CHAPTER – IV
VICTIMOLOGY : CONSTITUTIONAL AND
LEGISLATIVE FRAME WORK IN INDIA

Victimology : Constitutional Framework in India

“The arch of the Constitution of India pregnant from its preamble, chapter III (Fundamental Rights) and chapter IV (Directive Principles) is to establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice-social economic and political to every citizen through rule of law. Existing social inequalities are needed to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law.”

Preamble to our “suprema lex” contains goals to be achieved by the state which inter-alia talks about social, economic and political justice. These objectives have been translated into fundamental rights enshrined in Part III of the Constitution and Directive Principles of State Policy. Part III of the Constitution weaves a pattern of guarantee for the victims of the crime. To make this guarantee meaningful Article 32 of the Constitution provides effective enforcement of these rights.

The judiciary through judicial activism has widened the scope of these fundamental rights by using broad ambit of these provisions to secure justice for the victims of crime. One of the tools applied by the court for securing justice to the victims and for ensuring that these fundamental rights do not become a mere rope of sand is to grant monetary compensation to them. This ensures the dignity of the individual in a socialistic set up epitomizing restorative justice.

First of all Article 14 of the Constitution embodies general principles of equality before law and prohibits unreasonable discrimination. This is the most basic fundamental

right guaranteed to every person by Constitution itself and the word ‘any person’ in Article 14 very well covers victims of crime.

In E.P. Royappa v. State of T.N.\(^2\) Supreme Court gave a new dimension to equality principle. It pointed out that Article 14 has highly activist magnitude. Court held that equality is a dynamic concept with many aspects and dimensions and it can’t be cribbed, cabined and confined with in traditional and doctrinaire limits. From a positivistic point of view equality and arbitrariness are sworn enemies: one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch where an act is arbitrary, it is implicit in it that it is unequal both according to the political logic and Constitutional law and is therefore violative of Article 14.\(^3\)

It may be therefore noted that the doctrine of reasonable classification based on nexus test is no longer a paraphrase of Article 14 nor it is the objective and end of Article 14. The emphasis is now on the rule that Article 14 strikes at arbitrariness. The new approach to Article 14 has now been consistently adopted and applied by the courts in determining the true contents and reach of equalizing principle.

In a landmark judgment Lucknow Development Authority v. M.K. Gupta\(^4\) Supreme Court held that if loss or injury is caused to a citizen by the arbitrary actions of the State employees, the State is liable to pay compensation to him. Public authorities who are entrusted with statutory functions cannot act negligently. Under our Constitution sovereignty is vested in the people. Every limb of the constitutional machinery is obliged to be people oriented.

In case of Charan Lal Sahu v. U.O.I.\(^5\) the Constitutional validity of Bhopal gas leak disaster (processing of claims) Act, 1985 was challenged. The court held that Act is

\(2\) AIR 1974 SC 555

\(3\) The same have been reiterated by Supreme Court in Maneka Gandhi V. U.O.I. AIR 1978 SC 1628 Bhagwati J. held, “It must... therefore now be taken to be well settled that what Art. 14 strikes at its arbitrariness because an action is arbitrary must involve negation of equality. The doctrine of classification which is involved by the court is not paraphrase of Art. 14 nor it on the objective and end of that Article. It is merely judicial formula for determining whether the legislature or executive action is question is arbitrary and therefore constituting denial of equality.”

\(4\) (1994) 1 SCC 243

\(5\) (1990) 1 SCC 663

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valid as the state in a capacity of ‘parens patrie’ (parent of the country) for protecting

disabled victims of Bhopal gas disaster is competent to represent the victims.

Article 21 of the Constitution, guarantees right to life and personal liberty to a

person. Supreme Court has enlarged the scope of Article 21 in its widest possible

amplitude to give relief to the victims. To provide teeth to the new dimension and
dynamic approach given to fundamental right contained in Article 21. Supreme Court has
recognized the right of aggrieved persons to claim monetary compensation.

In Khatri v. State of Bihar6 Supreme Court for the first time answered the
questions whether a person deprived of his personal liberty could be compensated by
granting monetary relief. Justice Bhagwati in his affirmative note raised a counter........
“Is the court helpless to grant relief to the person who has suffered such deprivation?
Why should the court not be prepared to forge new tools and devise new remedies for the
purpose of vindicating the most precious of the precious fundamental right, i.e. right to
life and personal liberty.”

However in Rudal Shah v. State of Bihar7 Supreme Court overcame its hesitation
to grant monetary compensation by awarding 35000/- to the petitioner who was kept in
illegal detention for 14 years after his acquittal and Supreme Court argued its case in the
following word, “One of the telling ways in which the violation of that right can
reasonably be prevented and due compliance with the mandate of Article 21 is secured to
mullet its violators in the payment of monetary compensation. Administrative sclerosis
leading to flagrant infringement of fundamental rights can’t be corrected by any other
method open to judiciary to adopt. The right to compensation is some palliative for the
unlawful acts of instrumentalities which act in the name of public interest and present for
their protection the powers of the State as a shield.”

Since then this trend has been followed relentlessly by Supreme Court in plethora
of cases providing compensation to different categories of victims of crime.

6 (1981) 2 SCC 493 at p.504
7 AIR 1983 SC 1086
Compensation has been granted to the victims of state violence, custodial violence/police torture and rape victims etc.

In D.K. Basu v. State of W.B. in this landmark case Supreme Court held that torture by police strikes a blow at rule of law. Custodial violence has been held to calculated assault on human dignity, perhaps one of the worst crimes in a civilized society governed by rule of law.

In Nilabati Bahera v. State of Orissa Supreme Court granted Rs.1, 50,000/- compensation to the petitioner for the death of her son in police custody. The court also relied on Article 9 (5) of International Covenant on Civil and Political Rights, 1966 which indicated that anyone who had been the victim of unlawful arrest or detention should have an enforceable right to compensation. Award of compensation is a proceeding under Article 32 of Supreme Court or by High Court under Article 226 is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply.

In case of Smt. Dhanno v. U.O.I. the accused died during his imprisonment due to beating given by employees of jail and it was held that fundamental right of accused guaranteed under Article 21 is violated. State is required to grant monetary relief to victim for violation of his fundamental rights. Doctrine of State Immunity is not available. State was directed to pay compensation of Rs. 2,50,000/- to the widow.

In Shakila Gafar Khan v. Vasant Raghunath Dhoble it was held that in case of police torture, custodial violence etc., the courts must deal with such cases in a realistic manner. Torture in police custody bloats the basic rights of the citizens recognized by...
Indian Constitution and is an affront to human dignity. The courts must therefore deal with such cases in realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which if it happen will be a sad day, for any one to reckon with.\textsuperscript{16}

In Parminder Kaur v. State of Punjab and others,\textsuperscript{17} State was directed to pay Rs 3 Lakhs compensation to the widow and children of the deceased who died in police custody. It was a result of abuse of power by the police officials. It was further held that custodial death is violation of human rights and fundamental rights and the aggrieved party has the right to claim compensation and can resort to Article 226 to enforce its right.

In S.P.S. Rathore v. State of Maharashtra and others\textsuperscript{18} High Court took suo-motu cognizance and directed sessions Judge to hold enquiry against a police officer who got false cases registered against a person. Order of High Court was set aside by the Supreme Court as there was no material in the news report for making such an order. Apex court held that when there is violation of fundamental rights Courts while exercising jurisdiction under Articles 32 and 226 can award compensation.\textsuperscript{19}

In Smt. Sonabai v. State of Maharashtra\textsuperscript{20} it was held that right to life includes right to medical care. In this case an under-trial prisoner died due to failure of jail authorities to provide timely medical treatment amount to breach of his right to life and personal liberty. State was held liable to pay compensation of rupees 50,000/- to his dependants. Compensation has also been granted in cases of illegal detention,\textsuperscript{21} death in judicial custody, negligence,\textsuperscript{22} etc.

\textsuperscript{16} See also Samata Vadike V. State of Karnataka 2003 Crl. L.J. 1003
\textsuperscript{17} (2005) 3 Criminal Court Cases 522 (S.C.)
\textsuperscript{18} (2005) 2 Criminal Court Cases 871 (S.C.)
\textsuperscript{19} See also C. Thekkamalai V. State of T.N. and others 2006 Crl. L.J. 1997
\textsuperscript{20} 2006 Crl. L.J. 3423
\textsuperscript{21} Mohd. Zahid V. Govt. of NCT of Delhi AIR 1998 SC 2023. In this case accused was illegally detained under TADA. He was falsely charged with possessing illegal arms thereby made a victim of prolonged illegal incarceration. Govt. was directed to pay Rs. 50,000/- as compensation to the accused, Poonam Sharma V. U.O.I. AIR 2003 Del. 50
\textsuperscript{22} Bhaddu Devi (Bouri) V. State of Bihar 2003 (2) Criminal Court Cases 527 Jhar. This was a case of death in judicial custody, cause of death was not sufficiently proved by jail authorities, it was held that adverse influence must be drawn. Compensation of Rs. 50,000/- was awarded.
In Municipal Corporation Delhi v. Association of Victims of Uphaar Tragedy and others\textsuperscript{24} Delhi High Court directed that compensation to be paid to the victims of fire tragedy at Uphaar cinema at Delhi in which 59 persons died and 103 injured. Amount of compensation ran into 21 crores of rupees. Cinema building was sealed by orders of the court.

Compensation has also been granted in handcuffing cases,\textsuperscript{25} for persons killed in fake encounter and\textsuperscript{26} for rape victims. In Delhi Domestic Working Women’s Forum v. U.O.I.\textsuperscript{27} the petitioner Women Forum through a Public Interest Litigation brought the pathetic condition of four domestic women servants who were raped by 7 Army personnel in a running train while traveling by Muri Express. The victims were helpless tribal women belonging to State Of Bihar. Supreme Court laid down guidelines for trial of rape case and inter-alia held that compensation for rape victims shall be awarded by the court on conviction of offender and Criminal Injuries Compensation Board whether or not a conviction has taken place. The board will take into account pain, suffering and shock as well as the loss of earning due to pregnancy and child birth if this occurred as a result of rape.

The National Commission for Women was asked for frame schemes for compensation and rehabilitation to ensure justice to victims of such crimes. The union of India was to then examine and take necessary steps to implement the scheme at the earliest. Bodhisathwa Gautam v. Subhra Chakroborty\textsuperscript{28} In this landmark case Supreme Court awarded interim compensation of Rs. 1000/- per month to the victim of rape until her charges of rape are decided by trial court.

\textsuperscript{24} 2005 (4) Criminal Court Cases 261 (SC)
\textsuperscript{25} Prem Shankar V. Delhi Administration AIR 1980 SC 1535, State of Maharashtra V. Ravikant S. Patil (1991) 2 SCC 373
\textsuperscript{26} People’s union for civil liberties V. U.O.I. AIR 1997 SC 1203, Mussy Begum V. UOI AIR 2003 (HOC) 594 Guar. In this case liability of central government for grant of compensation for persons killed by Army was recognized.
\textsuperscript{27} (1995) 1 SCC 14
\textsuperscript{28} (1996) 1 SCC 490
In this landmark case of Vishaka v. State of Rajasthan Supreme Court laid down exhaustive guidelines to prevent sexual harassment of working women at their work places until legislation, is enacted for the purpose. The court held that it is the duty of employer or other responsible person in work places or other institutions, whether public or private to prevent sexual harassment of working women.

Compensation has also been granted in cases of human rights violations, for death due to electrocution, for wrongful confinement, for sacrifice of life in apprehending criminals.

In Utrakhand Stir (Rallyist) Case Allahabad High Court on 9 Feb, 1996 delivered a historic judgment in a group of six cases arising out of incident in Khatima, Mussorie and Muzzaffarnagar of U.P. in September, October 1994. In the impugned case 24 persons were killed, 7 women were raped, 17 were sexually molested, many others were injured and illegally detained as a result of police firing and atrocities committed on a peaceful demonstration for a separate State of Uttranchal in 1994. The court awarded rupees 10 lakhs compensation for rape victims judging crime of rape equivalent to death; rupees 5 lakhs to the victims of sexual molestation and rupees 2.5 lakhs to 50,000/- for less serious injuries. The court advancing the cause of human rights and giving more teeth to the constitutional guarantee for a right to live with dignity vide Article 21 declared that the Court itself can award compensation in a case of human rights violation. An important feature of verdict is that the State has been held vicariously

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29 AIR 1997 SC 3011
30 See Utrakhand case, Chairman Railway Board V. Chandrima Dass 1 SCC 465, Santosh Chaudhary V. State of Tripura AIR 2004 Gau. 1 (Agartala Bench)
31 Exe. Engineer, G.E.B. V. Zubedahai Ibrahim AIR 2003 Guj 320 In this case deceased was 37 yrs old and earning 8000/- form gala Rs. 10,000/- as income of deceased and adopting multiplier of 13 compensation of Rs. 1,32,800/- was awarded.
33 In Re-Khalil Razaq Sheikh case AIR 2001 Bomb. 283 It was held that it is the duty of the state to maintain law and order through the police force and when a member of police force directs a citizen to chase and apprehend those who are suspected of committing offences the state can’t be permitted to wriggle out its responsibility to pay compensation in the event of such citizen. State should be thankful to the event of citizen. State should be thankful to the citizens like deceased who died in a chase to apprehend those suspected of committing crimes. So in such circumstances compensation is the legitimate right of her widow and not an act of charity on the part of state. Accordingly court awarded compensation of Rs. 30,000/- to meet the ends of justice.
34 (1996) 1 UPLBEC 461,Times of India, February 11, 1996
responsible for crimes committed by its officers and asked to compensate the victims and 
officers responsible have been held individually and jointly liable to be prosecuted under 
Indian Penal Code.

