CHAPTER -VIII
COMPENSATION IN CRIMINAL CASES- AN INDISPENSABLE EXERCISE IN SENTENCING POLICY- EMERGING LEGISLATIVE TRENDS AND JUDICIAL EXPOSITIONS

“While social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfillment … not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn.”

Krishna Iyer

8.1 Introduction

The criminal commits the crime. The State apprehends such accused and brings him to trial. If found guilty, he is convicted and sentenced to undergo punishment. Does this complete the wheel of criminal justice? What about the crime victims? Traditionally, it may have been sufficient that the criminal is caught and punished. But, the modern approach is to also focus on the victims of crime. It is all very well that the accused is given a fair and just trial, that the guilty are punished, that the convicts and prisoners are given a humane treatment, that jail conditions are improved and the erstwhile criminals are rehabilitated, but, what about the crime victim?2

The agony and anguish of the victim cannot be kept at bark. It cannot be envisaged that in the criminal trial, the victim is to be forgotten or kept in the oblivion.3 In petty offenses, it is the monetary help that addresses the cause and not the incarceration of the accused.4

In State of Gujarat v. Hon'ble High Court of Gujarat,5 the Supreme Court succinctly noted:

“A victim of crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace."6

---

1 Per Krishna Iyer J. in Maru Ram & Ors. v. Union of India and Ors. (1981) 1 SCC 107
3 Subhash Yadav v. State of M.P., 2007 (2) Jab LJ 207 (Madhya Pradesh High Court)
5 State of Gujarat v. Hon'ble High Court of Gujarat AIR 1998 SC 3164
6 Ibid
The victim is entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. Criminal trial is meant for doing justice to all - the accused, the society and the victim. In order to give the victim complete mental satisfaction, it is essential to provide him compensation so that it can work as a support for the victim to start his life afresh.

This revise, it may be noted at the outset, does not undertake to elaborate victims’ compensation from the point of constitutional commitments and tortious liabilities. Compensation for violation of fundamental and other constitutional rights can be claimed under aegis of constitutionally developed compensatory jurisprudence under article 32 or 226 or both via article 21 of the constitution.

---

7 In Rattan Singh v. State of Punjab (1979) 4 SCC 719, Krishna Iyer J., held that:

“It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the legislature. We can only draw attention to this matter. Hopefully, the welfare State will bestow better thought and action to traffic justice in the light of the observations we have made.”

8 State of Gujarat v. Hon’ble High Court of Gujarat AIR 1998 SC 3164


11 The 154th Law Commission Report, identified right to compensation as rooting in the constitution. It observed thus:

“The principle of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for “securing the right to public assistance in cases of disablement and in other cases of undeserved want.” So also Article 51-A makes it a fundamental duty of every Indian citizen, inter alia ‘to have compassion for living creatures’ and to ‘develop humanism’. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for Victimology”

12 in Nilbati Behara v. State of Orissa AIR 1993 SC 1960, the Supreme Court observed that

“This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.”

13 In D.K. Basu v. State of W. B. (1997) 1 SCC 416 the Supreme Court observed that

“Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer 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.”
The position in this regard seems to be almost settled except for academic renovation. The primary focus of this research is compensation that is to be paid under criminal law, i.e., Criminal Procedure Code 1973 which redresses purely private wrongs, unless such private wrongs are attributed to state.

8.2 Compensation in Criminal Cases- A State Obligation

8.2.1 Theorizing state obligation

With modern concepts creating a distinction between civil and criminal law in which civil law provides for remedies to award compensation for private wrongs and the criminal law takes care of punishing the wrong doer, the legal position that emerged till recent times was that criminal law need not concern itself with compensation to the victims since compensation was a civil remedy that fell within the domain of the civil Courts. This conventional position has in recent times undergone a notable sea change, as societies world over have increasingly felt that victims of the crimes were being neglected by the legislatures and the Courts alike.\textsuperscript{14} Legislations have, therefore, been introduced in many countries including Canada,\textsuperscript{15} Australia,\textsuperscript{16} England,\textsuperscript{17} New Zealand,\textsuperscript{18} Northern Ireland\textsuperscript{19} and in certain States of USA as for example California,\textsuperscript{20} Massachusetts,\textsuperscript{21} New York,\textsuperscript{22} South Korea,\textsuperscript{23}

\textsuperscript{14} Internationally, the UN General Assembly recognized the right of victims of crimes to receive compensation by passing a resolution titled 'Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985. The UN General Assembly passed a resolution titled Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005 which deals with the rights of victims of international crimes and human rights violations.

\textsuperscript{15} The Victims of Crime Act, 1997.

\textsuperscript{16} Each Australian state and territory has developed a scheme for the financial (and other) assistance of victims of crime. The schemes are set out in the following legislation: Australian Capital Territory: Victims of Crime (Financial Assistance) Act 1983; New South Wales: Victims Rights and Support Act 2013; Queensland: Victims of Crime Assistance Act 2009; South Australia: Victims of Crime Act 2001; Tasmania: Victims of Crime Assistance Act 1976; Victoria: Victims of Crime Assistance Act 1996; Western Australia: Criminal Injuries Compensation Act 2003. There is also a recent Commonwealth scheme established by the Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Act 2012, which provides financial assistance to Australians who are harmed in an overseas terrorist act and Australians whose family members have died in an overseas terrorist act.

\textsuperscript{17} State compensation for victims of crimes of violence committed in England, Scotland or Wales is currently detailed in the Criminal Injuries Compensation Scheme 2012.

\textsuperscript{18} See New Zealand Public Act No. 134 of 1963.

\textsuperscript{19} See (Northern Ireland) Criminal Injuries to persons (Compensation) Act, 1968 (16and17 Eliz. 2 c. 9).


\textsuperscript{21} Massachusetts General Laws, (1968), Ch. 258A.

\textsuperscript{22} New York Executive Laws, section 620-635, 1967 Suppl.

\textsuperscript{23} The legal framework for the National Compensation Scheme is set out in the legislations in South Korea. The highest law in South Korea, the Constitution declares that the state has obligation to compensate victims of crime. In order to implement such obligation of the state, legislative bodies of South Korea promulgated rules, statutes, regulations and enforcement orders. The following three legislations set forth procedures and standards of the crime victim compensation system - (1) Crime Victim Protection Act [No. 12187, revised on January 7, 2014]; (2) Enforcement Decree of the Crime Victim Protection Act [Presidential Decree No. 25050, revised on December 30, 2013]; and (3) Enforcement Rules of the Crime Victim Protection Act [Legal Decree No. 789, revised on May 28, 2013].
providing for restitution/reparation by Courts administering criminal justice.

Basically two types of rights are recognized in many jurisdictions particularly in continental countries in respect of victims of crime, namely, the victim’s right to participate in criminal proceedings and secondly, the right to seek and receive compensation from the criminal court for injuries suffered as well as appropriate interim reliefs in the course of proceedings.

Apart from criminalizing the act and penalizing such offences, therefore, victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. 28

8.2.2 Three patterns of compensation

What type of compensation scheme shall be adopted depends to a greater extent on the sentencing system a country has inherited or adopted. In some of the jurisdictions, legislatures have imposed the burden of paying compensation on the convicted. In some other jurisdictions this responsibility has been assumed by the state itself. Even separate funds and budgets are earmarked for this. Mixed forms of schemes are also not uncommon and in the modern days, states have gone for this hybrid version of compensation.

The Law Commission of India noted three patterns of compensating the victim of the crime. 29 The State may take upon itself this responsibility of compensation in defined classes of cases. Secondly, the offender can be sentenced to pay a fine by way of punishment for the offence and, out of that fine compensation can be awarded to the victim. Thirdly, the court trying the offender can, in addition to punishing him in accordance with law, direct him to pay compensation to the victim of the crime, or otherwise make amends by repairing the damage done by the offence. Let us elaborate these three Patterns in some details.

