CHAPTER - 5
Chapter-5

JUDICIAL ATTITUDE TOWARDS COMPENSATION TO VICTIMS OF CRIME

5.1 Introduction

"If you would not be forgotten,
As soon as you are dead or rotten,
Either write things worth reading,
Or do things worth writing"

-Benjamin Franklin

'Justice' has been placed at the highest pedestal in the Preamble as compared to other principles i.e. liberty, equality and fraternity. The quality of justice determines the quality of society and of governance. Just as pollution poisons the physical atmosphere, poor justice system poisons the social atmosphere. Equal and fair justice is the hallmark of any civilized society.\(^1\) Rule of Law, which is so important, must run closely to the Rule of Life.\(^2\) Justice in India seems to be discretionary and a decision making process. Judges have been conferred with discretionary powers so that the remaining gaps can be filled by giving justice to the people, who turn to the judiciary with hope of justice in their eyes. But with the growing complexities of society, the desire and quest for justice has become stronger and deeper. The existing criminal justice system focuses its maximum attention on the offender. Efforts are made to either reform or rehabilitate him. In this effort little or no attention is paid to the victim of crime. President Genald Ford in his address to the American Congress in

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1 Singh, Subhash Chandra, 'Criminal Justice: An Overview', Cri.L.J., J.44
1975 said,3 "For too long the law has centred its attention more on the rights of the criminals than on the victims of crime. It is high time we reverse this trend and put the highest priority on the victims and potential offenders."

In India, as far as compensation is concerned, there is neither a comprehensive legislation nor a statutory scheme available for providing compensation by state or offender to victims of crime. The criminal justice system does not provide for a comprehensive payment of compensation to the victims of a crime for any physical, mental, psychological loss or injury. It provides for compensation out of the fine imposed. Interestingly, the Law Commission felt it ‘unwise’ to create a legal right in favour of the victim to join in the criminal proceedings as a third party to avoid mixing up of a civil and criminal proceedings, a confusion of issues and prolongation of the trial.4 Justice should not only be done to the accused and society but also to the victim which, as a whole justifies the justice delivery system. In spite of the loopholes in the legislature pertaining to compensation, the judiciary has been trying to fill the gaps not as a mere formality or duty but considering it as an essential need of the society. The courts are the guardians of the human rights. The common man looks upon judiciary as his protector. The courts have from time to time expanded the facets of human rights and upheld the rights of the individual. The courts have been working as a sentinel in protecting the human rights of the millions of justice hungry people while maintaining the balance amongst the three organs of States i.e. Legislature, Executive and Judiciary.

Judiciary is not only the custodian of the Constitution but is also a sine qua non for the efficient governance of the country. The golden thread of human rights runs through the entire courts of India.5 The judiciary through its various decisions has been giving compensation to the victims of crime depending upon the nature and

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4 Vibhute, I., ‘Victims Of Rape And Their Right To Life With Human Dignity And To Be Compensated: Legislative And Judicial Responses In India’, Indian Bar Review Vol. XXVI (1) 1999, at 62
circumstances of crime. Since there is no fixed evaluation criterion for calculating compensation, judiciary in serious cases has been very liberal in providing compensation to the victims.

The courts like other institutions also belong to the people. They are as much human institutions as any other. The other institutions and instruments of the State may survive by the power of the purse or might of the sword; but not the courts. The courts have no such means or power. The courts could survive only by the strength of public confidence. The public confidence can be fostered by exposing courts more and more to public gaze. Undoubtedly, judiciary is an asset, which has always tried to set good traditions of independence and integrity trying to retain the dignity of the Constitution of India. But it is one of the principles of human justice that justice should not only be done but it should seen to have been done. People have a great interest in knowing what occurs in a court of justice. Lord Atkin, a British Judge, once said, “The path of criticism is a public way- justice is not a cloistered virtue. It should be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary man.” According to Martin Luther King, “Injustice anywhere is a threat to Justice everywhere.” Hence judiciary has been very careful in providing compensation to the crime victims so that law and order can be maintained. Society is the human home, law its discipline and justice its perennial pursuit. Since right without remedy is a mere mirage therefore judiciary has tried its best to provide the best remedy to the victims of crime by not only punishing the offender but also by compensating the victim of crime because justice requires that a person who has suffered must be compensated.

5.2 Case Laws

“The only friend who follows men even after death is justice; for everything else is lost at the same time when the body perishes.”

Transparent justice should also clearly

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6 Mohammed Shahabuddin Vs State of Bihar (2010) 4 SCC 653 at 702
contain the reasons for any particular judgement as the reasons for judgement repose confidence of the people in judiciary especially victims. “Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions but they apply with equal force and in fact, with a greater degree of precision to judicial pronouncements.”

Reason is the very life of law. When the reason of law ceases, the law itself ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty.

5.2.1 Judicial Attitude In Cases Of Sexual Assault:

In Kunhimon Vs State\textsuperscript{10} justifying the necessity of compensation to the rape victim, the Court awarded a fine of rupees 3000 to four accused and to one accused rupees 10000 to be paid as compensation to the rape victim of 17 years along with three and a half years imprisonment.

In Gudalure M. J. Cherian Vs Union of India\textsuperscript{11} compensation of rupees 250000 to rape victim was awarded by the Court for violation of her fundamental right under Article 21.

In Shri Bodhisattwa Gautam Vs Miss Subhra Chakraborty\textsuperscript{12} interim compensation of rupees 1000 was directed to be paid to the victim every month during the pendency of the criminal case.

In State of Punjab Vs Gurmeet Singh\textsuperscript{13} imprisonment of five years and a fine of rupees 5000 was imposed upon the accused for raping a tenth class minor girl.

\textsuperscript{9} CCT Vs Shukla and Brothers (2010) 4 SCC 785 at 791
\textsuperscript{10} 1988 Cri.L.J. 493 Ker
\textsuperscript{11} (1995) SCC 925
\textsuperscript{12} AIR 1996 SC 922
\textsuperscript{13} AIR 1996 SC 1393
Judicial Attitude Towards Compensation To Victims Of Crime

In Hari Kishan and State of Haryana Vs Sukhbir Singh\textsuperscript{14} accused were directed to pay a sum of rupees 50000 to the victim as compensation under Section- 357(3) Criminal Procedure Code.

In Uttrakhand Stir (Rallyst) Case\textsuperscript{15} 24 persons were killed, seven women were raped, 17 were sexually molested and many others were injured and illegally detained as a result of police firing and atrocities committed on a peaceful demonstration for separate state of Uttaranchal in September/October 1994. The Court awarded compensation of rupees 10 lakh each to deceased victims’ family and rupees 10 lakh for rape victim judging the crime of rape equivalent to death; rupees 5 lakh to victims of sexual molestation and rupees 2.5 lakh to rupees 50000 for less serious injuries.

In A. K. Singh Vs Uttrakhand Jan Morcha\textsuperscript{16} the Supreme Court set aside the High Court’s award of rupees 10 lakh compensation to the victims. The Court observed, “Of Course, those who were paid compensation in pursuance of the High Court’s order were not required to refund the money to the State government, but at the same time those who did not get the money, could no more claim the amount from the State government.” Perhaps the amount was too large for the crime.

In Chairman, Railway Board Vs Chandrima Dass\textsuperscript{17} rupees 10 lakh was awarded as compensation to a foreign tourist from Bangladesh who was raped by Railway employees in the Yatri Niwas at Calcutta in 1988. The Court observed it as a violation of her fundamental right under Article-21 of the Constitution which is available to all the people irrespective of their nationality.

State of Karnataka Vs S. Nagaraju\textsuperscript{18} In this case rigorous imprisonment of two years and a fine of rupees 5000 was imposed to be paid as compensation under Section- 357 Criminal Procedure Code.

\textsuperscript{14} AIR 1988 SC 2127
\textsuperscript{15} Sangharsh Samiti Mussorie Vs State of Uttar Pradesh (1996)1 UPLBEC 461 (All)
\textsuperscript{16} AIR 1999 SC 2193
\textsuperscript{17} AIR 2000 SC 988
\textsuperscript{18} JT 2002 (Suppl 1) SC 7
In State of Maharashtra Vs Manik Mohan Gaikwad and Bhausheb Mohan Mali\textsuperscript{19} rigorous imprisonment of ten years and a meagre fine of only rupees 500 was imposed.

In Ankush Vs State of Maharashtra\textsuperscript{20} the trial court convicted the accused under Section- 376 Indian Penal Code and awarded ten years rigorous imprisonment and a compensation of rupees 10000 was awarded under Section- 357(3).

This judgement of trial court was set aside as the offence of rape could not be proved.