In case of Urmila v. Raju\textsuperscript{35} a seven years old girl was raped. Accused was charged 
u/s 376(2)(f) of Indian Penal Code. Trial Court imposed 3 years of rigorous imprisonment 
and a fine of Rs.10,000/- High Court reduced the sentence of imprisonment to six months 
and directed compensation of rupees 25,000/- to be paid to the victim. Grounds that 
offence was 13 years old and victim was already married were held improper. Sentence 
awarded by trial court was restored by Supreme Court.

In case of Chief Secretary v. Students of A.P.A.U.\textsuperscript{36} acid was thrown on a 
university student. High court treated letter/petition of the students as P.I.L. and awarded 
compensation of Rs.5 Lakhs and passed other directions for the medical treatment, 
including plastic surgery of victim at the expense of state, facilitation of her further 
studies and employment, appointment of special prosecutor to prosecute the acid-thrower 
and lastly to institute inquiry into misconducts by principal of university and others 
alleged to have indulged in misconducts. Supreme Court declined to interfere and said 
that directions have been given on humanitarian grounds. However it was held that sum 
of rupees 2 lakhs ex-gratia payment given by Chief Minister to the victim should be 
included in rupees 5 lakhs compensation awarded by High Court, and that this order shall 
not to be treated as precedent.

Recently in the landmark case of Sube Singh v. State of Haryana and others\textsuperscript{37} Supreme Court while admitting the brazen violation of human rights of the victims in the 
police custody observed that custodial violence could be tackled by taking both remedial 
as well as preventive measures. While laying down detailed guidelines for effective 
preventive measures the Apex Court recognized compensation as one of the major 
remedial measure after the event. The Court observed that ...... “Award of compensation 
against the State is an appropriate and effective remedy for redress of an established

\textsuperscript{35} (2005) 12 SCC 366
\textsuperscript{36} (2005) 12 SCC 448
\textsuperscript{37} AIR 2006 SC 117
infringement of a fundamental right under Article 21 by a public servant. The quantum of compensation will however, depend upon the facts and circumstances of each case. Award of such compensation by way of public law remedy will not come in the way of aggrieved person claiming additional compensation in a civil court, in enforcement of the public law remedy in Tort, nor come in the way of criminal court ordering compensation under section 357 Criminal Procedure Code.”

The courts should also stand guard against frivolous, false, motivated claims of compensation in the interest of society and to enable the police to discharge their duties fearlessly and effectively. Before awarding compensation Court will have to pose to itself the following questions:-

a) Whether the violation of Article 21 is patent and incontrovertible,

b) Whether the violation is gross and of a magnitude to shock the conscience of the court.

c) Whether the custodial torture alleged has resulted the death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement and where such allegation is not supported by any medical report or other corroborative evidence, or where these are clear indications that the allegations are false or exaggerated fully or in part, court may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.”

Thus Supreme Court is working as a ‘live wire’ to secure and promote fundamental rights. Most striking is court’s active acceptance of responsibility towards victims of crime.

Article 21 of Constitution of India – Compensation - Accused died during his imprisonment due to beating given by employees of jail - fundamental right of accused
guaranteed under Article 21 is violated - State is required to grant monetary relief to victim for violation of his fundamental rights - Doctrine of State immunity is not available - State directed to pay compensation of Rs. 2,50,000/- to widow.40

Compensation – On the basis of an affidavit by respondent that she was unlawfully detained and molested by police – State directed to pay compensation of rupees one Lac on basis of affidavit without holding enquiry and without completion of trial – Order of High Court set aside.41 Article 15 (3), provides that the State is not prevented from making any “special provision” for women and children and it recognizes the fact that the women in India have been socially and economically handicapped for centuries and as a result thereof, they cannot fully participate in the socio-economic activities of the nation on a footing of equality. The purpose of this article is to eliminate this socio-economic backwardness of women and to empower them in such a manner as to bring about effective equality between men and women. The object of Article 15 (3) is to strengthen and improve the status of women.

Victimology: Legislative Framework in India

“Trials involve adversaries and adversity, defeats and victories, winners and losers…… it is the business of defence to cast doubt on those allegations and discredit witnesses and their evidence… it is to make witnesses appear so inconsistent, forgetful muddled, spiteful or greedy that their words can’t be safely believed. Victims and defendants, prosecution and defence witnesses alike face accusations of mendacity, impropriety and malice. Victims who come to court supposing that a trial will be an assertion of their wrongs will discover that it is their probity that is at issue as well. In a contested trial, they will almost certainly be exposed to a bruising interrogation in which they are the injured party. At best they will be the alleged victim.”42

The Code of Criminal Procedure, 1973

The Code of Criminal Procedure is the first and probably the oldest legislation in India to deal with the concept of compensation to the victims of crime. Though the

40 Smt. Dhanno Vs Union of India 2002(2) Criminal Court Cases 141 (Delhi)
41 State Rep. by Inspector of Police & Ors. Vs N.M.T. Joy Immaculate 2004 (3) Criminal Court Cases 669 (S.C.)
The victimological aspect under the Code is of limited purport and is confined to compensation only but it has definitely proved the way for improving the principles of compensatory jurisprudence.

The Code of Criminal Procedure is based on the principle of presumption of innocence though there are various provisions in the Criminal Procedure Code for providing justice to victims of crime. But these provisions are scattered all over the Criminal Procedure Code.

In pursuance of the recommendations of the Law Commission of India in its 41st report a comprehensive scheme for compensation to the victims of crime has been made in section 357 and section 357A of Criminal Procedure Code. Besides these two sections, other sections like 358, 359, 237, 250 also deal with compensation to victims of crime. Other provisions which are important from the aspect of Victimology are proviso to section 24(8), Sections 320, 327, 378, 397, 473, 482, 437(5), and 439(2). These provisions are discussed in detail in this

**Right of Victim to Engage Advocate of his or her Choice**

The court may permit the victim to engage advocate of his/her choice to assist the Special Public Prosecutor.

**Compounding of Offences**

A crime is considered a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not very serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as compoundable only with the permission of the court. While granting permission to compound an offence the court should act judicially and should exercise a sound and reasonable discretion. The safeguard of the court’s permission is to prevent an abuse of

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43 In 1969  
44 Proviso to Section 24 (8) inserted by the Code of Criminal Procedure (Amendment) Act, 2008  
45 Rameshchandra J. Thakkar v. Assandas Parmanand Jhaveri, (1973) 3SCC884
the right to compound and to enable the court to take into account the special circumstances of the case which may justify composition. While granting permission to enter into the composition and accepting the same, the chastened attitude of the accused and the commendable attitude of the injured complainant, in order to restore harmony in society, were taken into consideration by the court. In case of non-compoundable offence which are not mentioned under section 320, Criminal Procedure Code. The Court should consider facts and circumstances of each case and allow the parties to compromise thereby to restore an amicable and harmonious relationship between the parties which otherwise would likely to result in an enduring feud however such offences must not seriously affect the interest of the public at large.

Offences under sections 365, 384, 342, 506 Indian Penal Code are non-compoundable. However if the parties settled the matter amicably, in the interest of justice, Court can be quashed FIR.

An offence under section 498-A is non-compoundable, but where the parties compounded their matrimonial grievances and the original complaint has been divorced by the husband the parties should be granted permission to compound the offence under section 498-A in appeal against acquittal filed by the State.

General scheme for the compounding of offences has been given by section 320 of the Criminal Procedure Code. Compounding of offences is a narrow concept while Plea Bargaining is a wider concept. Plea Bargaining is discussed in detail in this chapter.

Right to In-camera Trial

Court must be open to anyone who may like to hear the proceedings of the court although the actual presence of the general public is not essential to fulfill the requirement of the section. This general principle was embodied in this to ensure administration of justice with the provision giving the presiding judge or the Magistrate

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48 Baiju V. Sub Inspector of police, Karimanaor Police Station and another, 2007 CriLJ 1346 (kerala)
49 Mohinder Singh v. State, UT Chandigarh, 1996 CriLJ 1247 (P&H)
50 State v. Ahmadhusen Mahmad Khalil Ansari, 2004 CriLJ 4323 at P.3425(Guj.)
at any particular person deciding upon the facts and circumstances of the case for the ends of justice.\textsuperscript{51}

The Supreme Court has laid down that trial of sexual offences must be conducted in camera and it would not be permissible to print or publish any matter in relation to it except with the previous permission of the court.\textsuperscript{52} Offences under Section 376 and Sections 376A to 376D of the Indian Penal Code shall be tried as far as practicable by a court presided over by a woman.\textsuperscript{53}

In Sube Singh v. State of Haryana and Others,\textsuperscript{54} the Supreme Court laid down manner of holding inquiry into trial of child sexual abuse and gave directions in detail.

\textbf{Victim has a Right to Appeal in Case of Acquittal of Accused Person}

Appeal against the order of acquittal is an extraordinary remedy. Section 378 deals with appeals in cases of acquittals. According to the first four sub-sections of section 378, an appeal against an order of acquittal can be preferred by the Government, in a case instituted upon complaint, by the Government as well as by the complainant.

The word complainant used in section 378(4) cannot be given a restricted meaning and cannot be constructed so as to exclude the victim or the sufferer and who had faster information of the occurrence. Accordingly, on the death of the complainant before filing of appeal order of acquittal, the victim and eye-witnesses of offence are competent to file appeal and continue with the proceedings.\textsuperscript{55}

In Keshav Swaroop v. Government of N.C.T.,\textsuperscript{56} the Supreme Court said that where there is glaring defect or manifest error in point of law, in exceptional cases, High Court can allow a private party to file appeal against acquittal.

\textbf{Right of Revision}

High Court or Sessions Judge may call for and examine the record of any proceeding before any inferior criminal court situate within it or his local jurisdiction for

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{51} Naresh v. State of Maharashtra, AIR 1967 SC 1
\item \textsuperscript{52} State of Punjab v. Gurmeet Singh 1996 CriLJ 1728SC
\item \textsuperscript{53} Proviso to Section 26(a) inserted by the Code of Criminal Procedure (Amendment) Act, 2008 and it came into force on 31st December, 2009.
\item \textsuperscript{54} 2004 CriLJ 2891 SC
\item \textsuperscript{55} Sukhdev Singh Rana v. State 1996 CriLJ 3060
\item \textsuperscript{56} AIR 1998 SC 999
\end{itemize}
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the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The Sessions Court can enhance sentence in exercise of its revisional jurisdiction. The complainant has rightly filed revision application before the Session Judge and the Sessions Judge has also rightly after appreciation of the materials on record enhanced the sentence of fine amount of Rs. 10,000/- imposed on the accused

Revision against acquittal- Revisional application filed by the complainant against the order of acquittal passed by trial court in a police case can be exercised only in exceptional cases for limited purposes, where the interest of public justice requires interference for correction of manifest illegality or to prevent miscarriage of justice.

Where it was found that the trial court had failed to summon the eye-witnesses present at the time of incident as well as the workers at power house, therefore, it was held that the acquittal of accused was unmerited as it was based pm tainted evidence, tailored investigation, unprincipled prosecution, perfunctory trial and on evidence of threatened and terrorized witnesses, so retrial of the case was ordered in the instance case.

Right to Cancellation of Bail

The court which has released a person on bail may, if it considers it necessary so to do, direct that such person be arrested and committed to custody. The court has power and discretion to cancel the bail. In Public Prosecutor v. George Williams, the Madras High Court pointed out five cases where granted bail may be cancelled and be recommended to jail:-

- Where the person on bail, during the period of the bail, commits the very same offence for which he is being tried or has been convicted, and there by proves his utter unfitness to be on bail;

57 Section 397 of the Criminal Procedure Code, 1973
58 Paran Natu Tikku V. Rajinder Maheshwari, 2004 CriLJ 3772 (HP)
59 Nagaraj V. Gowramma, (2004) 3 Crimes 562 (Kant.).
60 Chandrabhan and another V. State of Rajasthan 2007 CriLJ (NOC) 470 (Raj.)
61 Section 437(5) and section 439(2) of the Criminal Procedure Code, 1973
• If he hampers the investigation, when on bail, forcibly prevents the search of places under his control for the corpus delicti or other incriminating things;

• If he tempers with the evidence, as by intimidating the prosecution witnesses, interfering with the scene of the offence in order to remove traces or proofs of crime etc;

• If he runs away to a foreign country, or goes underground, or beyond the control of his sureties;

• If he commits acts of violence, revenge against the police and the prosecution witnesses and those who have booked him or are trying to book him.62

In Bhagirathi Singh Judeja v. State of Gujarat63 the apex court has held that the only two material considerations for cancellation of bail are:

(i) Apprehension of the accused absconding and

(ii) Of his tampering with prosecution witnesses.

When an order for anticipatory bail has been granted, the only mode by which it can be cancelled is by applying section 439(2) of Criminal Procedure Code64

This is a very important right given to the complainant/victim to file a application for cancellation of bail.

Condonation of Delay

Section 473 enables the court to take cognizance after the expiry of the period of limitation in case the court is satisfied that the delay has been properly explained or that it is necessary so to do in the interest of justice. The discretion given to the court in this connection by section 473 is very wide. Complainant/victim can file an application for condonation of delay.

62 AIR 1951 Mad 1042(HC)
63 AIR 1984 SC 372
64 Manuel v. State (2005) 4 Crimes 412 (Ker.)
Inherent Powers of High Court

Powers given under section 482 is an extraordinary power of High Court. Court can exercise this power only for the purposes mentioned in the section itself. According to this section nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. Under this section the complainant/victim has right to move an application to the court:

- Where the investigating agency gives undue favour to the accused.
- Where the investigating agency don’t investigate the case properly, in that situation the complainant can file an application for changing the investigating agency.
- If the rights of the complainant/victim given under criminal law are infringed.