---

24 Taiwan enacted the Crime Victim Protection Act in 1998, which became effective on 1 October the same year. It has been amended four times since, and the latest version was promulgated on 22 May 2013, which became effective on 1 June of the same year.
25 See Committee on Reforms of Criminal Justice System (Government of India Ministry of Home Affairs, March, 2003), p 76
26 Such as right to be impleaded, right to be heard, right to know, right to assist the court, right to appeal, right to compromise, if the offence is compoundable, right to medical assistance etc.
27 See Bodhisattwa Gautam v. Subhra Chakraborty (1996) 1 SCC 490
29 See Law Commission of India, 42nd Report on “Indian Penal Code”, 1971, p 50
8.2.2.1 Pattern I

The first pattern of compensation is that the State assumes the responsibility to compensate the victim. Traditionally, the role of the state in criminal wrongs is confined to prosecution of criminals before appropriate courts and establishing the guilt which may result in conviction or no conviction by the courts. The State was no longer concerned with economic and emotional harm (even though capable of repatriation) of the victims. The sovereign function was said to have been discharged with apprehension and accusation of the culprits. The progressive penological discourses, however, convinced the states to take upon itself the responsibility of compensation in defined classes of cases. Two classes of cases, it is argued, may qualify for state compensation in pattern I namely, for violation of guaranteed constitutional rights and public law imperatives and secondly for established failure in maintaining law and order (social order) in the society the result of which is crimes in questions. In both the circumstances, the liability is attributed to the state via-a-vis the failure to discharge sovereign functions.

Compensatory rights under public law have been comfortably established by judicial pronouncements. The Supreme Court in *D.K. Basu* observed that:

“The claim of the citizen is based on the principle of strict liability to which the defense of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. The public law demand, as distinct from the private law tort remedy, is that crime victims be given compensation even in "no-fault" situations by the State. Compensation cannot be limited to cases of police torture or custodial deaths. It must extend to riot victims and victims of terror; indeed, it must ultimately cover all victims of crime and all criminal injuries.”

30 In view of recent Supreme Court pronouncement, there remains no distinction between these two and the state responsibility is established in payment of compensation.

31 Though the sovereign function clause and defence as such has been nullified by the courts vide *Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42. Yet these functions remain to be sovereign in the sense that maintenance of law and order cannot be outsourced. The sovereign function tag can be attached to the way the state functions but this tag cannot be invoked by the state for avoiding its liability in payment of compensation and being accountable to the public. In *Nilabati Behera v. State of Orissa* AIR 1993 SC 1960, the Supreme Court observed:

“... it is sufficient to say that the decision of this Court in [Kasturi Lal Ralia Ram Jain v. State of U.P., AIR 1965 SC 1039] upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation.”


33 *M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd.* 1993 Supp (2) SCC 433, p 473
In a number of cases, the Supreme Court has redefined the need for a separate Victim Compensation. Thus victim can claim compensation under torts, and public law as well. Further, under public law, jurisdiction of Supreme Court and high courts can be invoked for awarding compensation where a violation fundamental right is established.

Apart from constitutional claims, state responsibility is also fixed by public criminal law. Criminal Procedure Code, 1973 addresses such claims in India.

Thus in class one of the Pattern I, compensation is claimed and paid for, for the violation of constitutional rights.

Class two in the pattern I is one is in respect of state assuming the responsibility to amend the wrong by way of establishing a fund and authority to answer the claims.

8.2.2.2 Pattern II

The second pattern of compensation is that the offender can be sentenced to pay a fine by way of punishment for the offence and, out of that fine, compensation can be awarded to the victim. This pattern has been taken care of by Criminal Procedure Code, 1973. Section 357(1) and 357(3) of said Code provide for

---


35 In Nilabati Behera Alias Lalit v. State of Orissa And Ors (1993 AIR 1960), the Supreme Court observed:

“This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.”

36 Section 357 sheds compensatory responsibility on the offenders, section 357 A shifts this responsibility on the state, whereas, newly introduced section 357 B guarantees compensatory claims ensured by the State.

37 Section 357A obligates on every state to prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

38 District Legal Service Authority and the State Legal Service Authority have been established to enquiry into and award adequate compensation by completing the enquiry within two months.
compensation out of fine and independent of fine respectively. However, this pattern suffers from obvious defects stated infra.

8.2.2.3 Pattern III

The third pattern of compensation is that the court trying the offender can, in addition to punishing him according to law, direct him to pay compensation to the victim of the crime, or otherwise make amends by repairing the damage done by the offence. The third pattern is improvement over the second pattern in the sense that this pattern is ‘suffering orientated’. A meager fine or minimal compensation (as in case of acid attacks etc) adds in insults to victims of the crime. Therefore, culprits must be asked to restore the victims to the possible extent. Recent amendments of 2013 in Criminal Procedure Code subscribe to this pattern.

8.3 Victim Compensation As State Responsibility: Distinction Between Constitutional law And Criminal law- Blurred

The compensation between criminal law and constitutional law is apparent yet disputable. Compensation under constitution is provided for violation of fundamental rights either by the state or by its instrumentalities in excess of their powers. The compensation for not maintaining law and order resulting in looting, death, loss or injury is example of direct violation of fundamental rights providing eligibility to claim compensation. Even the defence of sovereign function is of little use in such cases. There is second layer of liability of the state however. If the instrumentalities

39 In Rudul Sah v. State of Bihar & Anr. (1983) 4 SCC 141, for the illegal detention of a person in jail for 14 years the supreme court has awarded Rs. 30,000 as interim compensation leaving the person to raise the claim for adequate compensation appropriate courts

In Sebastian M. Hongray v. Union of India & Ors.[1984] 3 S.C.R. 544, in such a writ petition, exemplary costs were awarded on failure of the detaining authority to produce the missing persons, on the conclusion that they were not alive and had met an unnatural death.

In Bhim Singh v. State of J&K and Others [1985] 4 S.C.C. 677, illegal detention in police custody of the petitioner Bhim Singh was held to constitute violation of his rights under Articles 21 and 22(2) and this Court exercising its power to award compensation under Article 32 directed the State to pay monetary compensation to the petitioner for violation of his constitutional right by way of exemplary costs or otherwise


“[t]here are several cases in which the Supreme Court and the High Courts made the State liable to pay compensation as a public law remedy ignoring the plea of the State about its immunity from liability. The Supreme Court categorically observed that the defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defence being available for constitutional remedy. It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence issued under the statute or for the enforcement of any right or duty under the Constitution or the law”
of the state like police use their excess powers or become privy to the crime, the liability of the state is established vicariously for compensation, though the state would be free to get reimbursed from the errant officer. In an orderly society citizens have right to assume complete safety in public life. If such public life safety is infringed the state must compensate the sufferers. This is inescapable liability of the state. Thus where rape takes place, it questions the law and order of the state entitling the sufferer to get compensation from the state. In *Nilabati Behera* Dr. Anand, J. in concurring but separate opinion observed:

“The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court molds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damages awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and persecute the offender under the penal law. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights

---

41 In *Nilabati Behera Alias Lalit v. State of Orissa And Ors* 1993 AIR 1960, the court observed that

“[t]he State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings.”

In *Saheli, A Women’s Resources Centre v. Comm. Police, Delhi* (1990) 1 SCC 422, the State was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for the tortious acts of its employees. In *State of Maharashtra and Others v. Ravikant S. Patil* [1991] 2 S.C.C. 373, the award of compensation by the High Court for violation of the fundamental right under Article 21 of an under trial prisoner, who was handcuffed and taken through the streets in a procession by the police during investigation, was upheld.

under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible.”

Compensation under the criminal law on the other hand is premised on the notion that private wrongs, even if they acquire public gloss, must be remedied by the wrongdoer himself. Such remedy may be by restitution or compensation or amends or rehabilitation. Criminal procedure code recognizes compensation as mode of satisfying the wrong. Criminal courts may either pay monitory satisfaction out of the fine imposed on the convict or may separately order for compensation.

There may be a convergence of violation of fundamental rights and criminal wrongs where the compensation may become a matter of debate. Take for example a case of murder. Assume that the victim lodges a complaint against a person under apprehension of attack. Due to negligence of the police in handling the case, the victim is killed by the accused. The relatives of the victim may have both the claims under constitution and criminal law as well. However, it may become difficult to adjudge under what law to award compensation. From the point of the victim however, he would be remedied under one of the law for he cannot be sent back without compensation.