In Rajan Vs State represented by The Inspector of Police\textsuperscript{21} the victim of rape was a 17 years old girl. A compensation of rupees 25000 was paid under Section- 357(1) of Criminal Procedure Code.

In K. Sivasankar Vs State by Inspector of Police\textsuperscript{22} the accused was charged with the offence of rape under Section- 376(2) Indian Penal Code. The victim was a girl of five years. A compensation of rupees 25000 was paid to the victim under Section- 357(1) Criminal Procedure Code. The rigorous imprisonment of ten years was converted into the period of sentence already undergone by the accused i.e. two years and four months after conviction. Taking into consideration the age of the accused i.e. 21 years at the time of commission of offence and superficial minor simple injury on the person of the victim girl, leniency was shown on the sentence of the accused.

In Hanamath and Others Vs State of Karnataka\textsuperscript{23} the accused were convicted under Section- 376(2) Indian Penal Code for committing rape upon a girl of 15 years. Rigorous imprisonment of ten years was awarded to the accused and a compensation of rupees 15000 was awarded to the victim under Section- 357. The amount of compensation was reduced from rupees 25000 to 15000 taking into consideration the paying capacity of the accused.

\textsuperscript{19} MANU/MH/1121/2008
\textsuperscript{20} MANU/MH/1032/2007
\textsuperscript{21} MANU/TN/8881/2007
\textsuperscript{22} MANU/TN/8862/2007
\textsuperscript{23} MANU/KA/0600/2005
In *Brijesh and Another Vs State of Haryana*\(^{24}\) the 16 years old victim was gang raped. The accused were sentenced for 10 years of rigorous imprisonment under Section- 376(2)(g) of Indian Penal Code and a fine of rupees 1000 was imposed. The court awarded a compensation of rupees 50000 under Article-21 for violation of her right to life and personal liberty.

*Bhupinder Singh Vs Union Territory of Chandigarh*\(^{25}\) the accused was awarded 3 years of imprisonment under Section- 376 Indian Penal Code and the victim was paid a compensation of rupees one lakh.

In *Ramesh Kumar Vs State of Haryana*\(^{26}\) the victim, a married woman was gang raped. Accused were awarded rigorous imprisonment for life and were ordered to pay a fine of rupees 10000 each to be paid as compensation to the victim.

*Miss Rinchu Vs Government of NCT of Delhi*\(^{27}\)

The accused, a ward boy committed rape upon a nurse of 19 years, in the hospital in such a dastardly manner that in order to stop her from shouting, inserted his hand in her wind pipe to choke the voice, clawed her on the throat. He used criminal force with such intensity that victim's entire right eye ball got detached from the socket and came out. Then he hit her hard on the head and threw her against the wall. He then pushed her down and committed rape on her. The accused was sentenced to life imprisonment and compensation of rupees 7.5 lakh was awarded to the victim.

In *Kamalanantha and Others Vs State of Tamil Nadu*\(^{28}\) the accused was convicted under Section- 376(2)(c) Indian Penal Code for sexually assaulting 13 ashram girls. The accused was sentenced to life imprisonment and a fine of rupees 510000 was imposed on each count i.e. the total amount of the fine imposed was rupees 6130000.

\(^{24}\) MANU/PH/0482/2003
\(^{25}\) MANU/SC/7802/2008
\(^{26}\) MANU/SC/7241/2008
\(^{27}\) MANU/DE/3718/2006
\(^{28}\) MANU/SC/0259/2005
In Dinesh alias Buddha Vs State of Rajasthan the accused was sentenced to 10 years of rigorous imprisonment for committing rape upon an eight years old girl. A compensation of rupees 50000 was awarded by the court to be paid to the victim.

In State of Himachal Pradesh Vs Amrish Kumar the accused, an MBBS student, was convicted under Section- 376(2)(f) Indian Penal Code for committing rape upon a minor girl. He was sentenced to rigorous imprisonment of 10 years and a fine of rupees 10000 was imposed.

In Nitin alias Nitu Ramprasad Bachicha (Dhobi) Vs State of Gujrat a girl of 17 years was gang raped. 10 years of rigorous imprisonment and a fine of rupees 10000 was imposed.

In Rupesh Kumar Vs State of Chattisgarh the accused was convicted under Section- 376 and 511 Indian Penal Code for attempt to commit rape. The sentence of five years was reduced to 3 and a half year and a fine of rupees 5000 was imposed.

In Raman alias Ramu Vs State the victim, a major girl fell in love with the accused. They were having continuous sexual relationship. Her consent was not in consequence of any misconception of fact. The accused was therefore acquitted who had refused to marry her. A female child was born out of the intimacy and sexual relationship. The paternity of the child was also established. The High Court, in order to secure the ends of justice accepted voluntary undertaking and offer of compensation made by accused to pay an amount of rupees 50000 each {i.e. total one lakh} in favour of the victim and the child.

In Chandigarh a German tourist of 20 years was gang raped. The Additional District and Sessions Judge R.S. Attri sentenced all five accused to rigorous life imprisonment. A fine of rupees 27000 was imposed on each of them.

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29 MANU/SC/8078/2006
30 2009 Cri.L.J. 2126 (H P)
31 2009 Cri.L.J. 2330 (Guj.)
32 2009 Cri.L.J. 1882 (Chh.)
33 2009 Cri.L.J. 1915 (Mad.)
34 Hindustan Times dated 29-01-2009
In Rupan Deol Bajaj Vs Kanwar Pal Singh Gill\textsuperscript{35} the accused, a senior police officer was found guilty for gently slapping on the posterior of a lady at a dinner party. A fine of rupees two lakh was awarded as compensation to the victim. 

In Ruchika molestation case\textsuperscript{36} the Additional District and Sessions Judge Gurbir Singh convicted former Haryana Director General of Police, Shambhu Parsad Singh Rathore for molesting a teenaged girl Ruchika Girhotra in 1990 who later committed suicide. Although the six months imprisonment awarded by CBI court was enhanced to eighteen months but no compensation was ordered for victim’s family. The media also highlighted this issue\textsuperscript{36} by publishing the news item “No Compensation for Ruchika’s Family.”

The offences of sexual assault have a devastating effect on the survivors i.e. the victims. It can be considered as a beginning of a nightmare. The aftershocks may include depression, guilt feeling, suicidal tendency, fear etc. In our country, such offences batter-shatter the chances of an unmarried girl to get married. Sexual assault not only amounts to a beastly and brutal attack on the dignity of a woman but also disregards her legitimate control over her body. The victim becomes a living corpse. The trauma doesn’t end here. Then begins the long, tiring and humiliating journey of the criminal justice system in which she is made to answer the questions and queries at length. The shame and the self-consciousness resulting from such questioning may leave an indelible scar on her peace of mind. In spite of all these hardships, if an offence of sexual assault is reported to the authorities, if no or inadequate compensation is provided to a victim, perhaps no one would dare to complain of such offences to the concerned authorities. According to the government of India, there is one rape in every 54 minutes, one molestation in every 26 minutes, one kidnapping/abduction in every 43 minutes and one criminal offence against women in

\textsuperscript{35} (2005) 6 SCC 161
\textsuperscript{36} The Tribune dated 27-05-2010
every 7 minutes. These figures have increased further. Now according to the official record two women are raped in India every hour. Sexual offences have always been the crime least reported, most stigmatised and seldom punished. In an incident on December 12th 2010 an 18-year-old married girl was abducted and raped by four persons in a moving car in Sultanpuri area New Delhi at night after she protested against lewd remarks being passed at her. The victim along with her neighbour was going to fetch her mother from a factory when the incident took place near her house at around 10.20 pm. The four rapists dragged her inside their car to commit the heinous act. There is no end to such crimes. Every 29 minutes a woman is raped somewhere in the national Capital, though most cases of this nature remain unreported. Crime against women has increased considerably for some time. It is not only rape and abduction which are reported routinely. Murders, burglaries, chain-snatchings and many other kinds of crime have been keeping the people virtually terrorised. The fast rising crime graph shows that the fear of law has virtually disappeared. Without doubt, our criminal justice system is mainly to blame. Criminals rarely get exemplary punishment. Then there is a culture of the police spending much of its time and energy on the security of the VVIPs and VIPs, leaving the ordinary citizens to fend for themselves. In such a situation what does the victim get ultimately? The victim in the criminal justice system has to pass through various stages such as; medical-examination, framing of charges, cross-examination, statements of accused, victim, witnesses, trial, conviction or acquittal. The story does not end here. Then begin the stages of appeals till the final delivery of the judgement. This researcher sent an opinion on the said issue to The Tribune focusing on payment

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38 The Tribune dated 18-12-2010
39 The Tribune dated 13-12-2010
40 The Tribune dated 14-12-2010
of interim as well as final compensation to the victims of such crimes which was accepted and published in the Letters to the Editor section.\textsuperscript{41}

Hence keeping in view all these factors in mind the judiciary must try its best to help the victim through awarding adequate final as well as interim compensation to the victims of sexual assault.