High Court gave directions to superior police officer to supervise investigation in dowry death of a woman. And the doctor conducting post-mortem examination did not find fault of sterilization operation conducted by the accused doctor on the deceased woman and the Medical Board headed by CMO has given clean chit to the accused, the Superintendent of Police has been directed to get investigation made under his supervision as to true cause of the death of the deceased and to submit report to the High Court.65

Right to Compensation

Section 357 provides an innovative scheme for compensating the victims of crime out of the fine recovered from the convict. The concerned court, at the time of passing judgment may order the disposal of the whole or partial fine amount for the following purposes:-

(a) It could be used for defraying the expenses properly incurred in the prosecution of the case.

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(b) Such amount could also be used for compensating the victim of any loss or injury caused by the offence if the court feels that such victim is competent to recover compensation for the same in a civil court.

(c) In case for conviction for causing death of another person or abetment thereof court may order that the fine recovered should be paid as compensation to the persons who are entitled to recover damages from the convict as per Fatal Accidents Act, 1885.

(d) In case of certain specified offences against property such as theft, criminal breach of trust etc. if the property is restored to the lawful owner, the court may order that the bonafide purchaser of the property, should be compensated out of the fine amount recovered.

Section 357(3) confers wider powers on the court to grant compensation as compared to section 357(1). However the liberal provisions of section 357(3) are applicable only if a sentence of fine is imposed. In such cases the court may order the accused person to pay such amount as court will specify in the order as compensation to the victim who has suffered loss or injury.

In Sarwan Singh v. State of Punjab, Supreme Court held that object of section 357 is to provide compensation to the persons who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence.

In awarding compensation it is necessary for the court to decide whether the case is fit for awarding compensation. If it is found that compensation should be paid, then the capacity of the accused to pay compensation, has to be determined. In directing compensation the object is to collect it and pay it to the victim, for imposing a default sentence for non-payment of fine would not achieve the object. Further it was stated

66 Section 357(3) of Criminal Procedure Code. runs as under--- 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.

67 AIR 1978 SC 1525

68 Ibid at para 10
that it is duty of the court to take into account the nature of crime, the injury suffered, the
justness of the claim for compensation, the capacity of accused to pay and other relevant
circumstances in fixing the amount of fine or compensation.69

In Palaniappa Gounder v. State of T.N.70 the Supreme Court clarified that as
section 357 expressly confers powers on the court to pass an order for payment of
compensation so there is no scope for invoking or exercising the inherent powers of the
court under section 482 because the court ought to apply the provisions of the statute.

In N.B. Pant v. State (U.T. of Delhi),71 Apex Court having regard to special facts
and circumstances of the case reduced the 2 months rigorous imprisonment to one month
and enhanced fine of rupees 500 to rupees 1000/- The amount so recovered was directed
to be paid to deceased’s wife by way of compensation as per section 357 of the Criminal
Procedure Code.

In the landmark judgment of Hari Kishan and State of Haryana v. Sukhbir
Singh72Supreme Court urged the courts to exercise the power under section 357 liberally
so as to meet the ends of justice in a better way. It has also been held that if there are
more than one accused they may be asked to pay in equal terms unless their capacity to
pay varies. The payments may also vary depending upon the acts of each accused. The
court has also opined that reasonable period for payment of compensation, if necessary
by imposing sentence in default.

In State of M.P. v. Mangu alias Mangilal,73Sessions Judge while convicting the
accused in a murder case directed payment of compensation by accused to the widow of
the deceased and since the recovery might be delayed, the state was directed to pay the
amount of compensation and recover it from the properties of accused and state was
directed further to ensure free education to the children of the deceased.

It was held as per statutory provision the court shall order the accused to pay by
way of compensation the specified amount to the person who has suffered any loss or

69 Ibid at para 11
70 AIR 1977 SC 1323
71 AIR 1977 SC 892
72 AIR 1988 SC 2127
73 1995 CRI.L.J. 3852 (M.P.)
injury by the reason of act for which the accused is sentenced. The statutory liability is only on the accused person who caused loss or injury. The statute does not declare liability of the state in this behalf in any manner or to any extent, however desirable it may be to have such a statutory provision. Emerging theories of victimology support grant-in-aid and assistance to the victim or the dependents of a victim in a case of homicide or accidental death. It is desirable that legislative exercise be conducted to incorporate such a provision in the Code but till such a statutory provision is enacted, criminal court exercising jurisdiction under section 357 can’t mulct the State with the liability to pay compensation to the victim either temporarily or otherwise. The statute does not enable the court to direct the state to pay compensation in the first instance and subsequently recover it from the accused.

In Balraj v. State of U.P. the accused killed his brother leaving his wife and four minor children, Supreme Court directed the accused to pay compensation of Rs. 10,000/- to his deceased brother’s wife. It was further directed that if compensation is not paid with in three months from the date of the order, the same be realized under section 431 Criminal Procedure Code and paid to her. The court said that power to award compensation under section 357(3) is not ancillary to other sentences but it is in addition thereto.

In State of Gujarat v. Hon’ble High Court of Gujarat, it was held that section 357 of Criminal Procedure Code provides some relief to the victims as the court is empowered to direct payment of compensation to any loss or injury caused by the offence but in practice the said provision has not proved to be of much effectiveness. Many persons who are sentenced to long term imprisonment do not pay the compensation and instead they choose to continue in jail in default thereof. It is only when fine alone is the sentence that the convicts invariably choose to remit the fine but those are cases in which

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74 AIR 1995 SC 1935
75 The same view has been reiterated by Supreme Court in Arjunan V. State of T.N. (1997) 2 Crimes 447 (Mad.) and the court further held that the quantum of compensation may be determined by taking into account the nature of crime, the manner in which it has been committed, the justness of claim by the victim and ability of the accused to pay.
76 AIR 1988 SC 3164 Para 49

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the harm inflicted on the victims would have been far less serious. Thus the restorative and reparative theories are not translated into real benefits to the victims.

As it is clear from above cases the Supreme Court has left no stone unturned in providing relief to the victims by granting compensation under section 357 Criminal Procedure Code. This approach has been followed by High Courts in plethora of cases. In some cases fine amount was ordered to be paid as compensation.

In Kanwar Pal Singh Gill v. State (Admn. Of U.T. Chd.) through Secy. And another with Rupan Deol Bajaj, IAS (Mrs.) v. Kanwar Pal Singh Gill, the accused K.P.S. Gill senior police officer (DGP) was convicted under S. 354, 509, I.P.C. for slapping on the posterior of a lady IAS officer in the presence of guests at a dinner party. Sessions Court enhanced the sentence of fine to 50,000/- but altered the sentence of imprisonment and directed accused instead to be released on probation. High Court enhanced the fine to 2,00,000/-Since the incident was about 17 years old. Accused completed the period of probation without violating any terms of bond. In such circumstances the appeal of the prosecutrix seeking enhancement of punishment was rejected. Compensation was awarded to the victim lady under section 357 against the accused. The victim lady refused to accept the amount of compensation and requested the same to be given to any women’s organization engaged in doing service for the cause of women. Since the amount was lying in the court deposit with High Court, the matter was left to Chief Justice of High Court to deal with that amount in appropriate manner as requested by the said lady.

In Jagdish and others v. State of Haryana accused was sentenced to 10 years rigorous imprisonment for attempt to murder, both hands of a person were amputated by him, High Court reduced sentence of second appellant from ten years to seven years. It

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77 2005 SCC (Cri) 1420
79 2005 (3) Criminal Court Cases 93 (SC)
further directed appellant number one to pay rupees 1 lakh and second appellant to pay rupees 50,000/- as compensation to the victim.\textsuperscript{80}

In Surender v. Commissioner and Secretary NCT and others\textsuperscript{81} a police inspector allegedly abused the petitioner, a taxi driver - and severely injured him with his service revolver for not paying entry fees. Case of extreme high handedness and recklessness was made out resulting in permanent disablement. Such act of a police official cannot be justified in any civilized society. Ad-interim ex-gratia compensation of rupees 2,00,000/- was therefore awarded to the petitioner under section 357 of the Criminal Procedure Code.

The function of a criminal court is to punish the offender while that of civil court is to make the wrongdoer compensate for the loss or injury caused to the aggrieved party. However, if these procedures can be combined without affecting the criminal and civil process, it would be just and expedient to do so as it would save time and money in seeking remedies in two different courts. Section 357 incorporates this idea to an extent and empowers the court to grant compensation to the victim and to order payment of costs of the prosecution.

It is to be noted here that lower courts seldom use this power to grant compensation whereas Supreme Court has urged again and again the courts to exercise the power under section 357 Criminal Procedure Code liberally.

The Apex Court has adopted liberal approach to the aid of the cause of victims of crime. Although the quantum of compensation ordered by the court has not been very high in relation to the gravity of the offences, nonetheless the decision are in the line with the growing trend of paying compensation to the victims in the course of criminal proceedings.

In Joginder Singh and others V. State of Haryana, accused convicted under section 307 IPC and sentenced to 7 years RI and to pay fine of Rs. 10,000/-During revision the injured stated that he was not interested in enhancement of sentence of accused if he was compensated in term of money – sentence reduced to already undergone (9 months, 18 days) – Amount of fine under section 357 of Criminal Procedure Code increased to 50,000/- to be paid to injured.

Victim Compensation Scheme

The Fourteenth Law Commission, when the Criminal Procedure Code (Amendment) Bill, 1994 was introduced in the Rajya Sabha and when it was pending before the Parliamentary Committee, was requested by the Central Government to undertake a comprehensive review of the Criminal Procedure Code of 1973 and to make suitable proposals for reform.

The Law Commission, among other things, identified ‘Victimology and Compensating Victims’ for its deliberation, exhibiting its sincere concern for victims of crimes and justifying the needs to ‘redesign and restructure’ the victim-compensatory legislative paradigm in India, it observed:

"Increasingly the attention of criminologists, penologists and reformers of criminal justices system has been directing to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harm to people and not merely symbolic harm to the social order. Consequently, the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victim is compensation to victim of crime."

Referring to the payment of compensation under the provision of section 357 of the Criminal Procedure Code and expressing its reservations about the efficacy of statutory provisions and recalling its meager use by courts in India, the Law Commission asserted that the principles of compensation to victim of crime need to be reviewed and expanded to cover all cases. Compensation should not be limited only to fines, penalties and forfeitures realised but the State, it asserted, should also render its assistance to

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82  2009 (3) RCR (Criminal) Punjab and Haryana High Court

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victims of crimes out of its own funds in all cases regardless of the fact whether an accused is acquitted or the perpetrator is not traced (but the victims is identified) or when the offence is proved. The State’s responsibility to make reparation to crime victims can be justified on humanitarian, compassionate, and legal grounds. The State is also under a sort of legal obligation to compensate victims of crimes, who suffered because of failure on the part of the state to: maintain law and order; ensure peace, harmony and tranquility in society; protect people and their property; and use its authority to suppress crime and punish offenders, Compensation from the State can also be justified on the ground that the state system, namely its political, economic and social institutions, generates crime by poverty, discrimination, unemployment and insecurity. The victim of such a system, therefore deserve compensation from the State. In this perspective the Law Commission, for the first time, traced the ‘Constitutional underpinnings for victimology’ in India. Fundamental Right (Part III) and Directive Principles of State Policy (Part IV), according to the Law Commission, from the bulwark for a new social order in which social, economic and political justice from the national life of country. Article 41 of the constitution, which mandates, inter alia, that the state shall make effective provisions for ‘securing the right to public assistance in cases of disablement and in order cases of undeserved want’ and Article 51-A, which impose a fundamental duty on every citizen, inter alia, ‘to have compassion for living creature’ and ‘to develop humanism’, can, if emphatically interpreted and imaginatively expanded, from the constitutional underpinnings for victimology.

In pursuance of its above outlined concern for victims of crime and the constitutional foundation of Victimology in India the Law Commission felt that the victim-compensatory paradigm reflected in section 357 Criminal Procedure Code, of 1973 is inadequate. Echoing its earlier recommendation made in its 152nd report on custodial crime through a well-designed ‘Victim Assistance Fund’ the Commission recommended a comprehensive victim compensation scheme to be administered, on the recommendation of a trial court, by the legal Services Authorities constituted at the District and State levels under the Legal Service Authorities Act 1987. The suggested

83 Fourteenth Law Commission Report –Chapter XV : Victimology
clause recommending the payment of compensation to victim of custodial crime, inter alia, mandates a criminal court to award, notwithstanding provisions of section 357, Criminal Procedure Code, compensation of not less than Rs 25,000 and Rs 1,00,000 respectively to the person who sustain ‘bodily injury not resulting in death’ and victims of ‘custodial death’. It also mandates the court to order the Government concerned, jointly and severally with the convicted public servant, to pay, as the amount specified in the order.

Inspired by the Tamil Nadu model and commanded by its zeal and deep concern for victims of crime, the Law Commission also recommended that every State Government, through a statutory provision to be inserted in the Criminal Procedure Code, (recommended section 357A) be put under a legal obligation to formulate, in coordination with the Central Government, a scheme for providing fund for the purpose of compensating victims of crime (or their dependents) who have suffered loss or injuries as a result of the crime and who require rehabilitation. Such a scheme be, on recommendation of a trial court, administered by the Legal Services Authorities constituted at the District and State levels under the Legal Services Authorities Act, 1987. Under the scheme the State Legal Services Authority and the District Legal Services Authority be authorised respectively to quantify and award compensation, on a recommendation of a trial court, to victims of crimes. However the Law Commission desires that these authorities should have special consideration while giving compensation to victims of custodial crime, rape, and child abuse; and physically and mentally disabled victims of crimes. The Commission, for the first time, also proposes that a trial court be also empowered to, in appropriate cases, recommend to the District Legal Services Authority (if the compensation in its view is less than Rs 30,000) or to the State Legal Services Authority (if the compensation is more than Rs 30,000) for further rehabilitation of victims of crimes. It further proposes that a crime victims be enabled to approach the District Legal Services Authority and the State Legal Services Authority, as the case may be, for seeking compensation even if the offender is not traced or identified, but the victims is identified, or no trial has taken place.
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 to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

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

(3) If the trial court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make a 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 recommendation or on the application under sub-section (4), the State or the District legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The state or the District Legal services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit”.