The debate however does not end here. Once the compensation is read as fundamental right under Article 21 of the constitution, it cannot be denied on the ground that the accused did not have the capacity to pay or was not apprehended or his guilt could not be established. In such cases, the state plays Parens Patrie assuming the responsibility of such victims to itself. State establishes fund from which such persons shall be compensated. In this given case, it is ultimately the state that bears the responsibility of the compensation.

Thus in any eventuality that is either for violation of fundamental rights or for criminal wrongs the economic burden is on the state though the mode of enforcement of such rights differs from each other. In a limited number of cases, where the accused is well of, such accused may be asked to bear the compensation failing which or for
falling short of, state again steps in. In *D.K. Basu v. State of W.B.*, the Supreme Court observed that

“41. ... Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.”

[Emphasis supplied]

In *D.K. Basu*, (supra) the court also noted that there was no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life and that the court had judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life.

Expanding scope of Article 21 is not limited to providing compensation when the State or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family where crime is committed by an individual without any role of the State or its functionary. Apart from the concept of compensating the victim by way of public law remedy in writ jurisdiction, need was felt for incorporation of a specific provision for compensation by courts irrespective of the result of criminal prosecution. Accordingly, Section 357A has been introduced in the CrPC. Compensation under the said Section is payable to victim of a crime in all cases irrespective of conviction or acquittal. The amount of compensation may be worked out at an appropriate forum in accordance with the said Scheme, but pending such steps being taken, interim compensation ought to be given at the earliest in any proceedings. In *Sube Singh v. State of Haryana* it was observed that:

“Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.”

This stands reiterated in several cases of Supreme Court thereafter. The court thus held that the award of compensation by way of public law remedy would not impede the criminal court from ordering compensation under Section 357of the CrPC.

---

43 (1997) 1 SCC 416
45 (2006) 3 SCC 178
8.4 Legislative Trends In The Development Of Compensation In Criminal Cases

Commensurate with the judicial innovation and international developments, legislature has also played proactive role, though bit lately in this aspects, in making provisions for compensation in criminal cases. The old section with supplemental amendments can be seen as under:

8.4.1 Section 357 of CrPC - Order to pay compensation – an ice breaker yet short of restorative and reparative aspirations

The erstwhile, Criminal Procedure Code of 1898 contained a provision for restitution. However, for inherent defect, The Law Commission of India in its 41st Report submitted in 1969, invited the attention of government of India for reforms in compensatory jurisprudence. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Criminal Procedure Code Bill, 1970, which aimed at revising Section 545 and introducing it in the form of Section 357 as it reads today. The Code of Criminal Procedure, 1973 made an improvement over the old Code of 1898 in that sub-section (3) of section 357, recognised the principle of compensating the victims even when no sentence of fine is imposed. First improvement (over the old law) in the form of section 357 reads;

“357. Order to pay compensation
(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment order the whole or any part of the fine recovered to be applied-
(a) In defraying the expenses properly incurred in the prosecution,
(b) In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a Civil Court;
(c) When, any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such

47 Section 545, of the Criminal Procedure Code of 1898, which stated in sub-clause 1(b) that the Court may direct “payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court”
48 This section had two limitations - that in order to be compensated, the act which constituted an offence should also be a tort and the word “substantial” excluded in cases where only nominal damages were recoverable. Its application depends, in the first instance, on whether the court considers a substantial fine proper punishment for the offence. In the more serious cases, the court may think that a heavy fine in addition to imprisonment for a long term is not justifiable, especially when the public prosecutor ignores the plight of the victim of the offence and does not press for compensation on his behalf. Another limitation stems from the fact that the magistrate's power to impose a fine is itself limited. At present,(sic. till 1971) a magistrate of the first class cannot impose a fine exceeding two thousand rupees and a Magistrate of the second class cannot impose a fine exceeding five hundred rupees. Further, under section 545(f)(b), the court has to be satisfied that substantial compensation is recoverable in a civil court by the person to whom loss or injury has been caused by the offence. (see The Law Commission of India, 42nd Report on “Indian Penal Code”, 1971
an offence, in paying in, compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) When any person is convicted of any offence which includes theft, criminal, misappropriation, criminal breach of trust or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

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

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

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

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section."

Reading the foregoing provision, it becomes clear that compensation may be awarded out of the fine imposed or independently. Such compensation shall be payable by the convicted person, upon the completion of the trial, at the time of sentencing. In other words, this section, essentially, empowers the courts, not just to impose a fine alone or fine along with the sentence of imprisonment, but also when the situation arises, direct the accused to pay compensation to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced.

However, from the victim's perspective this provision would be inadequate on several counts. Firstly, the interval between the commission of the crime and the conclusion of the trial and ultimate disposal of the appeal is not short and likely to run into several years. Assuming that compensation is ultimately awarded and that it is of a reasonable sum, the delay in making it available to the crime victim would itself

---

50 sub-section (1) of section 357
51 sub-section (3) of section 357
defeat the purpose.\textsuperscript{53} \textit{Secondly}, before an order of compensation can be made under this provision, the criminal needs to be apprehended put to trial and to be convicted. Unsolved crimes would leave the crime victim without recourse to this provision. Similar would be the situation where the offender dies while committing the crime.\textsuperscript{54} \textit{Thirdly}, if the convicted person is a person of no means or little means then how is the compensation to be realised by the crime victim? \textit{Fourthly}, in awarding compensation under section 357, the court's power, insofar as the quantum is concerned, is constrained by the convict's ability to pay\textsuperscript{55} \textit{Fifthly}, the payment remains suspended till the limitation period for the appeal expires or if an appeal is filed, till the appeal is disposed of.\textsuperscript{56} A person who fails to pay the fine/compensation is normally required to undergo imprisonment in default of the said payment. There are many cases of default for a variety of reasons. Many persons who are sentenced to long term imprisonment do not pay the compensation. Rather they choose to continue in jail in default thereof. It is only when fine alone is the sentence that the convicts customarily choose to remit the fine. In such cases the harm inflicted on the victims is far less serious.\textsuperscript{57} The hopeless victim, therefore, is indeed a cipher in modern Indian criminal law and its administration. So, although compensation is provided for under section 357, it is riddled with limitations, which often, add to the woes of the victim. Therefore, the restorative and reparative theories are not effectuated into real benefits to the victims\textsuperscript{58}

These limitations of section 357 and overall developments in compensatory jurisprudence, nationally and internationally, led to the Criminal Law Amendment Act 2008.

\textsuperscript{53} \textit{Ibid}
\textsuperscript{54} Law Commission of India, 154\textsuperscript{th} Report on “\textit{The Code of Criminal Procedure Code, 1973}”, 1996, p 61
\textsuperscript{55} in \textit{Sarwan Singh v. State of Punjab} (1978) 4 SCC 111, the Court held that in awarding compensation it was necessary for the Court to judge the capacity of the accused to pay, the justness of the claim for compensation and other relevant circumstances in fixing the amount of fine or compensation. See also \textit{Palamiappa Gounder v. State of Tamil Nadu} (1977) 2 SCC 634
\textsuperscript{56} Section 357(2) of \textit{Code of Criminal Procedure, 1973}
\textsuperscript{57} Per K.T. Thomas, J. (Bench consisting of M.M. Punchhi, CJL., K.T. Thomas and D.P. Wadhwa, JJ.) in \textit{State of Gujarat and Anr. v. Hon'ble High Court of Gujarat} AIR 1998 SC 3164
\textsuperscript{58} \textit{Ibid} para 48
8.4.2 Insertion of Section 357A – assuming 'Parens patriae’

The amendments to the CrPC brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unaltered, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where “the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated.” Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. Section 357A reads;

“357A. Victim compensation scheme
(1) Every State Government in coordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation

59 Charan Lal Sahu Etc. v. Union of India and Ors. 1990 AIR 1480, the supreme court elaborated the concept of "parens patria" in Indian context and observed that:

“The connotation of the term "parens patria" differs from country to country, for instance, in England it is the King, in America it is the people, etc. According to Indian concept parens patria doctrine recognised King as the protector of all citizens as parent. The Government is within its duty to protect and to control persons under disability. Conceptually, the parens patriae theory is the obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the right of the citizens. The Preamble to the Constitution, read with the Directive Principles contained in Articles 38, 39 and 39A enjoins the State to take up these responsibilities. It is the protective measure to which the social welfare state is committed. It is necessary for the State to ensure the fundamental rights in conjunction with the Directive Principles of State Policy to effectively discharge its obligation and for this purpose, if necessary, to deprive some rights and privileges of the individual victims or their heirs to protect their rights better and secure these further.”

