<td>Czech Republic</td>
<td>A crime victim compensation program</td>
<td>Victims of crime who suffer physical injury; Survivors of victims; Citizens of the Czech Republic, or to stateless persons authorized to reside permanently or for an extended period in the territory of the Czech Republic; Foreign nationals to the extent provided by a valid international agreement to which the Czech Republic is party</td>
<td>There is no maximum award limit.</td>
<td>Yes</td>
<td>Phone: 420-2-5710-4301</td>
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<tr>
<td>Country</td>
<td>25</td>
<td>Belgium</td>
<td>Crime victim compensation program</td>
<td>To victims of violent or personal crime</td>
<td>Victims of crime; Dependents of homicide victims; Foreign citizens; if the crime was committed after June 30, 1990 and the victim has stayed in Belgium for more than 3 years; EU country citizens from reciprocal states; Foreign citizens of the victim are from a country (or state) which has a reciprocal agreement covering German citizens</td>
<td>Medical expenses; Psychological care; Vocational rehabilitation; pensions for disabled victims if victim's earning capacity is reduced by at least 25 percent for 6 months or more.; Benefits for dependents of homicide victims; Physical therapy; Funeral expenses; Lost support for dependents; Services to replace work in the home previously performed by the victim</td>
<td>There is no maximum award limit.</td>
<td>Information not available</td>
<td>Yes</td>
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<tr>
<td>Portugal</td>
<td>26</td>
<td>Portugal</td>
<td>Portugal has an official program available for compensation</td>
<td>To victims of crime</td>
<td>Victims of crime; Dependents of victims of crime; Foreign citizens; Portuguese citizens victimized in a foreign country if compensation was not available.</td>
<td>Medical expenses; Lost wages; Lost support for dependents of victims; Funerals; Rehabilitation for disabled victims</td>
<td>The maximum awards in Portugal are Escudos is 4,000,000.00 (US.$23,500)</td>
<td>Compensation programs was not available at the time this directory was published</td>
<td>Yes: no specific time limit</td>
</tr>
<tr>
<td>No.</td>
<td>Country</td>
<td>Program Name and Description</td>
<td>Categories</td>
<td>Ineligible Categories</td>
<td>Amount Limit</td>
<td>Time Limit</td>
<td>Information</td>
<td>Contact Information</td>
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<tr>
<td>27</td>
<td>Republic of Ireland</td>
<td>Crime victim compensation program</td>
<td>To victims of violent or personal crime</td>
<td>Victims of crime; Foreign citizens</td>
<td>Medical expenses;</td>
<td>Within 3 months of the crime; exception may be made.</td>
<td>Information not available</td>
<td>The Criminal Injuries Compensation Tribunal 13 Lower Hatch Street Dublin 2. Republic of Ireland Phone: (01) 610604</td>
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<tr>
<td>28</td>
<td>Spain</td>
<td>A victims' compensation and assistance program</td>
<td>To victims of violent crimes</td>
<td>Victims of crime; Dependants of homicide victims and persons who have been living</td>
<td>Medical expenses;</td>
<td>As soon as possible; exception is made.</td>
<td>Informatio not available</td>
<td>Provisional assistance may be granted before a final court decision provided the</td>
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<td>permanently with the deceased for 2 or more years; Foreign citizens (only when the</td>
<td>Mental health</td>
<td>Waiting period for</td>
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<td>precarious situation of the victim or his beneficiaries has been substantiated.</td>
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<td>country of nationality provides similar assistance to Spanish nationals)</td>
<td>expenses; Lost</td>
<td>within 2 years;</td>
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<td>wages for disabled</td>
<td>exception is made.</td>
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<td>victims; Lost</td>
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<td>support for dependent</td>
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<td>of homicide victims;</td>
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<td>Funerals</td>
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</tbody>
</table>

The program does not provide emergency awards.
<table>
<thead>
<tr>
<th>Country</th>
<th>Crime victims must seek compensation and assistance</th>
<th>Victims of crime; Dependents of homicide victims; Foreign citizens; Swiss citizens victimized in a foreign country that does not have a compensation program.</th>
<th>Medical expenses; Psychological care; Lost wages; Funerals</th>
<th>The amount of compensation available varies from state to state</th>
<th>Informatio n not available</th>
<th>Yes</th>
<th>Within 2 years</th>
<th>Swiss Federal Bureau of Justice Division of Legislative Projects and Methods, Office of Crime Victim Assistance Bundeshaus Wes 3003 Bern, Switzerland 011 4131 322 4767</th>
</tr>
</thead>
<tbody>
<tr>
<td>Switzerland</td>
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<td>Crime victims can receive an advance if the victim needs immediate assistance.</td>
</tr>
</tbody>
</table>
In view of above discussions, the following are few suggestions to the streamline of compensation.

1. A review committee shall be constituted to suggest
   a. New procedural laws
   b. Amendment and simplifications of procedural laws.
   c. To repeal of redundant procedural rules.
2. The Government shall consult the relevant specialized agency before drafting or amending the rules of procedure for compensation.
3. All the relevant rules of procedure relating to compensation for victims of crime if they are found to be scattered in various places must be brought together.
4. Frequent conversations shall take place between the Government and crime victims compensating agency to review the working of procedural laws.

Amending the relevant procedural law shall also carry out the amendments in the substantive laws.