According to newly added section 357A of Criminal Procedure Code, the word ‘shall’ make it mandatory for every state Government to prepare a scheme for providing funds in coordination with the central Government 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. This section is applicable to offences against property as well as offences against human body. 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 on the recommendation made by the court for compensation according to the scheme referred to in sub-section (1) of this Section. Discretion is given to the Trial Court to make a recommendation for compensation in two cases. First if it is satisfied, that the compensation awarded under section 357 is inadequate for rehabilitation of the victim or his dependent, secondly where the cases end in acquittal or discharge and the victim has to be rehabilitated. Victim and his dependent has given a right to make an application to the state or the District Legal Services Authority for award of compensation where the offender is not traced or identified but the victim is identified and where no trial takes place. The State or the District legal of Services Authority shall make an enquiry on receipt recommendation of the Trial Court or on the application made by the victim and his dependent under sub section (4) of this Section and award adequate compensation by completing the enquiry within two months. To alleviate the suffering of the victim the State or the District Legal services Authority may order for immediate first-aid facility or medical benefits to be made available free of cost to victim. Such facilities are given to the victim on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned. The State or the District legal of Services Authority may give any other interim relief to the victim which it deems fit. In Re: Justice to Victims of Crime Court on its Own Motion v. Union of India, State of Punjab, Haryana and U.T. Chandigarh, Punjab and Haryana High Court has observed that no State has framed Victim Compensation Policy till date and gives

86 CWP 6319 of 2008, still pending in Punjab and Haryana High Court, next date of hearing is 2nd May 2011.
directions to the State of Punjab, Haryana and U.T. Chandigarh to formulate Victim Compensation Policy. Court further observed that it is appropriate to draw the attention of all concerned to the need to remedy a serious flaw in the administration of criminal justice, namely failure of justice to victims, particularly when crime goes unpunished. Law has to keep pace with the changing needs of the society in the light of national and international developments. On the direction given by the Punjab and Haryana High Court, State of Punjab, Haryana and U.T. Chandigarh formulated the Victim Compensation Policy but it was criticized by the Hon’ble High Court and give directions to review this policy.87

**Compensation to the Persons Groundlessly Arrested**

When any person cause a police officer to arrest88 another person, if it appears to the magistrate by whom the case is heard that there was no sufficient ground of causing such arrest, the magistrate may award such compensation, not exceeding one thousand rupees89 to be paid by the person so causing arrest to the person so arrested, for his loss of time and expenses in the manner as the magistrate thinks fit. It is further provided that in case more than one person is arrested then each of them is to be compensated with amount not exceeding one thousand rupees.90 All such compensation may be recovered as if it were a fine.91

In Shah Chandulal Gokaldas v. Patel Baldevbhai Ranchhoddas92 it was held that section 358 does not make any express provision for giving opportunity to the complainant or other concerned persons to show cause as to why an order to pay compensation under section 358 should not be passed against him. However looking at the consequences which are likely to follow from the order of compensation, the

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87 For details see Annexure II,III and IV
88 Sections. 41 to 44 of Criminal Procedure Code, deal with circumstances in which police officers, magistrates and private citizens are authorized to make arrest without warrant. In Joginder Kumar V. State of U.P. (1994) 4 SCC 260 Supreme Court laid down guidelines for regarding norms and rules of procedure along with constitutional mandate, then he can be prosecuted under S. 342 I.P.C. for wrongful confinement.
89 Substituted in place of one hundred rupees vide the Criminal Procedure Code. (Amendment) 2005 which has not come into force from 23 June, 2006.
90 Ibid
91 See Section. 42 of Indian Penal Code, 1860
92 1980 Cri.L.J. 514, 515 (Guj HC)
principles of natural justice would require that such an opportunity should be given to the complainant or other concerned person.

In Inder Singh V. State of Punjab, Punjab Police forcibly removed seven persons from their farm-house and killed them. The Supreme Court directed the State of Punjab to pay compensation of Rs. 1.50/- lakhs to the representatives of each of seven persons within two weeks.

For applying section 358 there should be some direct and proximate nexus between the complainant and the arrest. It has been held that there should be something to indicate that the informant caused the arrest of the accused without any sufficient grounds. There must be some objective basis for the satisfaction of Magistrate to come to conclusion that informant caused the arrest of the accused and there were no sufficient ground for causing such arrest.

Hence by analyzing the provision of section 358 it can be concluded that section 358 provides compensation for the persons groundlessly arrested. However the amount of compensation provided for such victims is just 1000 rupees which seems inadequate. Provisions for compensation are there but such a low amount virtually negates it. Besides this, opportunity of being heard should be given to the complainant. There should be provision regarding it in section 358 itself.

**Right to Get Costs**

It provides that in case of conviction of an accused in a non-cognizable offence the court may order the accused to pay to the complainant costs in whole or in part, which has been incurred by him. Such costs may include any expenses incurred in respect of process-fees of witness’s and pleader’s fees which the court may consider reasonable. This cost may be imposed on him in addition to the penalty imposed and in case of default the accused may be further ordered to suffer simply imprisonment for a period not

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93 AIR 1995 SC 1949
94 Mallapa V. Veerabasaappa 1977 Cri.L.J., 1856
95 Pramod Kumar Padhi V. Golekha 1986 Cri.L.J. 1634 (Ori.HC.), See also Dhananjay Sharma V. State of Haryana AIR 1995 SC 1795
exceeding thirty days. Order under this section can also be made by the court exercising power of revision.96

This section can be compared with section 357 (1) (a) which is wider in terms and refers to “expenses properly incurred in prosecution.” The order in both cases is discretionary. Under section 357, compensation is generally paid out of the fine levied whereas under this section it is in addition to the fine.

Compensation in Case of Complaint under Section 199(2)

Section 237 provides for a special trial procedure to be followed by a court of sessions in cases of defamation of high dignitaries and public servants.97 The primary object behind section 199 (2) is to enable the government to maintain confidence in the purity of administration when high dignitaries and other public servants are wrongly defamed.98

Such cases shall be tried according to the procedure for trial of warrant cases instituted otherwise than on a police report before a court of Magistrate. The provision to section 237 (1) provides that the person against whom offence is alleged to have been committed shall be examined as a witness for the prosecution unless Sessions Court for reasons to be recorded otherwise directs. If the party desires or if the Court thinks fit every trial under section 237 shall be held in camera. section 237(3) provides that if in any such case Court discharges or acquits the accused then it may issue a show cause notice to the complainant that why he should not be asked to pay compensation to the accused.

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96 Section 359 of Criminal Procedure Code, 1973
97 S.199(2) of Criminal Procedure Code, 1973
98 Section 199 relates to prosecution for defamation of persons un general (sub-section 1) and of some named officials (sub-section 2) in particular. In case of ordinary persons complaint should be made by aggrieved person, not necessarily the person defamed. In other cases, i.e in case of high dignitaries where defamation is in respect of discharge of public functions, a court of sessions can take cognizance upon a complaint in writing by public prosecutor. The complaint should be made with a period of six months of alleged commission of offence. The public prosecutor can lodge complaint only with previous sanction of the state or central government.
However the President or Vice-President of the Union, Governor of the State or Administrator of U.T. is exempted from payment of compensation because of the protection given to them under Article 361 of the Constitution.

The court shall record and consider cause shown by the person so directed and if it satisfied that there was no reasonable cause for making accusation, it may for recorded reasons order the payment of compensation not exceeding one thousand rupees as it may determine to be paid by such person to the accused.\textsuperscript{99} The compensation awarded under section 237(4) shall be recovered as if it were a fine imposed by a magistrate.\textsuperscript{100} The payment of compensation does not exempt the person concerned from civil/criminal liability. However payment made under section 237 shall be taken care of while passing order in subsequent civil proceedings.\textsuperscript{101} According to section 237 (7) the orders passed under section 237 are appealable to High Court.\textsuperscript{102} No compensation shall be paid until time for presentation of appeal has elapsed or if an appeal is presented it has been decided.

Hence section 237 and section 199 have been pre-eminently designed in public interest. These provisions authorize the state to take upon itself power to prosecute the offenders in appropriate cases but lest this procedure be abused, provision is made for examination of the person defamed and for awarding compensation against\textsuperscript{103} him if the complaint is found to be false, frivolous or vexatious.

**Compensation for Accusation without Reasonable Cause**

Section 250 of the Code is designed for payment of compensation to those accused against whom accusations are made in court without any reasonable grounds. Apart from providing compensation which could be imposed, Section 250 lays down the procedure governing such proceedings. Notice to the complainant/informant is necessary, and of course he has to be heard in reply, and against the final order, and in certain cases

\textsuperscript{99} Section 237 (4) of the Criminal Procedure Code, 1973  
\textsuperscript{100} Section 237 (5) of the Criminal Procedure Code, 1973  
\textsuperscript{101} Section 237 (6) of the Criminal Procedure Code, 1973  
\textsuperscript{102} Section 237 (8) of the Criminal Procedure Code, 1973  
\textsuperscript{103} 41st Report of Law Commission P.168 Para 20.11
an appeal lies. The procedure has generally been considered as satisfactory. Following conditions must be satisfied for a case to fall under section 250.

1) Case must have been instituted upon either upon a complaint or upon a police report.

2) The offence must be triable by Magistrate.

3) Case should have been ended in discharge or acquittal.

4) Magistrate should be of the opinion that there was no reasonable ground for making the accusation against the accused.

If all above mentioned conditions are satisfied then magistrate may call upon the complainant forthwith (if present) to show cause why he should not pay compensation to the accused or to each or any of such accused, (if there are more than one), he may be summoned to appear and show cause.

After considering the cause shown by complainant or informant, if magistrate is satisfied that there was no reasonable ground for making accusation, then after recording reasons he may order the compensation to be paid of the amount not exceeding the amount of fine he is empowered to impose. There is a provision for simple imprisonment for a period not exceeding 30 days in default in payment of compensation. Payment of compensation does not exempt the complainant from civil or criminal liability in respect of complaint made or information given by him.

In Banshidhar Pande v. Chunni Lal104 it was held that Section 250 required that offence must be triable by a Magistrate. Therefore where the offence is exclusively triable by a court of session, compensation order under section 250 cannot be passed. Compensation is awarded to the person who has suffered from the accusation and not to his relative.

In Bhagwan Singh V. Hansmukh105, it was held that there must be regular hearing of the case. If a magistrate without issuing process for the attendance of a person

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104 AIR 1977 All. 744.
105 (1996) 29 All. 137
complained against dismisses the complaint under section 203, he cannot pass an order for compensation because there is neither an order discharging nor an order acquitting the accused. There must be a complete discharge or acquittal.

In Nandkumar Krishnarao Nargire v. Jananath Laxman Kushalkar,\textsuperscript{106} the complainant who put up false complaint could not finally be asked to pay compensation as Chief Judicial Magistrate who initiated the proceedings was transferred. The new incumbent refused to proceed under section 250. High Court upheld the view. On appeal by Special Leave Petition Supreme Court upheld the decision of High Court. Supreme Court observed that the view has emerged in all High Courts in the country that the same magistrate alone can initiate action and pass final orders and it is not worth to disturb the unanimous understanding of High Courts on this Subject.\textsuperscript{107}

After perusal of section 250 of the Criminal Procedure Code, it can be safely concluded that it is beneficial provision as it comes to the aid of persons who are groundlessly arrested without any reasonable cause. Though no amount of monetary compensation can compensate the mental agony, tension, loss of valuable time, money of the person concerned but still relief can be provided.

\textbf{Plea-Bargaining}

Plea-Bargaining in simple words means an agreement in a criminal case wherein victim and accused agree to a mutually satisfactory disposition whereby accused gets reduced sentence by paying compensation to the victim.

The practice of his plea-bargaining originated in U.S.A. almost a century ago. The prosecuting agency has a leading role in this process as it has the discretion to reduce or dismiss some of the charges against the accused and also to make recommendations to the court about the sentences in exchange for a guilty plea. The Supreme Court of U.S.A., in Brady v. United States\textsuperscript{108} and Santobello V. New York\textsuperscript{109} upheld constitutional validity of plea-bargaining and underlined the significant role that the concept of the plea-

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{106} (1998) 2 SCC 355
\item \textsuperscript{107} See also Baini Prasad v. State AIR 1953 Punj. 212, Amulya Pal v. Bhupen Sarkar 1988 Cri. L. J. 85 (Cal.)
\item \textsuperscript{108} 297 US 742 - 25 L.Ed. 2d. 747
\item \textsuperscript{109} 404 US 257 (1971) Quoted from Law Commission of India Report No. 154 Vol.. 1 p.52
\end{itemize}
\end{footnotesize}
bargaining plays in the disposal of criminal cases. It has approved this practice mainly on the premise that the accused who are convicted on the basis of negotiated plea of guilt would ordinarily have been subjected to trial process.

Keeping in view the success of plea-bargaining system in U.S.A. and other western countries, in delivering speedy justice and reducing the arrears of cases pending before the courts, demands have been raised from various sectors to introduce the formal concept of plea-bargaining in India. As otherwise parties have been resorting to plea-bargaining through an informal process. For the first time the question of validity of plea-bargaining in India came before in Madanlal Ramchandra Daga v. State of Maharashtra. Supreme Court held that it is very wrong for a court to enter into a bargain that accused will pay the amount which they have wrongly realized from the victim. This factor may be taken into consideration for mitigation of the punishment imposed on them. The court held that offences should be tried and punished according to the guilt of the accused.