5.2.2 Judicial Attitude In Cases Of Murder:

Guruswamy Vs State of Tamil Nadu\textsuperscript{42}
The accused was found guilty under Section-302 Indian Penal Code and was sentenced to death by the High Court. The sentence was reduced to life imprisonment and a fine of rupees 10000 was imposed to be paid to the heirs of the deceased.

Sarwan Singh Vs State of Punjab\textsuperscript{43}
A person died as a result of dispute amongst brothers in a family. A fine of rupees 3500 was imposed on each accused to be paid to the widow of the deceased as compensation.

Venkatesh Vs State of Tamil Nadu\textsuperscript{44}
Compensation of rupees 10000 was given to the widow and unmarried daughter of the deceased.

Palaniappa Gounder Vs State of Tamil Nadu\textsuperscript{45}
Compensation of rupees 20000 awarded by the High Court was reduced to rupees 3000 by the Apex Court.

Brindavan Sharma Vs State (NCT of Delhi)\textsuperscript{46}
This case was a milestone as the court thought it obligatory both morally and legally to take care of the victims of crime and punishment. The father of three children killed the mother making them orphans. Father was willing to give all his movable and immovable property to the children but the court was not satisfied with it. It went

\textsuperscript{41} See Appendix-III for the text of opinion published in The Tribune dated 15-12-2010
\textsuperscript{42} AIR 1979 SC 1177
\textsuperscript{43} AIR 1978 SC 1525
\textsuperscript{44} 1993 Cri.L.J. 61 (SC)
\textsuperscript{45} AIR 1977 SC 1323
\textsuperscript{46} MANU/DE/9343/2006
ahead and suggested to one Vinod, a philanthropist to pay a monthly assistance of rupees 2100 to these children.

**State Vs Sidhartha Vashisht and Others**

Also known as Jessica Lal case in which the accused Sidhartha alias Manu fired in the late midnight hours at a bartender for non-service of liquor, was ordered to pay a compensation of rupees 50,000 to the dependants of the victim and was sentenced to life imprisonment. The order was upheld by the Supreme Court in **Sidhartha Vashisht alias Manu Sharma Vs State (NCT of Delhi)**

**Sukhdev Singh Vs State of Punjab**

In this case the Supreme Court increased the fine amount of rupees 2000 imposed on the offender to rupees 10000 so that the widow and the children of the deceased victim may be compensated.

**Balraj Vs State UP**

The court held that power to award compensation is not ancillary to other sentences but in addition thereto, and directed the accused to pay rupees 10000 by way of compensation to the widow of the deceased.

**Giani Ram Vs State of Haryana**

In this case the court reduced the period of sentence already undergone by the offender but directed the accused to pay a fine of rupees 20000 as compensation to the widow of the deceased.

**Baldev Singh Vs State of Punjab**

The Supreme Court, after considering the nature of crime, that it is a property issue which ended in the killing of the victim, the fact that the accused are in a position to pay, ordered a compensation of rupees 35000 each to the victim’s wife and children.
**Ningappa Yallappa Hosamani Vs State of Karnataka**\(^{53}\)
Compensation for murder was reduced from 50000 to 20000.

**Trimbak Vs State of Maharashtra**\(^{54}\)
There was a sudden quarrel which resulted in a person’s death. The complainant was awarded a compensation of rupees 2000.

Murder is terribly exhausting.\(^{55}\) Not only the victim suffers during his lifetime but even after his death the members of his family carry the burden of sufferings and pains all through their lives. Though a dead victim cannot be given a new life but the assistance of adequate compensation provided to the kin of the victim can definitely help in mitigating their hardships and hope for a better and a dignified life.

In **Parasnath Tiwari Vs Central Reserve Police Force**\(^{56}\) compensation on account of mental agony suffered by the parents of the victim were awarded. The victim was a CRPF constable who was killed accidentally by a fellow constable due to mistaken identity as an intruder. The parents were not intimated of the cause of death and agony was also caused to them by sending the photograph of a wrong person. This agony continued for twenty years. Besides, they also suffered financial loss as deceased’s earnings were source of sustenance to the family. Moreover, loss of the son created a void in the family. Compensation of one lakh awarded by the High Court was enhanced to rupees two lakh by the Supreme Court.

In **Santosh Kumar Singh Vs State through CBI**,\(^{57}\) the famous Priyadarshini Mattoo case of rape and murder, no amount of compensation was awarded to the deceased victim’s family. Moreover, the death sentence awarded by the High Court was commuted to life imprisonment by the Supreme Court.

**5.2.3 Judicial Attitude In Cases Of Riots/Tragedies:**

A number of incidents of riots and tragedies had been taking place in India. They are still happening. Both the government and the judiciary have been taking various steps

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\(^{53}\) MANU/SC/0972/2009  
\(^{54}\) MANU/SC/7284/2008  
\(^{55}\) Albert Camus accessed from www.giga-usa.com/quotes/topics/murder_t001.htm on 12-09-2009  
\(^{56}\) (2010) 3 SCC 111  
\(^{57}\) MANU/SC/0801/2010
to provide relief to the victims and their kin in the form of rehabilitation or compensation. Following riots and tragedies have been chosen for the study:

5.2.3.1 Delhi Riots, 1984

In 1984 anti-sikh riots, in which thousands of persons (officially the number of killings was placed at 2733, almost all of them sikhs) lost their lives a day after the Prime Minister Mrs. Indira Gandhi’s assassination on 31st October. A compensation of rupees 7 lakh has been provided by the State but still most of the families are yet to get compensation. Out of about rupees 714 crore, the Prime Minister announced as relief on January 16, 2006, only about rupees 419 crore have so far been handed over to the victims.\textsuperscript{58} Inspite of announcement of relief package for them, the victims are not getting the compensation due to the administrative dilly-dallying. As a result victims are knocking at the doors of the Court in order to obtain their due share from the government. Apart from the monetary compensation, the council of ministers decided on 2nd December, 2008 to allot booths and houses to the victims. The policy was amended so as to allot land for 327 booths at Ludhiana and 200 each at Mohali and Patiala at 50% of the last auction price to the eligible riot victims by the Punjab Urban Development Authority in consultation with the deputy commissioners concerned….. to allot 364 government staff quarters situated at Ludhiana…. at the price prevailing in the year 1991-92.\textsuperscript{59} Home Minister P. Chidambaram made it clear that the Delhi government had paid rupees 154.53 crore as enhanced ex gratia relief to the victims.\textsuperscript{60} Inspite of setting up of three Commissions and eight Committees, relief has not reached the victims. “…. the report of Justice Nanavati Commission….. to release an ex-gratia amount of rupees 3.5 lakh in each case of death during the riots, a large number of them had not received the grant.”\textsuperscript{61} The cases are still pending in the court for the release of compensation announced by the government.

\textsuperscript{58} The Tribune dated 05-04-2008
\textsuperscript{59} The Tribune dated 21-01-2009
\textsuperscript{60} The Tribune dated 05-08-2010
\textsuperscript{61} The Tribune dated 03-11-2008
In *S.S. Ahluwalia Vs Union of India* the Supreme Court held that the state is liable to pay compensation to the family of the sikhs killed during riots in the wake of the assassination of Mrs. Indira Gandhi on 31st October 1984, as their life has been extinguished in clear violation of Article 21 of the Constitution.

### 5.2.3.2 Bhagalpur Riots 1989

The Union Cabinet has granted rupees 3.5 lakh as compensation to the kin of each of the 844 people killed in the horrendous Bhagalpur riots of 1989. During the later part of the British rule over India, the religious processions started causing Hindu-Muslim clashes. The government instead of banning it altogether, prescribed the routes for the taking of processions in such a manner that the procession of one community could not pass through localities having the concentration of the other community. Around 1985, a section of Hindus insisted on taking out processions through routes other than the traditional ones fixed earlier. The Ram Shilla procession in Bhagalpur (Bihar) on 24th October, 1989 fully illustrates the desire of the processionists to terrorise Muslims by taking a sensitive route.