60 Came into effect from 31 December, 2009
61 This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd (1994) and 154th (1996) Reports.
62 Section 357A seems to be inspired by Paragraphs 12 and 13 of the 1985 General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34 of 29 November 1985) relate to compensation which reads as under:

“12. When compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to:
(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.”
to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in subsection (1).

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

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

(5) On receipt of such recommendations or on the application under subsection (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

Radical change brought by this amendment is that the benefits under section 357A can be invoked either by the

a) sentencing court itself
   • when it is of the opinion that the compensation awarded under Section 357 is not adequate for such rehabilitation, or
   • where the cases end in acquittal or discharge and the victim has to be rehabilitated or

b) victim or his dependents where the offender is not traced or identified, but the victim is identified, and where no trial takes place

Rights under section 357 are not foreclosed but continued in section 357A. Courts are empowered to travel beyond section 357 and award compensation where relief u/s 357 is inadequate or where the cases end in acquittal or discharge. This amendment has brought forth rehabilitation of victims on the forefront.

**Difference between compensation under Section 357A and Section 357 CrPC**

Following differences\(^\text{63}\) can be noted between Section 357A and Section 357 CrPC

a) Under Section 357A, compensation is payable out of funds created by the State Government whereas under Section 357, it is payable out of fine recovered from the convict.

b) Under Section 357A, compensation is payable even if offender is not traced or

---

\(^{63}\) See Note by Partners for Law in Development, August 2012 available at http://pldindia.org/wp-content/uploads/2013/03/PLD-notes-on-acid-attack.pdf (assessed on 9 August 2013)
identified but under Section 357, it is payable only upon conviction of the offender.

c) Under Section 357A, compensation is payable in addition to compensation awarded under Section 357 whereas under Section 357, there is no such provision.

d) Section 357A is a mandatory provision for compensation whereas Section 357 is discretionary.

e) Under Section 357A, order for compensation is made by District Legal Service Authority or State Legal Service Authority whereas under Section 357 order is made by the Court.

f) Section 357A empowers District Legal Service Authority or State Legal Service Authority to make order for interim relief whereas under Section 357, there is no such provision.

g) Under Section 357A, no criteria is specified for dependents of victim entitled to compensation whereas under Section 357 only dependents or heirs of victim who are entitled under Fatal Accidents Act can claim compensation.  

8.4.3 The Criminal Law (Amendment) Act, 2013\textsuperscript{65} Insertion of Section 357B- Reaffirmation of Rehabilitative Rights

In the aftermath of Delhi gang rape the government of India urgently pushed for reforms in the criminal law specially law relating to rape and other forms of sexual assaults.\textsuperscript{66} Stop gap ordinance was replaced by 2013 Amendment Act.\textsuperscript{67}

Though this law essentially focused on sexual assaults, it touched upon the vital issues of victim compensation. This amendment has introduced section 357B to the Code of Criminal Procedure 1973, which further strengthens the rights of acid and

\textsuperscript{64} Ibid

\textsuperscript{65} The spirit of this amendment can be traced, interalia, in The Declaration on the Elimination of Violence against Women 1993 which stipulates that States should condemn violence against women and pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should...develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence.

\textsuperscript{66} On December 22, 2012, a judicial committee headed by J. S. Verma, a former Chief Justice of India, was appointed by the Central Government to submit a report, within 30 days, to suggest amendments to criminal law to sternly deal with sexual assault cases. The Committee submitted its report after 29 days on January 23, 2013, after considering 80,000 suggestions (perhaps a role model case that suggests vertical and horizontal participation of common person in shaping laws) An Ordinance was promulgated on February 3, 2013 to incorporate recommendations made by Justice Verma Committee.

\textsuperscript{67} The Criminal Law (Amendment) Bill, 2013 was passed in the Lok Sabha on March 19, 2013, and by the Rajya Sabha on March 21, 2013. The Bill received Presidential assent on April 2, 2013 and came into force from April 3, 2013.
rape victims to seek compensation. Newly inserted section 357B reads

“The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.”

Economical rehabilitation rights have been recognised by this amendment. Under Section 357 compensation can be awarded if the culprit is known. Under section 357A compensation shall be awarded out of the state fund even if the offender is not traced or identified. However, identified culprit who is responsible for the entire legal struggle may escape with a minor fine even for major offences. To plug this loophole, section 326A (Acid attacks) and 376D (gang rape) have advocated for economical retributive sentencing policy. The provisos added to both the sections come with triple riders, i.e.,

(i) The fine shall be imposed by sentencing courts
(ii) such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim
(iii) further that the fine imposed under this section shall be paid to the victims directly

The sentencing courts are mandated to impose fine compulsorily since the

68 Section 326A of Indian Penal Code reads

“Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim”

69 Section 376D of Indian Penal Code reads

“Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.”

70 It is interesting to note that the Criminal Law Amendment Bill 2012 and Criminal Law Amendment Ordinance 2013 provided for imposition of 10 lakh fine as compensation for acid attacks. However, the Criminal Law Amendment Act 2013 dropped those figure and instead chose flexible words “...shall be just and reasonable to meet the medical expenses of the treatment of the victim” The obvious reason for non-confining the fine to a fixed sum of amount lies in the fact that, the cost of each surgery is exorbitant. It goes up to Rs.30 lakh. The compensation of Rs.10 lakh will not cover the cost of treatment and care.
word ‘and’ in both the sections has been used conjunctively.

Stated differently, victims of acid attacks and gang rapes are entitled to restitution from the offender and government as well. Further, it has been cautioned that, the compensation payable by the State Government under section 357A shall be in addition to the payment of fine that may be recovered by the offender(s). The duty cast on the state government by virtue of this section is independent. Even if a heavy fine is imposed on the culprit, yet, the government cannot shed off its responsibility. This new insertion has somewhere instilled the confidence in criminal compensatory justice.

The comparison of section 357, 357A and 357B is relevant here. Section 357 provided for compensation to be paid either out of the fine imposed or independent of such fine. However, the accused must be identified and convicted for the offence before section 357 is invoked. Section 357A dispensed with this condition precedent and provided for compensation even when no conviction takes place or no offender is identified. Section 357A is, thus, supplemental to section 357. The amount of compensation to be awarded under Section 357 CrPC depends upon (a) the nature of crime (b) extent of loss/damage suffered and (c) the capacity of the accused to pay for which the Court has to conduct a summary inquiry. In case the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court can invoke Section 357A to recommend the case to the State/District Legal Services Authority for award of compensation from the State funded Victim Compensation Fund. Section 357B is limited in scope in the sense that, it is applicable only in respect of 326A or section 376D of the IPC cases where context specific fine may be imposed and such fine shall be paid to the victim in addition to compensation to be paid under section 357A by the government. In other words, section 357B is declaratory in nature. It merely declares that the rights of victims to receive compensation under section 357A is not disturbed by the amount and quantum of the fine that may be imposed under section 326A or section 376D of IPC.
8.5 Judicial Expositions

Apart from the legislative trends noted above, judiciary has played a significant role in shaping compensation in criminal cases.\(^{71}\) In fact, it is the frequent observations by the apex courts in number of cases that actualised the legislative initiatives. In *D K Basu*\(^ {72}\) it was observed that ‘…to repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.’ The court further held that:

“The courts have the obligation to satisfy the social aspirations of the citizens … A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give such solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family. It has always been a judicial stance to expand and imbibe compensatory jurisprudence in those black and dead letters of law.”\(^ {73}\)

Albeit number of judgments, pronounced by Supreme Court and High Courts directly or indirectly, touching upon compensatory schemes, two judgments appeared to have brought a sea change in the perception of section 357 and the amendments that followed it. These two judgments are *Hari Singh v. Sukhbir Singh and Ors*\(^ {74}\) and *Ankush Shivaji Gaikwad v. State of Maharashtra*\(^ {75}\). In *Hari Singh*, the Supreme Court pronounced that powers under section 357 are in addition to and not ancillary to other sentences. This initial foundation was exemplified by *Ankush Shivaji Gaikwad*\(^ {76}\) where Supreme Court held that, it the duty of the court to state the reasons for

---

\(^ {71}\) in *M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd.* 1993 Supp (2) SCC 433 at p 473, the Supreme Court observed as follow

“The judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience.”