Again in Murlidhar Meghraj Loya v. State of Maharashtra, Supreme Court strongly rejected the application of plea-bargaining in economic offences. Supreme court observed -“Many economic offences resort to practices the Americans call the bargaining ‘plea-negotiation’, ‘trading out’ and compromise in criminal cases and trial magistrate drowne by a docket burden and had assent to sub rosa ante-room settlement. The businessman, culprit confronted by assure prospect of the agony and ignominy of the tenancy of a prison cell, trades out of the situation is idle to speculate on virtue of negotiated settlement of criminal cases, as U.S.A. but in out jurisdiction especially intends on society’s decision expressed through pre-determined legislative fixation of minimum sentences by society subverting the mandate of law.”

In Kasambhai V. State of Gujarat, in this case Supreme Court squarely observed that conviction based on plea of guilty entered by the accused as a result of plea-bargaining could not be sustained and that it was a plea of guilty “on allurement being held out to him that if enters a plea of guilty he will be let off very lightly.” This

110 AIR 1968 SC 1267
111 AIR 1976 SC 1929
112 AIR 1980 SC 854
Supreme Court did not approve the procedure of plea-bargaining on basis of informal inducement.

In Thippeswamy V. State of Maharashtra\textsuperscript{113} Supreme Court categorically declared that enhancement of sentence by the appellate or revisional court in appeal or revision by acting on plea of guilty would not be reasonable, fair and just. It would be clearly violative of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision to enhance the sentence. It was further held that revision or appellate court in such case should set aside the conviction and sentence of the accused and remand the case to the trial court.

In State of U.P. v. Chandrika\textsuperscript{114} Supreme Court reiterated that the concept of plea-bargaining is not recognized in India and is against public policy under our criminal justice system. Except section 320 of Criminal Procedure Code, the concept of negotiated settlement in criminal cases is not permissible. This method of short circuiting the hearing and deciding the criminal appeals or cases involving serious offences requires discouragement. Neither the state nor the public prosecutor nor even the judge can bargain that evidence would not be led or appreciated in consideration of getting flee bite sentence by pleading guilty. It was further held that mere acceptance or admission of the guilt should not be a ground for reduction of sentence nor can accused bargain with the court that he is pleading guilty, sentence be reduced.

Hence the approach of Supreme Court has consistently been against the plea-bargaining.

**Law Commission of India on Plea-Bargaining:-**

Law Commission in its 142\textsuperscript{nd} report after considering the system of plea-bargaining as practiced in other countries recommended that the scheme for concessional treatment to offenders who plead guilty on their own volition in lieu of promise to reduce the charge, to drop some of the charges or getting lesser punishment be statutorily
introduced by adding a new chapter in the Code of Criminal Procedure, 1973. Law Commission analyzed the views in favor as well as against the concept of plea-bargaining. The Commission observed ..., “we are of the view that plea-bargaining can be made an essential component of administration of criminal justice provided it is properly administered. For that purpose, certain guidelines and procedure have to be incorporated in the Code of Criminal Procedure, 1973,”115

In its 154th Report Law Commission of India again stated that-„”Since the plea-bargaining which is known as alternate dispute resolution has been successful in western countries it is desirable to introduce the same in India also on experimental basis and on such experiment the same can be extended to other parts of the country.”116

Concretization of Plea-Bargaining

Recently a new Chapter XXI A117 has been inserted in the Code of Criminal Procedure, 1973. The plea-bargaining is applicable at post-cognizance stage both in police report and complaint cases.118 It is not applicable in following cases:-

- Cases other than those punishable with death, life imprisonment, imprisonment exceeding 7 years.119
- Offences which affect socio-economic conditions of the country.
- Offences against women.
- Offences against children below the age of 14 years.
- The person should not be previous convict of the same offence.120

A person accused of an offence may file an application for plea-bargaining in the court in which such offence is pending for trial. Such application shall contain a brief description of the case including the offence to which the case relates and shall be

115 Law Commission of India Report no. 154, 1996 Vol. 1 p. 52, paras 9 to 9.10
117 Chapter XXI A has been inserted vide Criminal Law (Amendment) Act, 2005, it consists of Sections 265A to 265L, it has come into force on 5th July, 2006.
118 See details in S.265-A of Criminal Procedure Code,1973
119 Section 265 A of Criminal Procedure Code,1973
120 Section 265 B (2) of Criminal Procedure Code,1973
accompanied by an affidavit of the accused stating that he has made the application voluntarily after understanding all its limitations. Thereafter the court will fix the date for appearance and issue notice of the same to the parties. On appearance of the parties the court shall examine the accused in camera, in absence of opposite party, regarding this plea.

If the court is satisfied that the application has been filed by the accused voluntarily, then it shall provide time to Public Prosecutor or the complainant and the accused to work out a mutually satisfactory disposition as provided in Code.

In case no disposition has been worked out, the court shall record such observation and proceed further from the stage of application under section 265B. Report of mutually satisfactory disposition is to be submitted before the court.

Where a mutually satisfactory disposition of the case has been worked out the court shall dispose of the case in following manner.

The court shall award compensation to the victim in accordance with the disposition. The court shall hear the parties on quantum of punishment. If the accused be given the benefit of probation, he shall be released under section 360 or under the Probation of Offenders Act, 1958 or any other law for the time being in force and release the accused on probation if provision of section 360 Criminal Procedure Code or provisions of Probation of Offenders Act, 1958 apply. For awarding punishment following procedure is to be followed.

In other cases if the court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment. If accused can’t be released on probation and

121 Section 265 B of Criminal Procedure Code, 1973
122 For details see Section 265C of Criminal Procedure Code, 1973
123 Section 265E (a) of Criminal Procedure Code, 1973
124 Section 265D of Criminal Procedure Code, 1973
125 Section 265E (c), (d) of Criminal Procedure Code, 1973
126 Section 265E Cl. (c) of Criminal Procedure Code, 1973
minimum punishment is not provided then court may sentence the accused one fourth of the punishment provided or extendable, as the case may be for such offence.\textsuperscript{127}

The court shall deliver such judgment in open court and the same shall be signed by the presiding officer of the court.\textsuperscript{128} The judgment shall be final and no appeal except Special Leave Petition under Article 136 and Writ Petition under Articles 226/227 the Constitution shall lie in any court against such judgment.\textsuperscript{129} The court shall have for the purposes of discharging its functions all powers vested in it in respect of bail, trial of offences and other matters relating to the disposal of a case in such court under Criminal Procedure Code.\textsuperscript{130} Provisions of section 428 shall apply for setting off the period of detention undergone by the accused against the sentence of imprisonment under this chapter.\textsuperscript{131}

The statements or facts stated by an accused in an application for plea-bargaining filed under section 265 B shall not be used for any other purpose except for the purpose of plea-bargaining.\textsuperscript{132}

The chapter is not applicable to any juvenile or child defined in sub-section (k) of Section 2 of Juvenile Justice (Care and Protection of Children) Act, 2000.\textsuperscript{133}

Concept of plea-bargaining is an important step in the direction of alternate dispute redersal system and restorative justice. It will certainly reduce the huge burden of 2.91 crores\textsuperscript{134} cases pending before the courts. The judiciary can now better concentrate on serious cases. It gives an option to accused in non-heinous crimes to bargain for reduced sentence in trial court by providing compensation to the victim. In this way it will save precious time of courts, money of litigants and will encourage negotiated settlements.

\begin{itemize}
\item \textsuperscript{127} Section 265E Cl. (d) of Criminal Procedure Code,1973
\item \textsuperscript{128} Section 265E Cl. (d) of Criminal Procedure Code,1973
\item \textsuperscript{129} Section 265G of Criminal Procedure Code,1973
\item \textsuperscript{130} Section 265H of Criminal Procedure Code,1973
\item \textsuperscript{131} Section 265 I of Criminal Procedure Code,1973
\item \textsuperscript{132} Section 265 K of Criminal Procedure Code,1973
\item \textsuperscript{133} Section 265 L of Criminal Procedure Code,1973
\item \textsuperscript{134} The Tribune 5 July, 2006
\end{itemize}
India has a notoriously slow legal system under which under-trials spend several years in jail without conclusion of trial. Now accused can hope to reduce his ordeal. Hence it is part of judicial reform process.

It allows criminals to accept responsibility for their actions and to feel remorse and reduce expenses in further investigation and litigation. It will reduce secondary victimization of vulnerable victims. It brings both victims and offenders on the same negotiating table.

It will certainly go a long way in providing relief to the victims of crime. The most significant feature of Indian plea-bargaining system is that after working out mutually satisfactory disposition the court shall award compensation to the victim. The accused would get only half of minimum punishment if minimum punishment has been provided under the law.\textsuperscript{135} Hence it is very progressive piece of legislation, which could result into speedy disposal of cases.

**Critical Analysis of Plea Bargaining**

Critics of plea-bargaining assert that sometimes accused may be innocent yet he may be pressurized to plead guilty due to influence of many others extraneous factors. Outcome of plea-bargaining may depend strongly on negotiating skills and personal demeanor of lawyers. This puts persons who can afford good lawyers at an advantage.

Asian Human Rights Commission says\textsuperscript{136} that introduction of plea-bargaining is similar to treating the symptoms of an illness rather than actual ailment. It is true that thousands of under-trial prisoners are languishing in prisons throughout India, but actual reasons for this are needed to be addressed. In many cases delays are caused by failed investigations, or because evidence and witnesses fail to be produced in court. Even if everything is in order there are simply not enough mechanism to try a person. For example there are not enough courts to deal with the huge number of pending case. There is a shortage of Public Prosecutor due to backlog in appointments; government forensic facilities are an abject failure.

\textsuperscript{135} Section 265E (c) of Criminal Procedure Code,1973
\textsuperscript{136} http://www.achrchk.net/statements/mainfile.php2006statements/637/ visited on 23rd April 2008 at 11:30 AM.
If the government is concerned to reduce delays in criminal procedures, it should also try to address the other obstacles to fair and speedy trial. By contrast the introduction of plea-bargaining is a short-cut aimed at quickly reducing the number of convictions with or without justice. The consequences will be felt most obviously by the countless numbers of poor languishing in country’s prisons while awaiting trial. Those persons will now be pressed to plead guilty in exchange for shorter sentence. Plea-bargaining will lead to increase the number of cases where innocent persons find themselves imprisoned and with criminal records. The Indian police are well known for booking poor innocent people for crimes that they have never committed, often being paid off by the actual perpetrators. With the introduction of plea-bargaining, these persons will be getting pushed from one dark room to the other.

One of the dramatic side effects which have been pointed out by Asian Human Rights Commission is that custodial torture is not a separate offence in India. But it is simply punishable under general provisions like sections 323, 324, 330 of Indian Penal Code. The punishment for these offences is well within the limits prescribed in Chapter of plea-bargaining. This means that even for such offences lighter penalties will be there, despite the fact that such offences fall into the gravest categories of offences under International law.

Whatever may be the fears of misuse, the benefits of plea-bargaining can’t be ignored. Introduction of system of plea-bargaining will certainly benefit both victims and offenders and is a welcome step in compensatory jurisprudence as it advances interests of victims as well, however key lies in its successful implementation...

**The Probation of Offenders Act, 1958**

In its quest for re-establishing offenders in the community and to reform and rehabilitate them without subjecting them to the deleterious effects of jail, the probation of offenders Act, 1958 seeks to prevent the conversion of their association with hardened criminals of mature age. It accordingly empowers trial court in its discretion to release an offender after due admonition (in certain specified offences) and on probation of good conduct in suitable cases.
The court directing the release of an offender under sections 3 or 4,\textsuperscript{137} if thinks fit, may at the same time order directing him to pay such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and such costs of the proceedings as the court thinks reasonable.\textsuperscript{138} The amount ordered to be paid may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code of Criminal Procedure, 1973. The civil court trying any suit arising out of same matter for which offender is prosecuted shall take into account the amount of compensation already paid.\textsuperscript{139}

The compensation scheme of the Probation of Offenders Act, 1958 is inadequate from the victim’s point of view section 5 gives limited discretionary powers to the court to order compensation for loss or injury in cases where the accused is let off with admonition or released on probation.

In Hari Kishan and State of Haryana V. Sukhbir Singh\textsuperscript{140} case, two parties in the course of a fight inflicted on each other injuries both serious and minor. One of the victims named Joginder, lost the power of speech permanently. The accused and others were convicted under section 307 read with section 149 I.P.C. and sentenced to undergo imprisonment for four years. On appeal high Court altered the conviction from section 307 I.P.C. to sections 325 and 323 read with section 149 I.P.C. and released them on probation of good conduct. Each one of the accused was ordered to pay compensation of rupees 25000/- to Joginder, when the matter was brought before Supreme Court it pointed out that compensation is a measure of responding appropriately to crime as well as reconciling the victim and the offender and it reassures the victim that he/she is not forgotten in the criminal justice system. The victim must be made to feel that the court and the accused had taken care of him. Any such measure that would give the victim relief is far better than a sentence of deterrence. The Supreme Court found that compensation awarded by High Court was inadequate. After ascertaining the willingness

\textsuperscript{137} S.3 deals with power of court to release certain offenders after admonition, S.4 of the Act deal with power of the court to release certain offenders on probation of good conduct.

\textsuperscript{138} S.5 Probation of Offenders Act, 1958 subsection 1 Cl. (a), (b)

\textsuperscript{139} Section 5(3) Probation of Offenders Act, 1958

\textsuperscript{140} (1988) 4 SCC 551
and ability of accused to pay a further sum to the victim, the court increased the amount
of compensation to rupees 50,000/-. In quite a few cases of death caused by rash or negligent act, punishable under
section 304-A of the Penal Code, courts have reduced the period of imprisonment to the
one already undergone but imposed a severe fine in order to provide substantial relief to
the dependants of the deceased.\(^1\) With the same object, an innovative use of probation
technique is being made to compensate the dependants of the victim of death caused by
rash or negligent act as would be evident by two cases decided by the Punjab and
Haryana High Court\(^2\) The killer is released on probation if besides other favourable
factors, the offender is willing to pay compensation to the heirs of the victim though
probation was denied in Dr. Jacob George v. State of Kerala,\(^3\) where a homeopath
attempting to procure an abortion by operating upon a woman caused her death, the
Supreme Court reduced the imprisonment to two months already undergone. The fine
imposed upon the petitioner was increased from rupees 5000 to one lakh required to
nurse the child of the deceased reasonably well.