The Ram Shilla processions were to start from different places and all were to meet at Gaoshala. The procession which started from Hanuman Garhi in Nath Nagar Mohalla of Bhagalpur opted for a sensitive route to reach Gaoshala. As a result riots broke out in the wake of this procession. Killed 918 (876 Muslims), untraced 106; wounded 269; houses burnt to ashes 6200 (6000 of Muslims); houses looted 3000; shops looted 891; looms (other than power looms) destroyed 3000 (almost all of Muslims); damaged Mosques 42; Tombs 10; Madarsas 6; and Imambadas 6. Comparing the gruesomeness of the riots and quantum of relief given to the victims is not a balanced one. In July 2007, 14 accused were sentenced to life imprisonment. Very few people have been punished for the Bhagalpur riots so far. Chief Minister Nitish Kumar....

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62 AIR 2001 SC 1309
63 The Tribune dated 14-06-2008
64 Ansari, Iqbal A., *Communal Riots-The State And Law In India*, (1997) Qazi Publishers, B-35(Basement), Nizamuddin West New Delhi-110013 at 76
65 Ibid 77
66 The Tribune dated 14-06-2008
granted a monthly compensation of rupees 2000 to the kin of the riot victims only from 2007.\textsuperscript{57}

5.2.3.3 Uphaar Cinema Tragedy 1997

On 13-6-1997, a devastating fire occurred at Uphaar Theatres New Delhi, owned by Ansal Brothers. 59 persons were killed and over a hundred were injured due to suffocation in the cinema hall when a fire in the faulty transformer turned the hall into a gas chamber with no safe exits.

In \textit{Ansal Theatres and Club hotels Pvt. Ltd. Vs State and Another}\textsuperscript{68} the court held that the friends and relatives of victims of scene of macabre organised themselves to see that the culprits are brought to justice and families of victims get compensation. They formed an association and named it Association of Victims of the Uphaar Tragedy (AVUT). By way of writ filed by AVUT, i.e. the petitioners, the owners of the cinema were ordered to pay rupees 18 crores as compensation to the families of dead and to the surviving victims. As far as punishment is concerned the Delhi High Court reduced the jail term of Sushil Ansal and and Gopal Ansal from two years to one year.\textsuperscript{69}

5.2.3.4 Godhra Riots 2002

the Gujarat violence which describes a series of communal riots between Hindu and Muslim communities that took place in Gujarat in 2002, presents a pathetic picture of victims of crime who were offered an initial compensation of rupees two lakh to the families of those who died in Godhra train fire and one lakh to families of those who died in subsequent riots. Subsequently the centre decided to give rupees seven lakh as compensation to nearly five thousand post-Godhra riot victims in Gujarat.\textsuperscript{70} The communal riot in Gujarat broke out after the tragic incident of burning a bogey of the Sabarmati Express on February 27\textsuperscript{th}, 2002 at Godhra Railway Station in Gujarat. In this incident over 70 Hindu sadhus were killed and its aftermath saw the horrific

\textsuperscript{57} Ibid
\textsuperscript{68} MANU/DE/0745/2003
\textsuperscript{69} The Tribune dated 22-12-2008
\textsuperscript{70} www.indianexpress.com/story/1738.html
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incident of communal violence in Gujarat. Shah-Nanavati Commission and U.C. Banerjee Commission and various committees were set up to investigate the Godhra train burning incident.

In Union of India Vs Nilkanth Tulsidas Bhatia and Seven Others71 a compensation of rupees 20000 was awarded to the victims who were travelling in the coach which was set on fire by a violent mob at Godhra resulting in death and injuries to many passengers.

5.2.3.5 Bilkis Bano’s Case
On March 3rd, 2002, three and a half year old daughter of Bilkis Yakub Rasool Bano was snatched from her arms and her skull was smashed to the ground. The family was killed except her husband who was not at home at that time. Bilkis was raped, left for dead, hid in a cave and ultimately landed up in the Godhra relief camp where several thousands other Muslims were present. On 18th January Additional Sessions Judge U. D. Salvi convicted the accused but no compensation was awarded.72

5.2.3.6 Bhopal Gas Tragedy 1984
On the intervening night of December 02-03 1984, methyl isocyanate gas leaked from Union Carbide India Limited plant at Bhopal killing about 15000 people and injuring over 5 lakh leaving them sick and passing the harmful effects to the next generations. It was the world’s worst industrial disaster that killed and maimed thousands in Bhopal. After a long wait of 26 years, on 07th June 2010, Chief Judicial Magistrate Mohan Tiwari pronounced the judgement and awarded two years of imprisonment to the Union Carbide India Chairman, Keshub Mahindra and seven others for causing death by negligence under Section-304 A and for gross negligence under Section-336, 337 and 338 of Indian Penal Code. All the convicts were also awarded a fine of rupees one lakh each under Section-304(a), imprisonment of three months and a fine of rupees 250 under Section-336, imprisonment of six months and a fine of rupees 500 under Section-337 and imprisonment of two years and a fine of rupees 1000

71 MANU/GJ/0766/2006
under Section-338; all the sentences to run concurrently. All the convicts applied for bail immediately after the sentencing and were granted relief on a surety of rupees 25000 each. The main accused Warren Anderson, the then Chairman of the Union Carbide Corporation of USA, who lives in United States is still an absconder as he did not subject himself to trial. As far as compensation is concerned it is not only delayed but also meagre. The total compensation which has been disbursed is rupees 1548.93 crore. The tabular history of compensation granted in this case is mentioned below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial compensation demand from Union Carbide Corporation (UCC), USA, the parent company of UCIL</td>
<td>US $ 3.3 billion</td>
</tr>
<tr>
<td>Compensation paid by UCC in February 1999</td>
<td>US $ 470 million (Just 14.24% of the original demand)</td>
</tr>
<tr>
<td>Supreme Court orders release of full amount</td>
<td>Rupees 1500 Crore with interest: July 2004</td>
</tr>
<tr>
<td>Total compensation cases</td>
<td>10,29,517</td>
</tr>
<tr>
<td>Cases awarded</td>
<td>5,74,336</td>
</tr>
<tr>
<td>Cases rejected</td>
<td>4,55,151</td>
</tr>
<tr>
<td>Total compensation disbursed</td>
<td>Rupees 1548.93 Crore</td>
</tr>
</tbody>
</table>

73 The Tribune dated 08-06-2010
74 Ibid
75 Union Carbide Corporation Limited Vs Union of India (2006) 13 SCC 321
The Union Law Minister M. Veerappa Moily was also disappointed as the victims didn’t get justice. He said, “A stand-alone law was required to deal with incidents of such scale and dimensions to ensure that there was no delay in investigating the case, bringing the culprits to book and payment of compensation to the victims.” The victims of the gas tragedy and the kith and kin of the deceased have a long battle ahead. Most of them have got a meagre compensation so far. The killer gas has hit the survivors in their genes. It may take many more years for the judiciary to pronounce the last word in the case.

The timeline of the tragedy is shown below:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>3rd December 1984</td>
<td>Toxic methyl isocynate gas releases from Union Carbide India’s Limited’s Pesticide plant killing about 15000 people, injuring at least 5 lakh leaving millions sick and passing harmful effects to the next generations.</td>
</tr>
<tr>
<td>4th December 1984</td>
<td>Warren Anderson, Chairman of Union Carbide, among nine people arrested, freed on bail upon a promise to return.</td>
</tr>
<tr>
<td>February 1985</td>
<td>Indian government files claim for US $ 3.3 billion from Union Carbide in US court.</td>
</tr>
<tr>
<td>1986</td>
<td>US District Court judge transfers all Bhopal litigation to India</td>
</tr>
<tr>
<td>December 1987</td>
<td>CBI files chargesheet against Warren Anderson and other accused.</td>
</tr>
<tr>
<td>February 1989</td>
<td>Non-bailable arrest warrant against Anderson. Indian government and Union Carbide strike an out-of-court deal and compensation US $ 470 million is given by Union</td>
</tr>
</tbody>
</table>

76 The Tribune dated 08-06-2010
77 Ibid
Judicial Attitude Towards Compensation To Victims Of Crime

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>February-March 1989</td>
<td>Writ petitions in Supreme Court against the settlement</td>
</tr>
<tr>
<td>February 1992</td>
<td>Anderson declared fugitive for ignoring summons.</td>
</tr>
<tr>
<td>November 1994</td>
<td>Union Carbide allowed by the Supreme Court to sell stake in UCIL to McLeod Russell (India) Ltd. of Calcutta.</td>
</tr>
<tr>
<td>September 1996</td>
<td>Supreme Court dilutes charges against Indian officials of UCIL.</td>
</tr>
<tr>
<td>August 1999</td>
<td>Union Carbide announces merger with US based Dow Chemicals.</td>
</tr>
<tr>
<td>February 2001</td>
<td>Union Carbide refuses to take responsibility for UCIL’s liabilities in India.</td>
</tr>
<tr>
<td>August 2002</td>
<td>Charges of culpable homicide maintained against Anderson by Indian court.</td>
</tr>
<tr>
<td>June 2004</td>
<td>India’s extradition request of Anderson rejected by USA.</td>
</tr>
<tr>
<td>July 19th 2004</td>
<td>Supreme Court orders to pay out more than 15 billion rupees, part of the original US $470 million.</td>
</tr>
</tbody>
</table>