\(^ {74}\) (2013) 6 SCC 770

\(^ {75}\) *Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC 770
application on non application of section 357 to eligible criminal cases. For the
convenience of reading let us note the above rulings in Phase I and Phase II.

8.5.1 Phase I- Power of Courts to award compensation is not ancillary to other
sentences but it is in addition thereto

In Hari Singh v. Sukhbir Singh and Ors, 77 Supreme Court lamented the failure
of the Courts in awarding compensation to the victims in terms of Section 357 (1) of
the CrPC. The Court recommended to all Courts to exercise the power available under
Section 357 of the CrPC liberally so as to meet the ends of justice. Thus observed the
Court:

“….. Sub-section (1) of Section 357 … is an important provision but Courts
have seldom invoked it. Perhaps due to ignorance of the object of it. …. It may
be noted that this power of Courts to award compensation is not ancillary to
other sentences but it is in addition thereto. This power was intended to do
something to reassure the victim that he or she is not forgotten in the criminal
justice system. It is a measure of responding appropriately to crime as well of
reconciling the victim with the offender. It is, to some extent, a constructive
approach to crimes. It is indeed a step forward in our criminal justice system.
We, therefore, recommend to all Courts to exercise this power liberally so as
to meet the ends of justice in a better way.”

In number of other cases, 78 the Supreme Court assented judicial exposition to
the fact that the power of the Courts to award compensation to victims under Section
357 is not ancillary to other sentences but in addition thereto and that imposition of
fine and/or grant of compensation to a great extent must depend upon the relevant
factors apart from such fine or compensation being just and reasonable. 79

In Manish Jalan v. State of Karnataka, 80 the Supreme Court observed

“Though a comprehensive provision enabling the court to direct payment of
compensation has been in existence all through but the experience has shown
that the provision has rarely attracted the attention of the courts. Time and
again the courts have been reminded that the provision is aimed at serving the
social purpose and should be exercised liberally yet the results are not very
heartening.”

In K.A. Abbas H.S.A v. Sabu Joseph, 81 the Supreme Court retracted the
position held by the above cases.

77 (1988) 4 SCC 551
Mahindra Co. Ltd. and Anr. (2007) 6 SCC 528
80 (2008) 8 SCC 225
81 (2010) 6 SCC 230
In *Roy Fernandes v. State of Goa*, the Supreme Court again lamented that “the Criminal Courts do not appear to have taken significant note of Section 357 CrPC or exercised the power vested in them there under”

The bent of the judicial approach was, thus, always on the fuller exercise of the existing provision to rub the compensatory balm on the wounds of the victim so that possible rehabilitation could take place. The real exercise, however, began which may be noted as second phase.

### 8.5.2 Section 357 CrPC confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case

*Ankush Shivaji Gaikwad v. State of Maharashtra* decided by Hon’ble Supreme Court of India has been an eye opener in victim jurisprudence, an essential insertion in progressive interpretation and flagship in economic rehabilitation of sufferers. Hon’ble bench consisting of J Thakur T.S. and J Gyan Sudha Misra laid down the proposition that

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

---

82 (2012) 3 SCC 221


The appellant-Ankush Shivaji Gaikwad accompanied by Madhav Shivaji Gaikwad (accused No.2) and Shivaji Bhivaji Gaikwad (accused No.3) were walking past the field when there was a scuffle between the deceased and the accused persons in the course. On account of the injury inflicted upon him, the deceased fell to the ground. All the three accused persons ran away from the spot. The deceased was rushed to the hospital. But, the deceased eventually succumbed to his injuries. According to the doctor, the death was caused by the injury to the common intention. The decision was affirmed by the High Court. The court had asked the learned counsel for the parties to make their submissions as to applicability of S. 357 A of the Code of Criminal Procedure providing for compensation by the State to the victims of the crime.


85 In *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC 770, two premises weighed the court’s reasoning for the said holding. One the established practices in England and USA, second rules of statutory interpretation where ‘may’ may be interpreted as ‘shall’.

In England, the Criminal Justice Act 1982, requires courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, imposed a duty on the court to give reasons for not doing so. It also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review (Oxford Handbook of Criminology (1994 Edn., p.1237-1238), which has been quoted with approval in *Delhi Domestic Working Women’s Forum v. Union of India and Ors.* (1995) 1 SCC 14).

In the United States of America, the Victim and Witness Protection Act of 1982 authorizes a federal court to award restitution by means of monetary compensation as a part of a convict's sentence. Section 3553(a) (7) of Title 18 of the Act requires Courts to consider in every case “the need to provide restitution to any victims of the offense”. Though it is not mandatory for the Court to award restitution in every case, the Act demands that the Court provide its reasons for denying the same. Section 3553(c) of Title 18 of the Act states as follows: “If the court does not order restitution or orders only partial restitution, the court shall include in the statement the reason thereof.”
Applying the reasoning adopted in *Smt. Bachahan Devi and Anr. v. Nagar Nigam, Gorakhpur and Anr*[^86^] and *Dhampur Sugar Mills Ltd. v. State of U. P. and Ors.*,[^87^] the court observed that,

“[a]pplying the tests which emerge from the above cases to Section 357, it appears to us that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. We say so because in the background and context in which it was introduced, the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.”[^88^]

Further, after survey of number of cases,[^89^] the court observed that,

“Section 357 CrPC confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case”

The ignorant attitude of lower judiciary was intolerable to the Supreme Court when it apparently observed that

“we regret to say that the trial court and the High Court appear to have remained oblivious to the provisions of Section 357 CrPC. The judgments under appeal betray ignorance of the courts below about the statutory provisions and the duty cast upon the courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future.”

In para 68 of the said judgment, the Supreme Court directed that the copy of the judgment be forwarded to the Registrars of all the High Courts for circulation.

[^86^]: AIR 2008 SC 1282
[^87^]: (2007) 8 SCC 338
among Judges handling criminal trials and hearing appeals.\footnote{Pursuant to the said direction, the copy of the judgment was circulated vide letter no. 3551-356/DHC/Gaz/GX/ SCJudgment/2013 dated 8th July, 2013}


1. The power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto
2. Section 357 CrPC confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case.
3. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case.
4. Disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion.
5. If application of mind is not considered mandatory, the entire provision would be rendered a dead letter.
6. This power is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system.
7. This power is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes.

Exercising powers under section 357A, many states have framed their own schemes for the providing victim compensation. However, there exists marked imbalance in the way the schemes are framed and compensation provided. In Tekan Alias Tekram Versus State of Madhya Pradesh\footnote{2016 SCC OnLine SC 131} Supreme Court while addresing the scheme framed by the State of Chhattisgarh the court surveyed\footnote{In Para 11 the court juxtapositioned the position in 25 states and union territories and appreciated scheme framed by Goa as model scheme to be adopted.} the schemes framed by other states in respect of similar crimes. As many as 25 schemes prepared on similar crimes by states and union territories were surveyed by the court to note that surprisingly as low as 20,000/ to 10,00000/- compensation schemes have been

\footnotesize{\textsuperscript{90}} Pursuant to the said direction, the copy of the judgment was circulated vide letter no. 3551-356/DHC/Gaz/GX/ SCJudgment/2013 dated 8th July, 2013
\footnotesize{\textsuperscript{91}} Hari Singh v. Sukhibir Singh and Ors (1988) 4 SCC 551
\footnotesize{\textsuperscript{93}} Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770
\footnotesize{\textsuperscript{94}} Supra note 84
\footnotesize{\textsuperscript{95}} 2016 SCC OnLine SC 131
\footnotesize{\textsuperscript{96}} In Para 11 the court juxtapositioned the position in 25 states and union territories and appreciated scheme framed by Goa as model scheme to be adopted.
developed for the same crimes! The court observed

“[p]erusal of the aforesaid victim compensation schemes of different States and the Union Territories, it is clear that no uniform practice is being followed in providing compensation to the rape victim for the offence and for her rehabilitation. This practice of giving different amount ranging from Rs.20,000/- to Rs.10,00,000/- as compensation for the offence of rape under section 357A needs to be introspected by all the States and the Union Territories. They should consider and formulate a uniform scheme specially for the rape victims in the light of the scheme framed in the State of Goa which has decided to give compensation up to Rs.10,00,000/-.”