The policy of criminal justice system takes care of the interest of victims from two
angles:-

1) It aims to prevent the commission of offences by focusing on maintenance of law
and order of the society.

2) It provides for special provisions for ensuring restorative justice to the victims of
crime. For that 3 chapters have been added to Criminal Procedure Code. i.e.
chapters VIII, X, XI\(^4\) likewise to prevent the commission of offence special
provisions have been made in Juvenile Justice (Care and Protection of Children)
Act, 2000 to deal with children in need of care and protection as the basic
presumption is that if such children are not provided with such a support and

SCC (Cri.) 597

\(^{2}\) Sunder Lal V. State of Punjab and Gurmit Singh V. State of Punjab; Chandigarh crime cases,
p.126 and p.335

\(^{3}\) (1994) 3 SCC 430

\(^{4}\) Chapter VIII - Security for Keeping Peace and Good Behavior . . . Chapter X – Maintenance of
Public Order and Tranquility Chapter XI Preventive Action of the Police.
succor sooner and late they shall be pushed into the world of criminality. Moreover juvenile Justice (Care and Protection of Children) Act, 2000 also contains a full chapter on re-habilitation and social re-integration of target groups into the main stream.

Recently enacted the Protection of Women from Domestic Violence Act, 2005 also contains provisions for prevention of the domestic violence as it empowers the authorities to take cognizance of the cases where the domestic violence has not occurred so far but as is apprehended in the near future. Apart from statutory provisions state has adopted certain administrative measures for the prevention of offences, criminal justice agencies such as National Crime Record Bureau, National Institute of Social Defense, various ministries and departments have been instrumental in formulation of various policies and programmes for prevention of crime and rehabilitation of offenders as well as victims of the crime.

The Protection of Women from Domestic Violence Act, 2005

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and Beijing Development and the Platform for Action (1995) have acknowledged this, UN Committee on Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in its General Recommendations No. XII (1989) has recommended that state parties should act to protect women against violence of any kind especially that occurring with in the family. The phenomenon of domestic violence is widely prevalent in India but has remained largely invisible in public domains. It is an offence under section 498-A of Indian Penal Code, the civil law does not address it in its enmity it was therefore proposed to enact a law keeping in view the rights guaranteed under Article 14, 15 and 21 of the Constitution to provide for a remedy under civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The passing of Protection of Women from Domestic Violence Act, 2005 is not only an

145 For details see Chapter IV Juvenile Justice (Care and Protection of Children) Act, 2000 Sections 40 to 45

146 The Protection of Women from Domestic Violence Act, 2005, statement of objects and reasons.
important step in the history of women empowerment in India rather the very important and less talked about feature of this Act from the point of view of victims and from the restorative justice angle is that it inter-alia talks about monetary relief, compensation order, protection order, residence order for victims as well as it provides for services and co-operation of police, magistrate, protection officers and service providers.

It is mandatory duty of Police officers, Service Providers, Protection Officers and the Magistrate who has received a complaint of domestic violence or is otherwise there, to inform the aggrieved person of her right to make an application for obtaining a relief by way of protection order, compensation order or more than one such orders under this Act, besides she should be of her right her right to free legal services under Legal Services Authorities Act, 1987.

The main functionary under the Act is called Protection Officer who shall be appointed by the State Government concerned by notification in official gazette and as far as possible shall be women. Protection officer may be the government employee or member of non-governmental organization. Preference shall be given to woman. She shall have at least 3 years experience in social sector. Their tenure shall be a minimum period of 3 years. Her duties include assisting the magistrate in discharge of his functions. Her main duty is to prepare ‘domestic incident report’. And on receipt of complaint forward the copies to the police officer and to service provider to make application to the magistrate at the desire of aggrieved person for claiming protection order. To ensure that the aggrieved person is provided legal aid under Legal Service Authorities Act, 1987, to maintain list of all service providers providing legal-aid or counseling, medical facilities and shelter homes to make available shelter home to

147 Section 5 of the Protection of Women from Domestic Violence Act, 2005
148 ibid
149 Section 8 (1) of the Protection of Women from Domestic Violence Act, 2005
150 Section 8 (2) of the Protection of Women from Domestic Violence Act, 2005
151 The Protection of Women from Domestic Violence Rules, 2006 Rule No. 3
152 Section 8, Section 9 respectively deal with the appointment of protection offices and their duties.
153 Form No. 1 under Protection of Women from Domestic Violence Act, 2005
154 Section 9 (c) of the Protection of Women from Domestic Violence Act, 2005
155 Section 9 (d) of the Protection of Women from Domestic Violence Act, 2005
156 Section 9 (e) of the Protection of Women from Domestic Violence Act, 2005
157 Section 9 (f) of the Protection of Women from Domestic Violence Act, 2005
get the aggrieved medically examined,\textsuperscript{158} to ensure compliance of monetary relief.\textsuperscript{159} Protection Officer shall be under the control and supervision of magistrate and State government.\textsuperscript{160}

Functions of service provider\textsuperscript{161} include the making of domestic incident report\textsuperscript{162} and forward a copy of report to protection officer and to the relevant police station,\textsuperscript{163} to ensure that aggrieved person is provided shelter in a shelter home and report to relevant police station.\textsuperscript{164} Any voluntary association registered under societies Registration Act, 1860 or Company registered under Companies Act, 1956 can become service provider by registering itself with State government.\textsuperscript{165} Its objective should be protection of rights and interest of women by any lawful means including providing of legal-aid, medical, financial or other assistance. Every association or company seeking registration under this Act should have been rendering the kind of services it is offering under the Act at least 3 years before the date of application for registration.\textsuperscript{166}

Application for the statutory relief can be filed to the magistrate by :-

(a) Aggrieved person or

(b) Protection officer or

(c) Any other person on behalf of the aggrieved person.\textsuperscript{167}

Before passing any order on such application, the magistrate shall take into account any domestic incident report received by him from Protection Officer or Service Provider. Protection order may prohibit the respondent from committing aiding or abetting any act of domestic violence\textsuperscript{168} entering the place of employment of the

\begin{itemize}
  \item Section 9 (g) of the Protection of Women from Domestic Violence Act, 2005
  \item Section 9 (h) of the Protection of Women from Domestic Violence Act, 2005
  \item Section 9 (2) of the Protection of Women from Domestic Violence Act, 2005
  \item Section 10 of the Protection of Women from Domestic Violence Act, 2005
  \item Section 10 (2) (a) of the Protection of Women from Domestic Violence Act, 2005
  \item Section 10 (2) (b) of the Protection of Women from Domestic Violence Act, 2005
  \item Section 10 (2) (c) of the Protection of Women from Domestic Violence Act, 2005
  \item Section 10 (1) of the Protection of Women from Domestic Violence Act, 2005
  \item The Protection of Women from Domestic Violence Rules, 2006 Rule No. 11 (3) (a)
  \item Section 12 of the Protection of Women from Domestic Violence Act, 2005
  \item Section 18 (a), (b) of the Protection of Women from Domestic Violence Act, 2005
\end{itemize}
aggrieved person and if aggrieved person is a child, its school etc, communicate with her in any form, alienating any assets, causing violence to dependants and other relatives, committing any other act as specified in the protection order.

Magistrate while deposing off the application of domestic violence inter-alia may pass residence orders. In residence orders respondent may be restrained to dispossess or disturb the possession of the aggrieved person, nor his relatives can enter the place of the aggrieved, he cannot alienate, dispose off, encumber, renounce it, he may be ordered to return Stridhan or he may also be ordered to provide her alternate accommodation of the same level. The police may also be directed to provide her protection or to assist her in implementation of the order.

The Act further empowers the magistrate to pass orders for the grant of monetary relief to the aggrieved person from the respondent to meet the expenses incurred, and losses suffered including loss of earning, medical expenses, loss of property and maintenance of the aggrieved and her children including maintenance in addition to section 125 Criminal Procedure Code or any other law for the time being in force. Monetary relief shall be adequate, fair and reasonable and consistent with woman is accustomed. Magistrate can also order lump sump or monthly payments for maintenance. If respondent fails to pay the relief then magistrate may direct the employer or debtor of respondent to directly pay to the aggrieved person or to deposit in court the portion of wages or salary or debt due to or accused to the respondent.

In addition to other relief that may be granted under the Act, Magistrate may on an application by the aggrieved, pass an order directing the respondent to pay compensation and damages for injuries, including mental torture and emotional distress caused by the acts of domestic violence by that respondent.

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169 Section 18 (c) of the Protection of Women from Domestic Violence Act, 2005
170 Section 18 (d) of the Protection of Women from Domestic Violence Act, 2005
171 For details see Section 18 (e) of the Protection of Women from Domestic Violence Act, 2005
172 Section 18 (f) of the Protection of Women from Domestic Violence Act, 2005
173 Section 18 (g) of the Protection of Women from Domestic Violence Act, 2005
174 Section 19 of the Protection of Women from Domestic Violence Act, 2005
175 Section 20 of the Protection of Women from Domestic Violence Act, 2005
176 Section 22 of the Protection of Women from Domestic Violence Act, 2005
Any relief available under sections 18, 19, 20, 21, 22 may also be sought in any legal proceedings before a civil court, family court or a criminal court affecting the respondent whether such proceedings were initiated before or after the commencement of the Act and any such relief will be additional relief but duty is imposed on the person to inform the court that about the previously claimed relief.177

A breach of protection order or an interim protection order by the respondent has been made an offence and is punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to 20,000/- rupees or with both. Magistrate may also frame charges under section 498-A I.P.C. or under Dowry Prohibition Act, 1961 as the case may be.178 The offence of breach of protection order is cognizable and non-bailable offence.179 And the court may conclude that the accused has committed the offence on the sole testimony of the aggrieved person.180

The new Act is certainly a positive step in the direction of restorative justice as it talks about the victims of crime unlike earlier ones and The Protection of Women from Domestic Violence Act, 2005 is much broader in scope as it provides various rights, protection order, residence order to the women who are the most vulnerable victims of crime. In the context of changing social realities, it appears to be a sincere effort to bring Indian law in tune with gender justice.

The Immoral Traffic (Prevention) Act, 1956

Trafficking in human beings violates the basic human rights of the affected persons and leads to their exploitation in many ways. Human beings are trafficked for various purposes such as for working in mines, in hazardous industries, as domestic servants and for immoral purposes. The evil of immoral trafficking is eroding social values and digging into the very foundation of human civilization. It reduces the woman to the level of a commodity available for a price. Immoral trafficking in women has been in prevalence in India since ancient period. Most of the trafficked women and girls are

177 Section 26 of the Protection of Women from Domestic Violence Act, 2005
178 Section 31 of the Protection of Women from Domestic Violence Act, 2005
179 Section 32 (1) of the Protection of Women from Domestic Violence Act, 2005
180 Section 32 (2) of the Protection of Women from Domestic Violence Act, 2005
sold in flesh market for prostitution. This immoral practice of buying and selling women and converting them into prostitutes degrades them to such a level that these helpless women very rarely think of coming out of the prostitution dens, known as red-light areas, to lead a normal life. Health hazards of prostitutes are a normal phenomenon. Frequent pregnancies, abortions by improper means and getting affected by venereal diseases demoralize them in such an extent that they find solace in alcohol and drugs, spread of HIV has further increased their miseries.  

Keeping in view the ill effects of prostitution on the society, the Supreme Court observed: “No denying the fact that prostitution always remains as a running sore in the body of civilization and destroys all moral values.”

Article 23 of the Constitution declares that traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 35 of the Constitution provides that as soon as may be after the commencement of the Constitution, make laws for prescribing punishment for the acts declared as offences by the Constitution.

With the growing danger in society to healthy and decent living with morality, the representatives of various countries met in New York on 9 May 1950 and signed the International Convention for the Suppression of Immoral Traffic in Persons and Exploitation of the Prostitution of others. India ratified this International Convention and became bound to take steps for implementing its provisions.

This act is enacted in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for the prevention of immoral traffic.

Punishment for keeping a brothel or allowing premises to be used as a brothel is given under section 3 of the Act. A person who commits offence under this Act shall be punishable on first conviction with rigorous imprisonment for a term of not less that two years and which may extend to three years and also with fine which may extend to ten

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181 Women and the Law by Dr. Dalbir Bharti APH Publishing Corporation New Delhi. pp. 151
182 Vishal jeet v. Union of India AIR 1997 SC 3021
thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which shall not be less than three years and which may extend to seven years and shall also be liable to fine which may extend to two lakh rupees and any person who (a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or (b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, let the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel, or as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if-

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act: or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.

Section 3(3) provides that notwithstanding any thing contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (d) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.
Punishment for living on the earnings of Prostitution:- It is a hard fact that a large number of persons, both men and women, run brothels and live on the earnings of the prostitution, with a view to curbing this trend, the legislature has prescribed punishment for living on the earnings of the prostitution.

The Act provides that any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.\(^{183}\)

It further provides that where any person over the age of eighteen years is proved,-

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).\(^{184}\)

Punishment is provided for procuring, inducing or taking person for the sake of prostitution under section 5 of the Act. And person shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years and if the person in respect of whom an offence committed under this subsection, is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life.

\(^{183}\) Section 4(1) of the Immoral Traffic (Prevention) Act, 1956
\(^{184}\) Section 4(3) of the Immoral Traffic (Prevention) Act, 1956
The punishment for those who recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of,-

(a) threat or use of force or coercion, abduction, fraud, deception; or
(b) abuse of power or a position of vulnerability; or
(c) giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons.