78 Supreme Court allowed the CBI’s curative petition to review its 14 years old decision in which it had diluted the charges against seven accused. The Tribune dated 02-09-2010
Judicial Attitude Towards Compensation To Victims Of Crime

June 07th 2010

All eight accused in the case, including the then UCIL Chairman, Keshub Mahindra convicted by a court

The Group of Ministers headed by Home Minister P. Chidambaram on Bhopal gas tragedy in its report submitted to the Prime Minister on 21st June 2010 has recommended an enhanced package of rupees 1266 crore relief package to the victims and their families. The compensation package is as below:79

<table>
<thead>
<tr>
<th>Rupees 10 Lakh</th>
<th>For the kin of those dead</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rupees 5 Lakh</td>
<td>To those with permanent disability</td>
</tr>
<tr>
<td>Rupees 2 Lakh</td>
<td>To those suffering from cancer or renal failure</td>
</tr>
<tr>
<td>Rupees 1 Lakh</td>
<td>To those with temporary disability</td>
</tr>
</tbody>
</table>

But, this fresh amount will be deducted from the compensation amount already given to the victims in the past. Since it is a tragedy unprecedented in its magnitude, the government of Madhya Pradesh and the central government must consider the plight of the victims generously. The recommendations of the said report of the Group of Ministers have been accepted by the government. On 18th November 2010 Union Cabinet gave its approval for the sanction of rupees 71.28 crore as ex-gratia payment for the Bhopal gas victims. This ex-gratia payment will be made to an additional 1703 cases of permanent disability. These victims would be given five lakh each. For 1783 cases of permanent disability. These victims would be given five lakh each.

79 The Tribune dated 25-06-2010
Judicial Attitude Towards Compensation To Victims Of Crime

cases of temporary disability one lakh to each would be paid.\textsuperscript{80} The central
government filed a fresh petition before the Supreme Court seeking an eleven fold
increase in compensation of 470 million dollars (Rupees 705 crore) awarded earlier
for the victims. The court had taken the fatalities at 3000 while passing the verdict in
1989. The figure has now been revised to 5300 dead over 40000 crippled. The
number of minor injuries is now placed at 5, 27, 894 as against 50,000 estimated by
the apex court earlier.\textsuperscript{81}

5.2.3.7 Dabwali Tragedy 1995

On 23\textsuperscript{rd} December 1995 a fire accident occurred during the annual day function of
DAV School at the Rajiv Marriage Palace in Dabwali town on the Haryana-Punjab
border. The ‘pandal’ was made of synthetic material that fed the fire. The entry/exit
door was of 10*12 feet size. 446 persons including school children died. The majority
of them were children and women who were burnt alive. The tent of the illegal
marriage palace - which flouted all fire safety norms - had caught fire and collapsed
on over 1,000 people. The tragedy left 20 children disabled for life and 200 others
with burn injuries. A Commission was set up in January 2003. Compensation of
rupees 2 to 16 lakhs to 88 persons was awarded. Victims were demanding
enhancement in compensation. In March 2009 Justice T.P. Garg, a one man
Commission determined the compensation from 44000 to 16 lakhs to over 400
victims including 172 children and their parents and teachers.\textsuperscript{82} In this incident,
Supreme Court directed the DAV School to pay interim compensation of rupees 10
crores towards the rehabilitation of 446 persons including 230 children, killed in the
fire tragedy.\textsuperscript{83}

\textsuperscript{80} The Tribune dated 19-11-2010
\textsuperscript{81} The Tribune dated 06-12-2010
\textsuperscript{82} Hindustan Times dated 11-08-2009
\textsuperscript{83} Deccan Herald dated 16\textsuperscript{th} March 2010 accessed from www.deccanherald.com/content/58273/
dabwalli-fire-SC-directs-dav.html on 29-05-2010

196
In Dabwali Fire Targedy Victims Association Vs Union of India\textsuperscript{84} the Division Bench of Chief Justice Tirath Singh Thakur and Justice Kanwaljit Singh Ahluwalia enhanced the compensation for victims from 3 crores to over rupees 11 crores. The girls who suffered disability between one and five per cent, the total amount of compensation was rupees 3 lakhs for disability in addition to rupees 2 lakhs for loss of marriage prospects i.e. 5 lakhs in total. For boys, the compensation for the loss of prospects of marriage was rupees 1 lakh.

The Haryana government and two agencies under it have been directed to share and pay 45 per cent of the compensation awarded.\textsuperscript{85} The one man Commission headed by Justice T.P. Garg has been subjected to certain modifications and directions made by the court in the judgement. Moreover, treatment for the burn injury sustained by the injured victims is to be provided free of cost and if the same is not available in the state run hospitals in Haryana the same is to be arranged in Post Graduate Institute of Medical Education and Research, Chandigarh or at the All India Institute of Medical Sciences, New Delhi. The court passed the following orders:

1) The amounts determined in each one of the cases referred to in the body of this judgement are hereby awarded in favour of the claimants with interest at the rate of 6% per annum w.e.f. date of the filing of the claim petition before the One Man Commission.

2) Out of the total amount payable to each one of the claimant, the State of Haryana shall pay 45% of the total amount of compensation awarded in each one of the cases dealt with by us with liberty to recover 15% each of the amount so paid from Dakshin Haryana Bijli Vitran Nigam and Municipal Committee, Dabwali. The balance 55% of the amount awarded shall be payable by respondents No.4, 5 and 9 jointly and severally.


\textsuperscript{85} The Haryana Government sanctioned rupees 16.77 crore for disbursement among victims as per the orders of the Punjab and Haryana High Court. The state government had earlier released a sum of rupees 4.49 crore, making the total amount released so far to rupees 21.26 crore. Accessed from www.tribuneindia.com/2010/20100308/haryana.htm#1 on 10-06-2010
3) The apportionment for the enhanced amount of compensation among the claimants shall be in the same ratio as recommended by the One Man Commission subject only to modifications and/or further directions indicated by us in the body of this judgement. We make it clear that in cases where we have directed deposit of the amount of compensation in the name of minor claimants, the same shall be disbursed to the claimants in case they have already attained majority.

4) The amount awarded together with interest shall be deposited by the respondents in the ratio indicated in para 2 above with the Additional Civil Judge (Sr. Divn.), Dabwali for disbursement among the claimants within a period of 4 months from today, failing which the rate of interest awarded on the principal amount held payable, shall stand enhanced from 6% to 10% per annum from the date the period of 4 months expires till actual payment is made.

5) In the event of any default by the respondents in the making of the payment, the claimants shall be free to not only institute proceedings for the breach of the direction of this Court but also approach the Additional Civil Judge (Sr. Divn.), Dabwali for effecting recovery of the amount remaining unpaid.

6) The Additional Civil Judge (Sr. Divn.), Dabwali, shall, in any such event, initiate proceedings for recovery of the amount that remains unpaid as if the same was recoverable as fine and/or as arrears of land revenue for which purpose he shall be competent to issue certificates and instructions to the Collector(s) concerned for recovering the amount outstanding.

7) Treatment for the burn injury sustained by the injured victims shall be provided free of cost. In case the same is not available in the State-run hospitals in Haryana, the same shall be arranged in Post Graduate Institute of Medical Education and Research, Chandigarh or at the All India Institute of Medical Sciences, New Delhi upon satisfaction by the Director, Health Services, Government of Haryana that such treatment is essential but cannot be provided in the State-run hospitals.

8) Liberty is given to the petitioners to seek further clarification of this order at any stage, should the need so arise.
9) The costs involved in the setting up of the Commission from beginning till end shall be borne by the State of Haryana.

10) The parties shall bear their own costs in this Court, and in the proceedings before the One Man Commission.

The Supreme Court directed the DAV managing committee to pay an interim compensation of rupees 10 crore towards the rehabilitation of the fire victims. The apex court directed that the interim compensation be paid by the committee within six weeks. A bench headed by Chief Justice K G Balakrishnan also issued notice and sought response from the Dabwali Fire Tragedy Victims’ Association on a petition filed by the DAV managing committee.  