In the end, the court ordered as under

“19. In the result, we dismiss the appeal having no merit and issue the following directions:–

1) All the States and Union Territories shall make all endeavour to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation with the physically handicapped women as required under the law taking into consideration the scheme framed by the State of Goa for rape victim compensation;”

i. Interim Compensation for Immediate Relief

In Suresh & Anr.v. State of Haryana,\textsuperscript{97} the Supreme Court interpreted section 357 to include interim compensation also.\textsuperscript{98} In a case where state failed to protect the life of two,\textsuperscript{99} the court observed:

“…We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim.

Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial

\textsuperscript{97} Supreme Court November 28, 2014 [ bench consisting of JJ. V. Gopala Gowda and Adarsh Kumar Goel and lead judgment by J. Adarsh Kumar Goel ]

\textsuperscript{98} Interim compensation for violation of public law was first promulgated by supreme court in Bodhisattwa Gautam v. Subhra Chakraborty (1996) 1 SCC 490

\textsuperscript{99} This was case of kidnap and murder for a ransom of Rs fifty lakh. Two persons were murdered for not fulfilling the demand of ransom amount. The appeal was preferred against conviction and sentence of the appellants under Sections 302 read with Sections 34, 364-A, 201 and 120-B of the Indian Penal Code. The conviction was upheld by the high court and confirmed by the Supreme Court.
officers in the country can be imparted requisite training to make the provision operative and meaningful.
We determine the interim compensation payable for the two deaths to be rupees ten lacs, without prejudice to any other rights or remedies of the victim family in any other proceedings. … Accordingly, while dismissing the appeal, we direct that …the victim be paid interim compensation of rupees ten lacs. It will be payable by the Haryana State Legal Services Authority within one month from receipt of a copy of this order. If the funds are not available for the purpose with the said authority, the State of Haryana will make such funds available within one month from the date of receipt of a copy of this judgment and the Legal Services Authority will disburse the compensation within one month thereafter”

ii. Judiciary Crossing Ceiling of Maxim Fixed by Various Compensation Schemes

Victim Compensation Scheme under Section 357-A, Cr.PC have been framed by most of the states ranging from as low as Rs. 25,000/ to 10 Lacs. Most of the states range their compensation scheme from 2 lac to 3 lacs. However, this amount may not satisfy certain crimes. Crimes like rapes and acid attacks require through rehabilitation which may not be possible in the meager amount of 2 to 3 lacs. Therefore supreme court refused to be bound by monetary limits fixed by the schemes or limits fixed by judgments of the court. In *Parivartan Kendra*, Supreme Court disregarded its own judgment and awarded 10 lacs compensation for acid victims. In *Tekan Alias Tekram v. State of Madhya Pradesh* the Supreme Court Going out of its usual way, ordered the state government to pay Rs 8000/- monthly compensation to the unfortunate blind victim of the rape for the rest of her life! In a judgment of far reaching consequence, in *Aarti Thakur v. State of Maharashtra and Ors*, the Bombay High Court held that Manodhairya Yojana framed by government of Maharashtra is arbitrary on both counts, i.e., fixing October

102 In *Parivartan Kendra v. Union of India and Others* (http://indiankanoon.org/doc/16029001/) the Supreme Court awarded ten lacs compensation to the duo who suffered acid attack. The court itself clarified that Rs. 3,00,000/ compensation fixed in the earlier case is the minimum and there is nothing in that case or in any schemes framed by the states which binds the state or court to award more than that in peculiar cases and circumstances.
2, 2013 as the date from which benefits shall be claimed and such benefits shall be up to Rs 3 lakh only. Aarti Thakur suffered acid attack in 2012. She claimed for her medical treatment to the tune of 4 lakhs. Upon being turned down, she moved the high court challenging the cap of Rs 3 lakh and the cut-off date of October 2, 2013 set on the Manodhairya Yojana. The court ordered ‘the government to pay the hospital after collecting the bills’. Aarti's surgery and other hospital expenses was estimated at Rs 4 lakhs approximately. The court also directed ‘the hospital to ensure that the Aarti is operated without waiting for the money. The bills shall be submitted to the state government which shall within four weeks thereafter pay them.’

a. Recovery And Default In Payment – Sentencing Policy

i. Fine and compensation - distinction

Courts are empowered to make direction u/s 357 of the CrPC towards paying compensation. Section 357(1)(b) also enables the court to direct payment of compensation, if a sentence of fine has not been imposed. What then is the difference between a 'fine' and 'compensation'? This was cleared the Supreme Court in *Dilip S. Dahanukar v. Kotak Mahindra Co.*107 the court held

“…The distinction between sub-sections (1) and (3) of Section 357 is apparent. Sub-section (1) provides for application of an amount of fine while imposing a sentence of which fine forms a part; whereas sub-section (3) calls for a situation where a court imposes a sentence of which fine does not form a part of the sentence…We must, however, observe that there exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a fine but the legal fiction raised in relation to recovery of fine only, it is in that sense fine stands on a higher footing than compensation awarded by the court.”

i. Can a compensation order impact the severity of the sentence imposed?

Compensation is a part of the sentence not a sentence in toto. Though compensation can be awarded with substantive term imprisonment the award of compensation shall not reduce the quantum of sentence. Several pronouncements would show that in cases where compensation has been enhanced by the appellate court or the revisional court, notional sentences have been imposed. Can a compensation order be permitted to impact the severity of the sentence imposed?108

---


107 *(2007) 6 SCC 528*

vogue, actually this practice has been deprecated by the Supreme Court. In *Hazara Singh v. Raj Kumar & Ors.*, the court “deprecated the practice of lesser imprisonment, against higher compensation. The court observed that payment of higher compensation will not absolve the accused from sentence of imprisonment. Power of wealth need not extend to overawe court processes.”

In the *Guru Basavaraj v. State of Karnataka*, the Supreme Court again ruled that compensation is not a substitute for adequacy sentence. Thus a compensation order is not a part of a sentence. The practice of a heavier compensation order resulting in a small sentence is clearly contrary to the very basis of sentencing. If applied, there is a large possibility of it being misused. It would certainly result in miscarriage of justice.

**ii. Quantification and Recovery of compensation and whether imposition of a default sentence for default in payment of compensation is permissible**

The modes of determination of compensation remain unclear, uncertain and inconsistent. The suitable method for determining compensation for the purpose of section 357 would be multiplier method for computation of adequate compensation.

The method recognised in Section 163A of the Motor Vehicles Act appears to be safest method. This is multiplier method which followed in all other branches of law. The statutory mode of recovery of fine is provided u/s 421 of Cr.PC as under

---

110 (2013) 9 SCC 516
111 See also Sadha Singh v. State of Punjab (1985) 3 SCC 225
112 (2012) 8 SCC 734
421. Warrant for levy of fine.-
(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-
(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;
(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law: Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

What can be done if a person commits default of payment of fine? The Indian Penal Code statutorily recognises the permissibility of directing imprisonment in default of payment of fine under Section 64 of the Indian Penal Code which specifically provides that the court which sentences an offender, shall be competent to direct that in default of payment of fine, the offender shall suffer imprisonment for a certain term, in which the imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence. So far as the description of such imprisonment for the non-payment of fine is concerned, discretion is given to the court under Section 66 of the IPC which permits the court to impose imprisonment in default of payment of fine to be of any description to which the offender might have been sentenced for the offence. So far as the limits to imprisonment for non-payment of fine are concerned, when imprisonment and fine are awardable, the same are provided in Section 65 and when the offence is punishable with fine only, Section 67 provides the limits. Under Ss 68 and 69, the legislature has provided for payment of the fine or part of the fine and the consequences thereof on the default imprisonment.\footnote{Vishal Yadav v. State Govt. of UP (2015) available at http://indiankanoon.org/doc/154440315/, para 394}

Though the Cr.PC does not provide specific provision for recovery of the

amount of compensation u/s 357 of the Cr.PC, it is essential to refer to Section 431 in this regard which reads thus:

“431. Money ordered to be paid recoverable as a fine.- Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that Section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 421, after the words and figures under section 357, the words and figures or an order for payment of costs under section 359 had been inserted.”