And where any person recruits, transports, transfers, harbours or receives a person for the purpose of prostitution such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred harboured or received the person with the intent that the person shall be used for the purpose of prostitution.\textsuperscript{185}

Any person who commits trafficking in persons shall be punishable on first conviction with rigorous imprisonment for a term which shall not be less than seven years and in the event of a second or subsequent conviction with imprisonment for life. Any person who attempts to commit, or abets trafficking in persons shall also be deemed to have committed such trafficking in persons and shall be punishable with the punishment herein before described.\textsuperscript{186}

Any person who visits or is found in a brothel for the purpose of sexual exploitation of any victim of trafficking in persons shall on first conviction be punishable with imprisonment for a term which may extend to three months or with fine which may extend to twenty thousand rupees or with both and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and shall also be liable to fine which may extend to fifty thousand rupees.\textsuperscript{187}

\textbf{Detaining a person in premises where prostitution is carried on}

Section 6 of the Act deals with persons who detain any person in any brothel and prescribes punishment for such acts. It provides that any person who detains any other person, whether with or without his consent,-

\textsuperscript{185} Section 5A of the Immoral Traffic (Prevention) Act, 1956
\textsuperscript{186} Section 5B of the Immoral Traffic (Prevention) Act, 1956
\textsuperscript{187} Section 5C of the Immoral Traffic (Prevention) Act, 1956
(a) in any brothel, or (b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees.

The court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may be less than seven years.

Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under this section and where a child found in a brothel, is, on medical examination detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

Section 6(3) provides that a person shall be presumed to detain a person in a brothel or in upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,- (a) withholds from her any jewellary, wearing apparel, money or other property belonging to her, or (b) threatens her with legal proceedings, if she takes away with her any jewellary, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellary, wearing apparel, or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.
Rescue and removal of persons

Section 16 of the Act provides that where a magistrate has reason to believe from information received from the police or from any other person authorized by State Government in this behalf or otherwise, that any person is living, or is carrying, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove there from such person and produce her before him. The police officer, after removing the person shall forthwith produce her before the Magistrate issuing the order.

When the special police officer removing a person or a police officer rescuing a person, is for any reason unable to produce her before the appropriate Magistrate, police officer shall forthwith produce her before the nearest Magistrate of any class, who shall pass such orders as he deems proper for her safe custody until she is produced before the appropriate Magistrate. But person shall not be detained in custody for a period exceeding ten days from the date of the order of Magistrate. And the appropriate Magistrate after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received by him regarding the age, character and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the person and the prospects of her rehabilitation. The Magistrate may, pass such orders, as he deems proper for the safe custody of the person. 188

However where a person rescued under section 16 is a child, it shall be open to the magistrate to place such child in any institution established or recognized under any Children Act for the time being in force in any state for the safe custody of children. No person shall be kept in custody for this purpose for a period exceeding three weeks from

188 Sec Sections 16 and 17 of the Immoral Traffic (Prevention) Act, 1956
the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over her.

Where the Magistrate is satisfied, after making an inquiry as required under section 17(2) that the information received is correct; and that she is in need of care and protection, he may, make an order that such person be detained for such period, being not less than one year and not more than three, as may be specified in the order, in a protective home, or in such other custody, as he shall, for reasons to be recorded in writing, consider suitable. But such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person, and that those entrusted with the custody of the person, including the persons in charge of a protective home; may be required to enter into a bond which may, where necessary and feasible contained undertaking based on direction relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the court, which will be in force for a period not exceeding three years.\textsuperscript{189}

Magistrate may summon a panel of five respectable persons, three of whom shall, whereas practicable, be women, to assist him in discharging his functions under section 17(2) and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons.

It is the duty of a Magistrate to enquire about the genuineness of the parents, guardian or any other person or organization to whom the rescued or removed person is to be handed over. The Magistrate making an inquiry under section 17, may before passing an order for handing over any person rescued under section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognized welfare institution or organization.\textsuperscript{190}

\textsuperscript{189} Section 17 of the Immoral Traffic (Prevention) Act, 1956
\textsuperscript{190} Section 17A of the Immoral Traffic (Prevention) Act, 1956
Protective home or provided care and protection by Court:- Sections 19 and 21 of the Act deal with the matters of protective homes and provided care and protection by the court. A person who is carrying on, or is being made to carry on prostitution, may make an application, to the Magistrate within the local limits to whose jurisdiction she is carrying on, or is being made to carry on prostitution, for an order that she may be-(a) kept in a protective home, or (b) provided care and protection by the court in the manner specified in the Act. On such a request the Magistrate may pending inquiry direct that the person be kept in such custody as he may consider proper, having regard to the circumstances of the case. 191

If the Magistrate after hearing the applicant and making such inquiry as he may consider necessary, including an inquiry by a Probation Officer appointed under the Probation of Offender Act, 1958, (20 of 1958) into the personality, conditions of home and prospects of rehabilitation of the applicant, is satisfied that an order should be made under this section, he shall for reasons to be recorded, make an order that the applicant to be kept in a protective home, or in a corrective institution, or under the supervision of a person appointed by a Magistrate for such period as may be specified in the order. 192

The State Government may in its discretion establish as many protective homes and corrective institutions under this Act as it thinks fit and such homes and institutions when established shall be maintained in such manner as may be prescribed. 193

Rehabilitation of Rescued Prostitutes:-

The Supreme Court of India in Gaurav Jain v. Union of India 194 gave directions for the rehabilitation of the victims of the prostitution. Court said it is the duty of the State and all voluntary non-government organizations and public spirited persons to come into their aid to retrieve them from prosecution, rehabilitate them with a helping hand to lead a life with dignity of person, self-employment through provisions of education, financial support, developed marketing facilities as some of major avenues in this behalf.

191 Section 19 of the Immoral Traffic (Prevention) Act, 1956
192 ibid
193 Section 21 of the Immoral Traffic (Prevention) Act, 1956
194 AIR 1997 SC 3021
Marriage is another important object to give them real status in society. Housing, legal aid, free counseling, assistance and all other similar aids and services are meaningful measures to ensure that unfortunate fallen women do not again fall into the trap of red light area contaminated with foul atmosphere.

Economic rehabilitation is one of the factors that prevent the practice of dedication of the young girls to the prostitution as Devadasis, Jogins or Venkatasins. Their economic empowerment and education gives resistance to such exploitation however, economic programmes are necessary to rehabilitate such victims of customs or practices.

The rescue and rehabilitation of the child prostitutes and children should be kept under the nodal department, namely, Department of Women and Child Development, under the Ministry of Welfare and Human Resource, Government of India. It would device suitable schemes for proper and effective implementation. The institutional care, thus would function as an effective rehabilitation scheme in respect of the fallen women or the children of fallen women even if they have crossed the age prescribed under the Juvenile Justice Act. Time to time Supreme Court has given directions to the Central Government, State Government and Union Territory Administrators, adequate steps should be taken to rescue the prostitutes, child prostitutes, and the neglected juveniles. They should take measures to provide them adequate safety, protection and rehabilitation in the juvenile homes manned by qualified trained social workers or homes run by NGOs with the aid and financial assistance given by the Government of India or State Government concerned.

The Indecent Representation of Women (Prohibition) Act, 1986

With the development in mass media and advancement of technology, the field of advertisement has become an effective way of attracting people’s attention towards various products and market trends. Along with the benefits of the mass media, it opened another field of oppression and humiliation of women.

With a view to curbing the trend of indecent representation of women through advertisement or in publications, writings, figures or in any other manner, the
Government of India has enacted the Indecent Representation of Women (Prohibition) Act, 1986, indecent representation of women” means the depiction in any manner of the figure of a woman; her form or body or any party thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.

The advertisements containing indecent representation of women in any form is prohibited. And person shall not produce or cause to be produced sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form.

If any person contravenes the provisions of Section 3 or Section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

The Prohibition of Child Marriage Act, 2006

Having realized the ineffectiveness of the Child Marriage Restraint Act, 1929, the Indian Legislature enacted the Prohibition of Child Marriage Act, 2006 (Act 6 of 2007). This Act provides for stringent penal action against those who indulge in solemnization of child marriage. The title of this new Act uses the word “prohibition” whereas the Act of 1929 had used the word “restraint”. Now solemnization of child marriage is punishable with rigorous imprisonment of up to two years and fine which may extend to one lakh rupees. Offences under this Act are cognizable and non-bailable, notwithstanding anything contained in the Code of Criminal Procedure, 1973.

195 Section 3 of the Indecent Representation of Women (Prohibition) Act, 1986
196 Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986
197 Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986
This Act provides for the prohibition of solemnization of child marriages and makes child marriages to be voidable at the option of contracting party.198.

Provision for Maintenance and Residence to Female Contracting Party to Child Marriage

Being aware of the situation, where a female contracting party to a child marriage may face difficulty of maintaining herself in case her marriage is declared void under provisions of this Act, the legislature has made suitable provisions under section 4 of the Act to deal with such a situation. While granting a decree under section 3, the District Court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage. The quantum of maintenance payable shall be determined by the District Court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party. The amount of maintenance may be directed to be paid monthly or in lump sum. In case the party making the petition under section 3 is the female contracting party, the District Court may also make a suitable order as to her residence until her remarriage.

Custody and Maintenance of Children of Child Marriages and Legitimacy thereof

There is always possibility that children may born of a child marriage. If a child marriage is found to be void under the provisions of this Act or it is declared void on the initiative of any of the contracting parties, then the responsibility of bringing up the children born of such a marriage becomes a matter of concern. The Prohibition of Child Marriage Act, 2006 contains provisions to deal with such situations and to ensure custody and maintenance of children of child marriage. To tackle such types of problems following provisions are made in the Act.

The District Court shall make an appropriate order for the custody of a child born of the child marriage. While making an order for the custody of a child, the welfare and best interest of the child shall be the paramount consideration. An order for custody of a

198 Section 3 of the Prohibition of Child Marriage Act, 2006
child may also include appropriate directions for giving to the other party access to the
child in such a manner as may best serve the interests of the child, and such other orders
as the District Court may, in the interest of the child, deem proper. The District Court
may also make an appropriate order for providing maintenance to the child by a party to
the marriage or their parents or guardians.199

To ensure that the child born of a child marriage does not suffer the stigma of
being called an illegitimate child, section 6 of the Act provides that every child begotten
or conceived of such marriage before the decree of nullity under section 3 is made shall
be deemed to be a legitimate child for all purposes.

Punishment for contracting, solemnizing, promoting or permitting a child
marriage is provided under the Act and punishable with rigorous imprisonment which
may extend to two years or with fine which may extend to one lakh rupees or with both.
And the Act provides power to the court to issue injunction prohibiting child marriages.
But no woman shall be punishable with imprisonment.200

In case of Smt. Seema v. Ashwini Kumar,201 the Supreme Court said that
compulsory registration of marriages would be a step in the right direction for the
prevention of child marriages still prevalent in many parts of the country. The Supreme
Court has issued the directions that the Central and State Governments shall take the
following steps:-

• Marriages of all persons who are citizens of India belonging to various religions
  should be compulsorily registered in their respective States.

• The procedure for registration should be notified by the respective States within 3
  months.

The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989

Scheduled Castes ("SC"s) and Scheduled Tribes ("ST"s) are Indian population
groupings that are explicitly recognized by the Constitution of India as previously

199 Section 5 of the Prohibition of Child Marriage Act, 2006
200 See Sections 9,10,11 of the Prohibition of Child Marriage Act, 2006
201 AIR 2006 SC 1158
SCs/STs together comprise over 24% of India’s population, with SC at over 16% and ST over 8% as per the 2001 census. The proportion of Scheduled Castes and Scheduled Tribes in the population of India has steadily risen since independence in 1947. Some Scheduled Castes in India are also known as Dalits. Some Scheduled Tribe people are also referred to as Adivasis.

**National Commissions**

To effectively implement the various safeguards built into the Constitution and other legislations, the Constitution under Articles 338 and 338A provides for two statutory commissions— the National Commission for Scheduled Castes, and the National Commission for Scheduled Tribes.

In 1989, the Government of India enacted the Scheduled Castes and Tribes (Prevention of Atrocities) Act in order to prevent atrocities against SC/STs. The purpose of the Act was to prevent atrocities and help in social inclusion of Dalits into the society, but the Act has failed to live up to its expectations.

It was not until 1990 that the Article 338 was finally amended to give birth to the statutory National Commission for SCs and STs via the Constitution (Sixty Fifth Amendment) Bill, 1990. The first Commission under the 65th Amendment was constituted in March 1992 replacing the Commissioner for Scheduled Castes and Scheduled Tribes and the Commission set up under the Ministry of Welfare’s Resolution of 1987.

In 2002, the Constitution was again amended to split the National Commission for Scheduled Castes and Scheduled Tribes into two separate Commissions - the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.

Justice Ramaswamy observed in the case of State of Karnataka v. Ingale that more than seventy-five percent of cases brought under the SC/ST Act end in acquittal at all levels. What needs to be appreciated is that victims of atrocities suffer not only of bodily and mental pain but also imminent feeling of insecurity, which is not present in the...
victim of other crimes. On top of this if the judges show indifference towards them and shun them, if further aggravates their already vulnerable position.