Hence the courts have been very active in providing enhanced compensation to the victims, whether of riots, crime or tragedies. “That court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fullness of experience, be found to serve another generation badly, and which discards the old rule when it finds that another rule of law represents what should be according to the established and settled judgement of society.”87 “… Every new decision… in every new situation… is a development of the law: Law does not stand still. It moves continually. Once this is recognized, then the task of the judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason, laying brick on brick without thought to the overall design. He must be an architect… thinking of the structure as a whole… building for society a system of law which is strong, durable and just. It is on his work that civilized society itself depends.”88

5.2.3.8 Zahira Sheikh’s Case

On 1st March 2002, a 17 year old girl Zahira and her family were hounded by a riotous mob baying for blood at Best Bakery in Hanuman Tekri, Vadodra during the

86 www.zeenews.com/news611365.html accessed on 10-06-2010
88 Ibid
Judicial Attitude Towards Compensation To Victims Of Crime

Gujarat riots. Sessions Court of Mumbai convicted 9 of the 17 accused facing retrial in the Best Bakery case in the special court at Mazgaon. Since Zahira was convicted for giving false evidence compensation was not awarded to her. The judge provided a compensation of rupees 50,000 for the wife of Kausar Ali, one of the 14 victims of Best Bakery massacre. The Supreme Court upheld the decision in Zahira Habibullah Sheikh and Another Vs State of Gujrat and Others.

5.2.3.9 Nandigram Violence 2007

In January 2007, Haldia Development Authority had issued a notice on land acquisition for a proposed chemical hub as part of a Special Economic Zone (SEZ) project in Nandigram in East Midnapore district West Bengal. The villagers had united and as a result of the protests, on 14th March 2007, 14 people were killed in police firings and many others were injured. The violence continued. The police action was unconstitutional and unacceptable. The government was directed to pay rupees 5 lakh each to the nearest kin of those killed, rupees 1 lakh to each injured person and rupees 2 lakh to each woman raped.

In Association for Protection of Democratic Rights Vs State of West Bengal and Others, the court directed the state government to pay compensation of one lakh to the persons who were injured in Nandigram violence. A compensation of rupees 2 lakh was awarded to the victims of rape. An amount of rupees 5 lakh was awarded who had died as a result of indiscriminate police firing on 14th March 2007. A riot is at bottom the language of the unheard. The brutal killing of the innocent people keep reminding us of their sleepless nights, foodless days, 24 hours trauma, unending sufferings, indelible horrible memories of the past. At the same time it also gives a small ray of hope to the victims that their sufferings might come to an end one day. This small hope of the victims, if given due care can fill the void and can replace the
darkness with brightness. This is possible by providing adequate relief to the victims. We cannot change the past but something can be done in the present to improve the future. Adequate steps taken today can help in reducing the fire burning in the hearts of the victims against the system. This fire can be mitigated by letting the victims feel that they are not forgotten and they are still needed by the society. Adequate compensation can certainly give birth to a new hope of life to the otherwise living corpses. Past cannot be undone but right steps taken today will not only help in preventing the future tragedies but will also improve the future. Adequate compensation will work as a balm on the wounds of the victims and will also help them regaining their lost will to live.

5.3 Socio-Legal Implications

Crime is a major social problem which disturbs peaceful living and diminishes the quality of life. Victimisation results in physical, psychological and emotional harm to the victim which further results in a stressful life. Loss of near and dear ones or sexual assault cause indelible and permanent scars and trauma on the minds of the victims, besides leading to financial crises which are most of the times beyond recovery.

In every crime there are at least two victims:

a) Society

b) Actual victim

The ‘society’ is given justice when the offender is punished as he is responsible for disturbing the equilibrium of social order.

The ‘actual victim’ is the primarily affected person who suffers in life, limb or property.

The society is given the primary status whereas the victim is given a secondary status by reducing his role in the criminal justice system merely to that of a witness. Whereas punishment provides the public face, victims’ compensation is the private face of the same coin. 95 According to the theory of ‘social contract’ an individual is

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bound to society only by his consent and therefore made society responsible to him as well as the reverse. The main function of the state is to protect the life and limbs of its people. Punishment of the offender by state is justified on the ground that the offender has broken a contract which he had made with the society. Therefore it can be said that state is bound to compensate the victim on the ground that state has broken a contract by not protecting the life and limbs of its subjects. Today’s violations are tomorrow’s conflicts. In earlier times offenders were always asked to compensate the victims in proportion to the injury caused. With the development of formal criminal justice system, the state took the responsibility of protecting the people and preserving peace in the society. Due to this the focus of justice shifted on establishing the guilt of the accused and punishing him, sidelining the victim whose role was reduced to merely that of a witness during trial. The victim had to satisfy himself with the punishment of the offender. Not much significance was given to payment of compensation. Gradually the importance of compensation was realised keeping in view the hardships suffered by the victims. The Indian Judiciary, inspite of absence of any specific legislation on compensation, had been trying its best to protect the rights of the victims by not only punishing the wrong doer but also compensating the victim. The judiciary has also used its inherent powers to provide compensation to the victims as well as their rehabilitation.

5.3.1 Compensation In Case Of Sexual Assault As Violation Of Fundamental Rights Under The Constitution- An Analysis

[A] In Shri Bodhisattwa Gautam Vs Miss Subhra Chakraborty97 Subhra was a student of Baptist College, Kohima. The accused, Bodhisattwa was a lecturer in that college from April 1989 till his resignation 27-01-1995. On 10-06-1989 the accused visited the complainant’s residence for the first time and there after he often used to visit her house and thus there developed a love affair between them since 1989. The accused dishonestly procured sexual intercourse with her by giving false assurance of

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97 AIR 1996 SC 922
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marriage. As a result the complainant got pregnant in September 1993. Being worried about her pregnancy she created pressure upon him to marry her. The accused tactfully tried to defer his marriage by saying that he was waiting for his parents’ formal consent and asked her to co-operate till he got a government service. As a result there was a quarrel and he lastly opined for secret marriage to avoid social gathering as he was waiting for his parents’ permission. She agreed to it and they got married on 20-09-93 in front of the God he worshipped in his residence by putting vermilion on her forehead and accepted her as his lawful wife. But he kept insisting and pressurizing her to abort the child as the birth of the baby would be a barrier to convince his parents to accept her as their daughter-in-law. The complainant failed to understand his mischievous plan and consented to undergo operation and aborted in October 1993. She submitted herself completely in good faith to the accused as an ideal wife. She again got pregnant in April 1994 but was again forced to undergo abortion. The complainant was thus exploited in a very pre-planned way. On hearing the message that the accused would go to Silchar to join there as a lecturer she requested him to take her along with him but was refused. All her efforts ended in futility. She then registered a criminal complaint against him under Section-312/420/493/496/498-A, Indian Penal Code. In the meantime the accused filed a petition in Gauhati High Court under Section-482 Criminal Procedure Code for quashing the proceedings but the High Court on 12-05-95 dismissed the petition compelling him to approach the Supreme Court by way of special leave petition which was also dismissed by the Supreme Court on 20-10-1995 and by taking suo motu notice to the facts he was issued a notice as to why he should not be asked to pay reasonable maintenance per month to the respondent during the pendency of the prosecution proceedings against him. He replied that his services had been terminated by the college on 11-11-1995 and had not received any salary since 16-07-95. The Court observed that the jurisdiction enjoyed by the Apex Court under Article-32 is very wide. It has the jurisdiction to enforce fundamental rights by issuing various writs. Fundamental Rights can be enforced even against private bodies and
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individuals. The right to approach the Supreme Court for enforcement of fundamental rights under Article-32 is itself a fundamental right. The Supreme Court can even declare an Act to be ultra vires and has power to award compensation for violation of fundamental rights. An interim compensation of rupees 1000 per month was awarded till the completion of the case. The Court inter alia suggested:

- To set up Criminal Injuries Compensation Board keeping in view the Directive Principles of State Policy under Article-38 (1).
- The Court also laid down that compensation shall be awarded by Court on conviction and by the said Board whether or not a conviction has taken place. The Board will take into account the pain, suffering, shocks as well as loss of earnings due to pregnancy and the expenses of child but if this occurred as a result of rape.

The Court further observed that if the court has the jurisdiction to award compensation at final stage, there is no reason to deny interim compensation which shall be treated as part of the overall jurisdiction of courts trying the offences of rape.

The court was very right in awarding interim compensation to the victim.

The court observed certain defect in the present system:

1. Complaints are handled roughly and are not given such attention as is warranted.
2. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience.
3. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself.
4. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had had to suffer as a result of the rape itself.

In the light of the above observation of Supreme Court, in India, even if a male is wrong, the indictment is thrusted upon a woman. It is she who suffers ultimately. In cases of sexual assault, to save themselves from the social stigma or poverty cases are not reported and if reported not registered and if registered are suppressed by the dominants. If, inspite all these hardships a case is brought before the court, the complex and complicated procedure, embarrassing and humiliating questions by the
defence and the prosecution leave no scope in making the victim feel hopeless and helpless. She undergoes the torture of rape once again not physically but mentally and psychologically. After undergoing all through these stages, if no compensation is provided in the last or the quantum of compensation provided is very less, then the very concept of justice seems to be a futility and useless.