An order for payment of compensation by the defendant upon conviction in a criminal trial is certainly an order under Section 357 of the CrPC and therefore, would be recoverable in accordance with the procedure prescribed under Section 431. Section 431 adverts to Section 421 of the CrPC As such, the recovery of compensation would be effected in a manner prescribed under Section 421 of the CrPC.

The statute has provided for imposition of imprisonment upon default of payment of a sentence of fine.118 In Balraj v. State of U.P.,119 the Supreme Court directed that if the appellant did not pay the amount of compensation as ordered, the same may be collected as provided under Section 431 of the CrPC and paid to the victim.

The sentence of imprisonment for default in payment of compensation is different from the regular sentence of imprisonment imposed as a punishment. It is in consonance with Section 66 of the IPC.

iii. Impact of undergoing default sentence on liability for payment of fine/compensation

Having said that u/s 357 of the CrPC the court can impose a default imprisonment for failure to pay compensation, what is the impact of undergoing the

119 (1994) 4 SCC 29
default sentence on the compensation liability needs to be answered.\textsuperscript{120} By the ruling of \textit{Kuldeep v. Surender Singh}\textsuperscript{121} the court has already established that sentencing a person to jail is a “mode of enforcement” and not a “mode of satisfaction”.

It is evident, therefore, that too heavy a compensation amount and too trivial the default imprisonment would negate the efficacy of not only the compensation, but also of the length of default imprisonment.\textsuperscript{122} The nature of term imprisonment default of payment of fine is best illustrated by the Supreme Court in \textit{Shantilal v. State of M.P.}\textsuperscript{123} It observes

“…The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or otherwise. A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount.”

The default sentence is a method of procuring enforcement of the order and not a method for discharge of liability. Undergoing the default sentence would not discharge the liability to pay the compensation ordered by the court.\textsuperscript{124}

\textbf{8.6 Cost of Litigation and Sentencing Policy}

There is huge cost of litigation even in criminal cases also though comparatively criminal cases run for a lesser duration to get disposed of. The contributing factors in the increase is the fact that the accused who is in the state custody is deemed to be innocent and therefore all expenses of such person as long as he is in custody is to be borne by the state itself. At the end of the trial, courts may ask the accused to pay for the expenses which are surprisingly limited to the fine to be paid under section 357. The unscrupulous litigant have taken advantages of such facilities and spend considerable time in government or private hospitals to avoid inconvenience of jails and to be in touch with their well wishers. The entire or substantial expenses of such cozy trip to hospital is sponsored by the state which

\textsuperscript{121} (1989) 1 SCC 405
\textsuperscript{122} State of Gujarat v. Hon’ble High Court of Gujarat (1998) 7 SCC 392
\textsuperscript{123} (2007) 11 SCC 243
encashes on public exchequer. This fact has been predominantly deprecated by Justice Geeta Mittal in *Vishal Yadav* 125 where she went to miniscule minutes of the each penny spent on the accused during the entire trial and ordered for the recovery of the same. Justice Geeta Mittal imposed a fine of rupees fifty lac on the accused and ordered it to be disbursed in the order mentioned. The operative part of the judgment was as under:

<table>
<thead>
<tr>
<th>For commission of offences under</th>
<th>Sentences awarded to each of Vikas Yadav &amp; Vishal Yadav</th>
<th>Sentence awarded to Sukhdev Yadav</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 302/34 IPC</td>
<td>Life imprisonment which shall be 25 years of actual imprisonment without consideration of remission, and fine of Rs. 50 lakh each</td>
<td>Life imprisonment which shall be 20 years of actual imprisonment without consideration of remission, and fine of Rs.10,000/-</td>
</tr>
<tr>
<td></td>
<td>Upon default in payment of fine, they shall be liable to undergo rigorous imprisonment of 3 years.</td>
<td>Upon default in payment of fine, he shall be liable to undergo simple imprisonment for one month.</td>
</tr>
<tr>
<td>Section 364/34 IPC</td>
<td>Rigorous imprisonment for 10 years with a fine of Rs.2 lakh each</td>
<td>10 years rigorous imprisonment with fine of Rs.5,000/-</td>
</tr>
<tr>
<td></td>
<td>Upon default in payment of fine, they shall be liable to undergo rigorous imprisonment for 6 months</td>
<td>Upon default in payment of fine, he shall be liable to undergo simple imprisonment for 15 days</td>
</tr>
<tr>
<td>Section 201/34 IPC</td>
<td>Rigorous imprisonment for 5 years and a fine Rs.2 lakh each</td>
<td>5 years rigorous imprisonment with fine of Rs.5,000/-</td>
</tr>
<tr>
<td></td>
<td>Upon default in payment of fine, they shall be liable to undergo rigorous imprisonment for 6 months</td>
<td>Upon default in payment of fine, he shall be liable to undergo simple imprisonment for 15 days</td>
</tr>
</tbody>
</table>

(III) The amount of the fines shall be deposited with the trial court within a period of six months from today.

(IV) We further direct that the fine amounts of Rs.50,00,000/- of each of Vikas Yadav and Vishal Yadav when deposited with the trial court, are forthwith disbursed in the following manner:

<table>
<thead>
<tr>
<th></th>
<th>To the Government of Uttar Pradesh towards investigation, prosecution and defence of the cases with regard to FIR No.192/2002 P.S. Ghaziabad.</th>
<th>Rs.5,00,000/- from the deposit of the fine of each of the defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>To the Government of NCT of Delhi towards prosecution, filing and defence of litigation, administration of courts and witness protection with regard to FIR No.192/2002 P.S. Ghaziabad</td>
<td>Rs.25,00,000/- from the deposit of the fine of each of the defendants</td>
</tr>
<tr>
<td>2</td>
<td>To Nilam Katara towards the costs incurred by her</td>
<td>Rs.20,00,000/- from the deposit of</td>
</tr>
</tbody>
</table>

125 *Ibid*
(V) Amount of fines deposited by Sukhdev Yadav and other fines deposited by Vikas Yadav and Vishal Yadav shall be forwarded to the Delhi Legal Services Authority to be utilised under the Victims Compensation Scheme.

(VII) So far as Vikas Yadav is concerned, we also issue the following directions:

(i) The period for the admission in AIIMS from 10th October, 2011 to 4th November, 2011 (both days included) shall not be counted as a period for which he has undergone imprisonment. His records and nominal rolls shall be accordingly corrected by the jail authorities.

(ii) **Vikas Yadav** shall make payments of the following amounts to the Government of NCT of Delhi:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Amounts paid to AIIMS</td>
<td>Rs.50,750/-</td>
</tr>
<tr>
<td>2 Towards security deployment during AIIMS</td>
<td>Rs.1,20,012/-</td>
</tr>
<tr>
<td>3 OPD visits</td>
<td>Rs.50,000/-</td>
</tr>
<tr>
<td>4 Taxi fare</td>
<td>Rs.18,500/-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>Rs.2,39,262/-</strong></td>
</tr>
</tbody>
</table>

(ii) **Vishal Yadav** shall make payments of the following amounts to the Government of NCT of Delhi:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Provision of security during the above seven hospital admissions post conviction</td>
<td>Rs.14,75,184/-</td>
</tr>
<tr>
<td>2 During OPD hospital visits</td>
<td>Rs.50,000/-</td>
</tr>
<tr>
<td>3 Post conviction visits on taxi fare</td>
<td>Rs.14,700/-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>Rs.15,39,884/-</strong></td>
</tr>
</tbody>
</table>

(IX) The amounts directed to be paid by Vishal Yadav and Vikas Yadav at Sr. Nos.(VI) and (VII) above shall be deposited within four months of the passing of the present order.

(X) In the event of the failure to deposit the amount as directed at Sr. Nos.(VI), (VII) and (VIII), the defaulting defendant (Vikas Yadav and Vishal Yadav) shall be liable to undergo rigorous imprisonment of one year. It is made clear that these directions are in addition to the substantive sentences imposed upon them."

It is interesting to note that out of 50 lacs, 30 lacs was awarded to the government for various expenses it incurred towards hospitalization charges and hospitality. This kind of exercises is hardly seen in courts. The economics of sentencing policy can work in proper perspective if such exercises are undertaken by the judges. Incarceration is not the only answer to the crime. It has to be rebuked with appropriate economic sanctions, which may be in the form of victim compensation and reimbursement of legal expenses incurred both by the state and the party.
8.7 Mandatory Fine And Or Compensation- A New Legislative Trend Of Sentencing Policy

The modern tendency of legislature in fixing fine and or compensation for every crime is being witnessed which fact underlines that there is economics behind sentencing policy. Though state undertakes to provide compensation where there is need of, such responsibility shall be assumed, primarily, by the offender who causes harm. To fix such responsibility modern legislations have come up with mandatory fine - fixed or unremunerated- whereby courts shall impose fine and or compensation on the accused to be paid to the victims. The recent legislations like Protection of Children From Sexual Offences Act, 2012, Criminal Law (Amendment) Act, 2013; The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 etc have come up with mandatory fine provision in addition to the incarceration. All offences under Protection of Children From Sexual Offences Act, 2012, come with mandatory fine which is unremunerated. The courts are free to calculate the harm and cost of restitution in imposing fine. This mechanism gives free hand to the courts to bring the accused to the book economically. Similarly, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, also prescribes mandatory fine apart from increasing victim compensation from the state to the tune of eight lacs.\footnote{See Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016. The notification now specifies 47 categories of offences in which states will pay compensation ranging from Rs 1 lakh to Rs 8.25 lakh to SC/ST victims. Prior to this notification, only 22 kinds of offences with minimum compensation ranging from Rs 60,000 to Rs 5 lakh were included.} As noted elsewhere, the Criminal Law (Amendment) Act, 2013 went a step further in providing that in case of acid victims and gang rapes the fine imposed shall be adequate to meet the medical expenses of such victim. There is no problem, thus, seen with modern legislations. The Indian Penal Code, 1860, however needs complete overhauling in terms of increase in the fine and economics of sentencing policy. At least 100 times increase in the existing legislations is needed on the urgent basis to answer the economics of sentencing policy in India.

The need of the hour in sentencing policy is to think about the crimes and punishments from the backgrounds of the economics. Offenders must no doubt be meted with incarceration, but the fact of economical effects of such crimes cannot be lost sight of. The existing provisions under IPC relating to fine are not up-to-date. Rather they are so outdated that criminals are encouraged by such provisions. Take
for example of sections 372 and 373 of IPC relating to the food adulteration. The punishment is six months imprisonment and one thousand rupees fine. Even if the criminal is punished under these sections, he would happily accept the punishment in return for the huge gain he may obtain from such business. Such offenders may on the other hand cause huge economic loss to the victims leaving them economically devastated and crippled. Therefore, in this context, the Law Commission of India thus reports: \(^{127}\)

6.5 As we are aware that adulteration of food causes several health problems in humans. Most of the food adulterants are very harmful and toxic; yet, the greed and profit motive encourages anti-social persons for adulteration. Therefore, the tackling of food adulteration is required to be given due importance for its serious effect on the health of the public. From the above, it may be seen that though the offences covered under sections 357A and 357B of CrPC stand at a different pedestal than the food adulteration; yet, in case where the food adulteration causes grievous injury or where such adulteration results in death seems to be the cases which can be squarely covered under section 357B keeping in view the health hazards due to food adulteration which results in various ailments and premature deaths. Thus, keeping in view the serious nature of the crime, the aforesaid two cases be covered under section 357B of CrPC”

Taking into account the above predicament and to infuse economics in the sentencing policy, the Law Commission \(^{128}\) has recommended newer version of section 272 \(^{129}\)

---


\(^{128}\) Ibid

\(^{129}\) The existing section as on date with state amendment is as follows

“Section 272. Adulteration of food or drink intended for sale. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

The text of the State Amendment in respect of Orissa is as under:

Orissa.- In section 272 for the words “shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both”, the following shall be substituted, namely:—

“shall be punished with imprisonment for life and shall also be liable to fine:
Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life.” [Vide Orissa Act 3 of 1999, sec. 2 (w.e.f. 27.1.1999)].

Uttar Pradesh. – In section 272 for the words “shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both”, substitute the following words, namely:-

“shall be punished with imprisonment for life and shall also be liable to fine:
Provided that the Court may, for adequate reasons to be mentioned in the judgement, impose a sentence of imprisonment which is less than imprisonment for life.” [Vide Uttar Pradesh Act 47 of 1975, sec. 3 (w.e.f. 15.9.1975)]

West Bengal.-In section 272 for the words “of either description for a term which may extend to six months, or with fine which mays extend to one thousand rupees, or with both”, substitute the following words, namely:-

“for life with or without fine:
Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life.” [Vide West Bengal Act 42 of 1973, sec. 3 (w.e.f. 29.4.1973)
which will take care of economic needs of the victim on the basis of gravity of the offence. The Law Commission recommends:

Substitution of new section for section 272. In the Indian Penal Code, (45 of 1860) (hereinafter referred to as the Penal Code), for section 272, the following section shall be substituted, namely :-

“272. Adulteration of food or drink intended for sale.- Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished, -

(i) where such adulteration does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such adulteration results in non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such adulteration results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which shall not be less than five lakh rupees;

(iv) where such adulteration results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees:

Provided that the court may, for adequate reason to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life:

Provided further that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided also that any fine imposed under this section shall be paid to the victim.”

Similarly section 273 is also proposed to be recast with heavier elements of fine on the basis of proportionality principle. The Law Commission recommends the following words in the existing section

Substitution of new section for section 273. In the Penal Code, for section 273, the following section shall be substituted, namely:-

“273. Sale of noxious food or drink.- Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to

130 The existing section as on date is as under

“273. Sale of noxious food or drink.- Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

In section 273, State Amendments are the same as under section 272
believe that the same is noxious as food or drink, shall be punished, -

(i) where the sale, offer for sale or exhibition for sale of such food or drink, does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where the sale of such food or drink, results in non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where the sale of such food or drink, results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which shall not be less than five lakh rupees;

(iv) where the sale of such food or drink, results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees:

Provided that the court may, for adequate reason to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life:

Provided further that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided also that any fine imposed under this section shall be paid to the victim."

8.8 Conclusion

A victim of a crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. Injustice to victims in terms of reparation would create a constitutional vacuum in legal system. Although, retribution is primary function of law, reparation is the ultimate goal of the law. Hence, there is an all round development of compensatory jurisprudence would over. India has anchored the compensation claims in constitution and Criminal Procedure Code 1973. Sections 357, 357A and 357B of Criminal Procedure Code 1973 hold launching pad of compensation in criminal cases. Though comprehensive provisions enabling the Court to direct payment of compensation have been in existence all through, the experience shows that the provision has rarely attracted the attention of the Courts. Time and again the Courts have been reminded that the provision is aimed at serving the social purpose and should be exercised liberally yet the results are not very inspiring. However, of late, the insertion of section 357A and 357B in Criminal Procedure Code 1973 has triggered the new compensatory regime which is further supplemented by recent pronouncement of Supreme Court in Ankush Shivaji Gaikwad v. State of Maharashtra.(supra) No words can better summarize than that the court in Ward v.
James ¹³¹

“[a]lthough you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected 'years of survival'. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable…”

The reply to this paragraph lies in the legislative trends that are emerging and the judicial expositions the courts are supplementing to compensatory law in India.

¹³¹ (1965) 1 All ER 563