[B] Chairman, Railway Board and Others Vs Mrs Chandrima Das and Others

This case revolves around ‘Hanuffa Khatoon’ who was a Bangladeshi national. She had arrived at Howrah Railway Station on 26-02-1998 to avail Jodhpur Express for paying a visit to Ajmer Sharif. Since her name was in the waiting list she approached a Train Ticket Examiner for confirmation of berth and was asked to wait in the Ladies’ Waiting Room. Two unknown persons approached her, took her ticket and returned it after confirming reservation. The lady took her meal in a restaurant and came back to the waiting room. After some time, two persons came to her and asked to take rest in Yatri Niwas. On being certified by the lady attendants engaged on duty at Ladies’ waiting room about their credentials, she accompanied them to Yatri Niwas. Another person joined them on the way to Yatri Niwas. The room to which she was taken, two persons were already waiting there. One person bolted the door from outside and the remaining four took liquor inside the room and also compelled her to consume it. She was brutally humiliated. After recovering from the shocking state she managed to escape and came back to the platform where she met a person who pretended to be her saviour. He requested her to accompany him to his residence to rest for the night with his wife and children as the Jodhpur Express on the following morning. He took her to a rented flat of his friend where she was raped and when she resisted violently, her mouth and nostrils were gagged intending to kill her and as a result she bled profusely. On being informed by the landlord of the building following her hue and cry raised by her, she was rescued by the police. The case was registered. Mrs. Chandrima Das, a practising advocate of the Calcutta High Court

98 AIR 2000 SC 988
filed a petition under Article-226 inter alia claiming compensation for the victim. An appeal was filed in the Supreme Court concerning the following issues:
1. Whether the remedy lay in the domain of private law or public law.
2. The locus standii of the respondent Mrs. Chandrima Das in filing the petition.
3. Whether the commission of offence makes the union of India vicariously liable for the offence.
4. Whether a foreign national can claim fundamental rights under the Constitution which are available to citizens and not aliens.

As to first issue the court held, it is not a mere matter of violation of an ordinary right of a person but the violation of fundamental rights which is involved. She was a victim of rape, which is a crime not only against person of a woman, but a crime against the entire society. Rape is an offence which is violation of the fundamental right of a person guaranteed under Article-21 of the Constitution.99 Essentially, under public law, it is the dispute between the citizen or a group of citizens on the one hand and the state or other public bodies on the other, which is resolved. This is done to maintain the rule of law. Every executive action of the state is open to judicial scrutiny and the High Court and Supreme Court can, in exercise of the power of judicial review, quash the executive action which is violative of fundamental rights. With the expanding horizon of Article-14 read with other Articles every action of the government, if arbitrary, unreasonable or contrary to law is now amenable to the writ jurisdiction of the Supreme Court under Article- 32 and High Court under Article-226.100 The public law remedies have also been extended to the realm of tort.101 Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under Private law.102

99 At 994 Para- 12 and 13
100 At 993 Para- 7
101 At 993 Para- 9
102 At 994 Para- 10
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- As to second issue relating to locus standii of the respondent the court held the concept of ‘Locus Standii’ has undergone sea change. Public-spirited citizens having faith in the rule of law are rendering great social and legal service by espousing causes of public nature. They can not be ignored or overlooked on technical or conservative yardstick of the rule of locus standii or absense of personal loss or injury. The reliefs claimed in the petition included the relief for compensation But many other reliefs for example, relief for eradicating anti-social and criminal activities of various kinds at Howrah-Railway Station were also claimed. The true nature of the petition, therefore, was that of a petition filed in public interest.

- As to third issue whether the central government is vicariously liable for the offence of rape, the court rejected the theory of sovereign power. The functions of the government in a welfare state are manifold, all of which cannot be said to be the activities relating to exercise of Sovereign power. The functions of the state not only relate to the defence of the country but they extent to other spheres as, for example: education, commercial, social, economic, political and even marital. These activities cannot be said to be related to sovereign power. Running of Railways is a commercial activity. Establishing Yatri Niwas to provide lodging and boarding facilities to passengers on payment of changes is a part of the commercial activity of the Union of India and this activity cannot be equated with the exercise of Sovereign power.

- As to fourth issue it was contended that since the victim was a foreign national so the protection of fundamental rights is not available to her. This ground was rejected on two grounds:
  1. On the ground of Domestic Jurisprudence.
  2. On the ground of Human Rights Jurisprudence.

The first is based on constitutional provisions and the latter on Universal Declaration of Human Rights, 1948. With regard to Human Rights Jurisprudence the court
observed that the International Covenants and Declarations have to be respected by all signatory states and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those Rights. As to Domestic Jurisprudence the court observed, the fundamental rights are available to all the ‘Citizens’ of the country but a few of them are also available to ‘persons’. While Article-14, which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to ‘person’ would also include the ‘citizen’ of the country and ‘non-citizen’ both.

Hence in this landmark case the court had taken a liberal and the right view of compensating the victim who was not even an Indian national.

The natural right of any creature on this earth is his right to live by reason of being born on this earth. If this natural and fundamental right is violated, the victim has every right to be compensated which is very essential for her to restart her life afresh although it is not so easy but monetary assistance will at least save her from financial crises. Following points may be inferred from this judgement:

- Though rape is an offence against the person of an individual but falls in public law domain as it is an offence against society also.
- It is a crime which violates the fundamental rights and hence compensation can be claimed for violation of fundamental rights.
- This right to be compensated is available to all the persons in India irrespective of their nationality.
- State is liable to compensate as it is vicariously liable for such offences and hence can not claim sovereignty.

5.3.2 Compensation In Case Of Sexual Assault Under Criminal Procedure Code-An Analysis

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106 At 997 Para- 24
107 At 997 Para- 29
In this case being aggrieved by inadequacy of sentence awarded by the session court, the state government preferred a criminal appeal for enhancement of sentence and the original accused also filed a Criminal Appeal for setting aside the conviction. Both the appeals were disposed of together. In this case a minor girl of 12 years was residing with her parents, two sisters and two brothers. On 22-08-2004, after dinner, the kids went to sleep and the parents were listening to *kirtan* in the courtyard of their house. The victim heard that somebody was attempting from outside to open the door forcibly. The door was forcibly dashed and opened. Two persons slapped her and kidnapped her by closing her mouth. They carried her towards the hilly area and raped her one by one. In the meanwhile the children informed their parents who along with other villagers started searching the victim who was found in hilly area having been raped by both the accused. The case was registered and the accused were arrested. The learned Session Judge came to the conclusion that the accused in furtherance of their common intention have committed gang rape on prosecutrix. The accused were convicted under Section- 376(g) of Indian Penal Code and were inter-alia sentenced to rigorous imprisonment for 10 years and were to pay a fine of rupees 500 for the offence of rape. The High Court confirmed the order of the Sessions Court and the appeal of the accused was dismissed. The court held that mere statement of prosecutrix if it is 100 per cent trustworthy, is sufficient to convict the accused. The sentence was not enhanced considering that the parents of the accused are old and father is handicapped. The order of Sessions Court was thus confirmed by the High Court.

Comparison:

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108 MANU/MH/1121/2008
109 Para 46
If a comparison is made between the judgements given under different statutes, it is brought to light that there is a huge difference in compensation awarded. In the case of Chairman, Railway Board Vs Mrs. Chandrima Das\textsuperscript{110} decided in 2000 the compensation awarded was rupees 10 lakh whereas in the latter case decided in 2008, i.e. after a gap of eight years, the fine imposed is just rupees 500 with no compensation to the victim. Isn’t it a mockery of justice? While undergoing the trauma of pain and suffering what does the poor victim get ultimately? Nothing for her better future. Furthermore she had to undergo formalities of the court. What a pity! If rape has been held to be a crime against society then does its nature change while convicting the accused under Section-357 of Criminal Procedure Code and under Article-21 of the Constitution? Why there is so much of gap in the quantum of compensation for the same offence under different statutes?

[B] K. Sivasankar Vs State represented by Inspector of Police\textsuperscript{111}

The victim in this case was a girl of 5 years who used to play near her grandmother’s house situated nearby her house. One day the child did not return home. A search was made for her in the street where the accused was found with the victim who was crying. When the victim was enquired she informed that the accused had given a chocolate and took her to his house and made an attempt to rape her. The learned trial judge came to the conclusion that an offence under Section 366 (A) and 376 (2)(f) read with Section 511 of Indian Penal Code are made out. The accused was convicted under Section 366 (A) and sentenced to undergo 10 years rigorous imprisonment and a fine of rupees 10000 was imposed. He was also convicted under Section- 376 (2)(f) read with Section- 511 and sentenced to undergo 10 years rigorous imprisonment and a fine of rupees 15000 was imposed. An appeal was preferred before the Delhi High Court. The High Court, taking into consideration the age of accused who was 21 years at the time of commission of offence took a lenient view and the superficial minor simple injury on the person of the victim, set

\textsuperscript{110} AIR 2000 SC 988
\textsuperscript{111} MANU/TN/8862/2007
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aside the conviction under Section- 366 (A) but confirmed the conviction under Section- 376 (2)(f) read with Section- 511 but the sentence was modified to the period of sentence already undergone. Fine of rupees 10000 to be paid under Section- 366(A) was to be treated as the fine paid under Section- 376 (2)(f) apart from the fine of rupees 15000 already paid by him i.e. a total amount of rupees 25000 to be paid to the victim as compensation under Section- 357(1) of Criminal Procedure Code. In this case which was decided in 2007 of a different High Court the amount of compensation is rupees 25000 where only superficial minor simple injuries were found on the person of the victim. The State of Maharashtra Vs Manik Mohan Gaikwad and others highlights the difference between the two cases with regard to compensation. In State of Maharashtra Vs Manik Mohan Gaikwad and others\textsuperscript{112} for the offence of rape a fine of just rupees 500 was awarded with no compensation whereas in K. Sivasankar Vs State represented by Inspector of Police\textsuperscript{113} the amount of compensation is rupees 25000. Why there is so much of gap in the decisions of different High Courts? Though in law 2+2 can never be four but efforts should always be made by the judiciary to bring it at least to the approximation of four. If the punishment is enhanced, compensation is reduced. If the punishment is reduced, compensation is often enhanced. It appears as if accused have been given more liberties by our criminal justice system. The concept of compensation is much talked about. But why the judiciary feels reluctant in providing higher amount of compensation to the victims? Does a fine of rupees 500 and no compensation serve any fruitful purpose except in reminding the victim again and again that “see, this is the concern which the law or the judiciary has for you.” Will such kind of reduced compensation not lead the victims to either suppress the crime or take law in their own hands to take revenge? Can this really be called the progress of the society? It is true that courts recognise the importance of compensating the victim. But then justice must not only be done but seen to have been done. If right to life includes right to live

\textsuperscript{112} MANU/MH/1121/2008
\textsuperscript{113} MANU/TN/8862/2007
with honour and dignity, then, can compensation ranging from rupees 500 to 20000 etc be considered as sufficient to let the victim start her life afresh? Why there is so much of dissimilarity in various decisions of the court in matters of compensation? It seems to strangulate the system of justice and also perhaps the travesty of justice.

5.3.3 Compensation In Case Of Murder:

In State of Kerela Vs Sherin the accused had committed the murder with the intention and knowledge that his act was likely to cause the death of the victim. The learned Sessions Judge invoked the provisions of Section 3 of the Probation of Offenders Act, 1958 and released the respondent on probation of good conduct considering his age of 18 years at the time of commission of the offence. The accused was directed to pay rupees 25000 as compensation to the legal heirs of the deceased. This order was confirmed by the High Court and the appeal of the Kerela state was dismissed.

For rape also compensation of rupees 25000; for murder also 25000. Though both the offences are heinous in nature but hardly do the courts enhance the amount of compensation. We talk a lot about human rights, their dignity, honour, basic fundamental rights, then why the matter of compensation depicts a failure of existence of human rights? Though compensation is discretionary in nature, it may/may not be awarded by the court but if it is awarded, does that amount become sufficient for the victim to re-live his/her life as a dignified/respectable person in the society? Although there are lot of lacunas in our criminal justice system but till the time legislature wakes up, people will look at the judiciary with a positive hope in their eyes that some organ is still there for the redressal of their grievances. The judiciary shoulders a great responsibility and therefore will have to live up to the expectations of the people especially the victims who dare to report the crime, due to whose bold and firm stand, the accused are convicted. But conviction must not put a full stop on justice. It has to be supplemented with compensation which must, must and must be reasonable and not just a mere formality making a mockery of justice.

114 MANU/KE/0444/2005
The award of compensation is purely at the discretion of the court. Though under Section-357 of Criminal Procedure Code the court is empowered to award compensation out of the fine imposed as a sentence and also when fine is not treated as a part of sentence. Here the compensation has been linked with the paying capacity of the offender.

After the accused is held guilty, he has to be heard on the question of sentence under Section-235(2) Criminal Procedure Code unless he wants to proceed under Section-360. It is at this stage that he may be required to provide evidence regarding his

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115 Section-357(1)
116 Section-357(3)
117 Section-235: Judgement of acquittal or conviction:
(1) After hearing arguments and points of law (if any), the judge shall give a judgement in the case.
(2) If the accused is convicted, the judge shall, unless he proceeds in accordance with the provisions of Section-360, hear the accused on the question of sentence, and then pass sentence on him according to law.

118 Section-360: Order to release on probation of good conduct or after admonition:
(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour.

Provided that where any first offender is convicted by a Magistrate of the second class not specifically empowered by the High Court, and the Magistrate is of the opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before such Magistrate, who shall dispose off the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Code before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.
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paying capacity, which may further lead to cross-examination of some of the witnesses, recording the statement of the accused etc which causes delay. This may possibly be one of the reasons why judges are generally unwilling to enter into the question of awarding compensation. It leads to the inference that even if the court is willing to award a higher amount of compensation, it may not be awarded due to the incapacity of the accused. In Mangial Vs State of Madhya Pradesh\(^{19}\) it was observed, “It is, just, reasonable and expedient that amount of compensation that may be awarded, ought not to be unrealistic and unpragmatic so as to render it only an award on paper because such high amount of compensation may be irrecoverable from an accused, leading to no recovery and consequent non-payment of compensation.” That is why the Supreme Court has observed that the quantum of compensation should be practical, realistic and payable by the accused. But India is a developing nation. Most of the people live below poverty line. Poverty is one of the main reasons for commission of most of the crimes. What is the fault of the victim if the offender is poor? Does that mean that justice can be provided only if the offender

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

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Sessions may on appeal when there is a right of appeal to such Court or when exercising its power of revision, set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Sessions shall not under this sub-section inflict a greater punishment that might have been inflicted by the court by which the offender was convicted.

(6) The provisions of Sections-121, 124 and 373 shall, so far as may be, apply in the case of surities offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surity (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surity conditioned on his appearing for sentence and such Court may, after hearing the case, pass the sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 or The Children Act, 1960 or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

\(^{19}\) AIR 2004 SC 1280

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is rich? Hence changes are required in the legislation itself. Due to non-existence of any specified criteria for deciding compensation, there has been a variance in the decisions of the court while awarding compensation. Inspite of legislative silence, the judiciary has been playing an active role in providing compensation to the victims though with variation in the quantum awarded. “Justice, Justices and Justicing are the trinity of the judicial administration. For their functional success, all three must be finetuned to respond to the imperatives and urgencies of the Third World and even the Fourth World within the Third World- the marginalised, victimised, sub-humanised sector.”120 After all, law is the means and justice is the end; and if we want peaceful orderly progress, surely there must be a dynamic rule of law geared to a better world of justice and humanism.121

The Apex Court in State of West Bengal Vs Committee for Protection of Democratic Rights122 observed that the Constitution is a living and organic document. It cannot remain static and must grow with the nation. The constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of the time and polity. The court is not helpless to grant relief in a case of violation of right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies for the purpose of vindicating these precious fundamental rights.123

5.4 Conclusion
It can be concluded by saying that we are standing on the first step and we have to cover a long distance. Now is the time to utilise the quality of farsightedness. If not now then never. An internally strong and well fabricated system of giving compensation is the urgent demand of the day. Mere announcements and judgements are not enough. They must be implemented in a transparent manner. A well designed legislation on compensation can bring the agony of millions of victims to an end.

121 Ibid at viii
122 (2010) 3 SCC 571 at 591
123 Ibid at 594
Apart from this, in serious offences like murder and sexual assault special attention need to be given. The victim must feel that he/she is cared for by the criminal justice system and has got adequate compensation for the crime committed upon him or her. Whether the judgement is pronounced for violation of his fundamental rights under the Constitution or under any other law for the time being in force, the victim must feel that he/she will be adequately compensated because the sufferings remain the same irrespective of the statute. If the penal law for the accused is uniform, the compensatory law for the victims should also be on the similar pattern.