Rehabilitation

According to the preamble of the SC/ST Act, it is an Act to prevent the commission of offences of atrocities against SC/STs, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences. The Madhya Pradesh High Court also had the same view and observed in the case of Dr. Ram Krishna Balothia v. Union of India that the entire scheme of the SC/ST Act is to provide protection to the members of the Scheduled Castes and Scheduled Tribes and to provide for Special Court and speedy trial of the offences. The Act contains affirmative measures to weed out the root cause of atrocities, which has denied SC/STs basic civil rights. There is mention of rehabilitation under section 21(2) (iii), but there are no provision addressing the same. As it has been stated earlier that victims of atrocities are on a different level when compared to victims of other crimes, hence there should be special provision for the same. According to the report submitted by the National Commission for Review and Working of the Constitution victims of atrocities and their families should be provided with full financial and any other support in order to make them economically self-reliant without their having to seek wage employment from their very oppressors or classes of oppressors. Also it would be the duty of the state to immediately take over the educational needs of the children of such victims and provide for the cost of their food and maintenance. SC/STs constitute 68 percent of the total rural population.203

The Forest Rights Act, 2006

India's forests are home to millions of people, including many Scheduled Tribes, who live in or near the forest areas of the country. Forests provide sustenance in the form of minor forest produce, water, grazing grounds and habitat for shifting cultivation.

The Statement of Objects and Reasons of the Forest Rights Act intended to correct the “historical injustice” done to forest dwelling communities to recognize their rights. The Scheduled Tribes and other (Recognition of Forest Rights) Act, 2006 is a key piece of India on December 18, 2006. It has also been called the “Forest Rights Act”, the “Tribal Bill”, and the “Tribal Land Act.” The law concerns the rights to forest dwelling communities to land and other resources denied to them over decades as a result of the continuance of colonial forest laws in India.

A little over one year after it was passed, the Act was notified into force on December 31, 2007. On January 1, 2008 this was followed by the notification of the Rules framed by the Ministry of Tribal Affairs to supplement the procedural aspects of the Act. The Act as passed in 2006 grants four types of rights:

**Title rights** – i.e. ownership – to land that is being framed by tribals or forest dwellers as on December 13, 2005, subject to a maximum of 4 hectares; ownership is only for land that is actually being cultivated by the concerned family as on that date, meaning that no new lands are granted;

**Use rights** – to minor forest produce (also including ownership), to grazing areas, to pastoralist routes, etc;

**Relief and development rights** – to rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection;

**Forest Management Rights** – to protect forests and wildlife.

**Recommendations of Malimath Committee on Reforms of Criminal Justice System**

Reforms in the criminal justice system have been a matter of frequent review and debate in India. The law commissions of India as well as other commissions from time to time have suggested a number of proposals for reform in the administration of criminal justice. Most of the suggestions predominantly loaded with the idea of fair, efficient and humane administration of criminal justice not only insist for review of some of the fundamental principles of administration of criminal justice and suggest appropriate
ents to the substantive and procedural laws but also recommended restructuring redefining of operational orbits of all the constituent state functionaries-investigatory, prosecutory, adjudicatory and custodial- of criminal justice delivery system. However majority of these proposals unfortunately are greeted with insensitivity by the policy makers and the legislature.

In November, 2000 the Ministry of Home Affairs, Government of India, probably realizing the fact that the criminal justice system in India ails from some defects and that “little is done and vast is undone” constituted under the chairmanship of Dr. V.S. Malimath, the Committee on reforms of criminal justice system to inter-alia examine the fundamental principles of criminal jurisprudence and consider measures for revamping the criminal justice system. Malimath Committee inter-alia gave following recommendations to give justice to victims of crime.

**Justice to Victims of Crime**

It says that an important object of criminal justice system is to ensure justice to victims of crime, yet he has not been given any substantial right not even to participate in the criminal proceedings. Committee made several recommendations like:-

- The victim, and if he is dead, his legal representative shall have the right to implead as a party in every criminal proceedings where the offence is punishable with 7 years imprisonment or more. In cases notified by the appropriate government with the permission of the court an approved voluntary organization shall also have the right to implead in court proceedings.

- The victim has a right to be represented by an advocate of his choice provided that the advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer.

- The victim’s right to participate in criminal trial shall inter-alia include the right -
  - i) To produce evidence, oral or documentary with the leave of the court and/or to seek directions for production of such evidence and to ask questions to the witnesses or suggest to the Court questions which may be put to witnesses.
ii) To know the status of investigation and to move the court to issue directions for further investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search of truth.

iii) To be heard in respect of grant or cancellation of bail.

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v) To advance arguments after the prosecutor has submitted arguments.

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vii) To prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to court to which an appeal ordinarily lies against the order of conviction of such a court.

viii) Legal services in selected crimes it may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.

Like Law Commission, Committee also felt that victim compensation is a State obligation in all serious crimes. Whether offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by Parliament. The draft bill on the subject submitted to the Government in 1995 by the Indian Society of Victimology provides a tentative frame work for considerations.

The Committee suggested that victim compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority created under Legal Services Authorities Act, 1987. The law should provide for the scale of compensation in different offences for the guidance of the court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.

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It was the considered view of Committee that criminal justice administration would assume a new direction towards better and quicker justice once the rights of
victims are recognized by law and restitution for loss of life, limb and property are provided for in the system. The cost for providing it is not exorbitant as sometimes made out to be. With increase in quantum of fine recovered, diversion of funds generated, public contribution on proposed Victim Compensation Fund can be mobilized at least to meet the cost of compensating victims of violent crimes. Even if the part of assets confiscated and fortified in organized crime and financial frauds is also made part of the fund and if it is managed efficiently, there will be no paucity of resources for this well conceived reform. In any case, dispensing justice to victims of crime cannot any longer be ignored on the ground of scarcity of resources.

Hence Malimath Committee has devoted a considerable space for justice to victims in its report, referring to Section 357 Criminal Procedure Code. The Committee observed- “Not only was the victim’s right to compensation ignored except a token provision under Criminal Procedure Code but also right to participate as dominant stakeholder in criminal proceedings was taken away from him. The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy.”

The merit of Malimath Committee lies in the fact that it for the first time, delved into the participation of victims in criminal processes as an inseparable component of justice to victims and suggested a set of recommendations for their effective participation. The Committee has also recommended that a ‘schedule’ listing inter-alia rights and duties of complainant/informant/victim be added in Criminal Procedure Code. And be translated into different regional languages and be made available free of cost to citizens.

However, it is obvious that Committee’s recommendations about victim’s right to produce evidence oral or documentary with leave of court and/or to seek directions for production of such evidence and to put questions to witnesses or to suggest to court questions which may be put to witnesses will be effective only if the complainant/informant/victim is allowed to carry out his own investigation but Committee is silent on this aspect. In absence of such a provision allowing private investigation, the rights of complainant/informant/victim proposed by committee will be.
only cosmetic and will not ensure effective participation of victims either in seeking justice for themselves or helping criminal courts to work in pursuit for truth the underlying theme of Malimath Committee Report. Further such a provision warrants serious attention, of course after a careful study of its feasibility in the state investigatory mechanism, when police and prosecution in India for a variety of reasons have able to respectively carry out their ‘investigatory’ and ‘prosecutory’ roles effectively and ‘efficiently’. Committee is silent on this aspect too.

Inspite of these defects Committee’s emphasis on victim participation and recognition of victim’s rights is a welcome step. However Ministry of Home Affairs of Government of India, in pursuance of Malimath Committee Report, prepared the Criminal Law (Amendment) Bills, has failed for reasons best known to it, to give serious attention to these recommendations of Malimath Committee.

Reports of Law Commission of India on Victimology

Law Commission of India204 in its various reports has suggested the incorporation of certain provisions and amendments in the existing provisions to provide relief to the victims of crime and in particular suggested amendments in compensatory provisions.

In its 41st Report205 on the Code of Criminal Procedure, 1898 inter-alia it observed that it is purely with in the discretion of criminal courts to order or not to order payment of compensation and in practice they are not particularly liberal in utilizing this provision.206

In its 42nd Report207 on Indian Penal Code the Law Commission observed, “the injured party is not always adequately served by civil courts and in criminal law he often takes a back seat. Having given his evidence, he stands aside and watches the offended majesty of public justice being satisfied by conviction and sentence. He himself is fortunate if he gets compensation or even his expenses. Often, he must have recourse to civil courts to reclaim his property, and not infrequently may have suffered a loss or

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204 http://lawcommissionofindia.nic.in visited on 3rd June, 2008 at 12:35PM
205 http://www.lawcommissionofindia.nic.in/1-50/Report41.pdf on 3rd June, 2008 at 12:55PM
207 http://www.lawcommissionofindia.nic.in/1-50/Report42.pdf on 3rd June, 2008 at 12:55PM
injury for which he can not be recompensed.” The Commission laid emphasis on 3 patterns of compensation:-

a) The State may take this responsibility in defined classes of cases.

b) The offender can be sentenced to pay a fine; compensation can be awarded to victim.

c) The Court trying the offender can in addition to punishing him according to law, direct him to pay compensation to the victim of crime, or otherwise make amends by repairing the damage done by the offence.

The Commission further suggested the Indian Penal Code should give prominence to the aspect of compensating the victims of offence out of the fine imposed on offender. It recommended the insertion of Section 62 immediately before Section 63 of I.P.C. dealing with the order to pay compensation out of the fine to the victim of offence. When such provision is made in the Penal Code, it will be necessary to suitably modify Section 545 now Section 357 Criminal Procedure Code, to bring it into the line with provision. It may be provided that in every case where the new Section 62 of I.P.C. is attracted, but the courts decides not to make an order for payment of compensation out of fine, it should record its reasons.

In its 142nd Report on ‘Concessional treatment for offenders who on their own initiative choose to plead guilty without any bargaining’ Law commission after

208 Law commission of India Report No. 42 on Indian penal Code June, 1971 p.50 to 54

209 The recommended Section62 reads as under- “Section 62 order to pay compensation out of fine to the victim of offence:- Whenever a person is convicted of an offence punishable under chapter 16, 17 or 21 of I.P.C or of an abetment of such offence or of a criminal conspiracy to commit such offence and is sentenced to a fine, whether with or without imprisonment, and the court is of the opinion that compensation is recoverable by civil suit by any person for loss or injury caused to him by that offence, it shall be competent to the court to direct by sentence that the whole or any part of the fine realized from the offender shall be paid by way of compensation to such person for the said loss or injury. Explanation-expenses properly incurred by such person in the prosecution of the case shall be deemed part of the loss caused to him by the offence.”

210 http://www.lawcommissionofIndia.nic.in/101-169/Report142.pdf visited on 3rd June, 2008 at 1:00PM

211 Law commission of India Report No. 142 on ‘Concessional treatment for offenders who on their own initiative choose to plead guilty without any bargaining’ 1991
considering the system of plea-bargaining as being practiced in other countries, recommended that plea-bargaining should be introduced in India with certain changes as it contains provisions for providing compensation to the victims, brings both offenders and victims on the same negotiating table and leads to decrease the burden of cases. With the efforts of Law Commission now plea-bargaining has been introduced in our criminal justice system.

The Law Commission inter-alia stated that there is a need to amend section 357 Criminal Procedure Code. It observed “under section 357 (1) Criminal Procedure Code, it is only from out of the fine imposed by the Court that compensation can be awarded, and under section 357(3) Criminal Procedure Code, compensation can be awarded only whilst imposing a sentence other than that of fine. As at present, compensation can’t be awarded in matter in which parties compound an offence under section 320 Criminal Procedure Code because the compounding usually takes place by agreement between the parties in compounding matters even before the commencement of the trial. Stipulation for payment of compensation can’t under the circumstances be made part of an order of the court or the competent authority without recording a conviction. So, also larger amount of compensation cannot be ordered where there is a ceiling on imposition of fine. In order to give effect to the scheme, it is therefore necessary to amend this section to enable the competent authority to direct payment of compensation to the aggrieved party even in the absence of a plea of guilty and regardless of whether fine is imposed or not. That is why it is recommended that section 357 be amended as to empower the competent court to order payment of compensation even in cases where there is no conviction has been recorded and regardless of whether fine is imposed or not if an offence is compounded before the court or the competent authority under the scheme.”

In its 152nd Report on ‘Custodial Crimes’, The Law Commission suggested insertion of section 357-A in Criminal Procedure Code prescribing compensation to the victims to be awarded at the time of sentencing the accused, rupees 25000/- in case of bodily injuries rupees 1 lakhs in case of death.

In fixing the amount of compensation under this section, the court shall take into account all relevant circumstances including (but not necessarily limited to) the following:-

a) the type and severity of the injury suffered by the victim;
b) The mental anguish suffered by the victim;
c) The expenditure incurred or likely to be incurred on the treatment and rehabilitation of the victim;
d) The actual and projected earning capacity of the victim and the impact of its loss on the persons entitled to compensation and other members of the family;
e) The extent, if any, to which the victim himself contributed to the injury;
f) The expenses incurred in the prosecution of the case;
g) In case of death or permanent disablement of the victim, the court may take into account the estimated annual income of the victim as multiplied by the number of years of his estimated span of life;
h) Pending final determination of the proceedings, the court may award, by way of interim relief, such compensation as it may think proper in the circumstances of the case at the stage of the case, even before the judgment is passed.

In its 154th Report on the Code of Criminal Procedure, 1973 the Law Commission recommended for section 357-A in Criminal Procedure Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by courts. The Law Commission among other things identified victimology and compensating victims for its deliberation. Exhibiting its sincere concern for justifying the need to 'redesign and restructure' the victim compensatory legislative paradigm in India. It observed, “increasingly the attention of criminologists, penologists and reformers of criminal justice system have been directing to victimology, control of victimization and protection of victims of crime should receive priority attention in total.
response to crime. One recognized method of protection of victim is compensation to the
victims of crime.” The Law Commission asserted that the principles of compensation to
victims of crime are needed to be reviewed and expanded to cover all cases. Compensation should not be limited only to fines, penalties and forfeitures realized but the State, should also render its assistance to victims of crime out of its own funds in all
cases regardless of the fact whether an accused is acquitted or the perpetrator is not traced
or when the offence is proved.

The Law Commission prepared a 306 page consultation paper on ‘Witness
Identity Protection’ and ‘Witness Protection Programmes’\textsuperscript{216} in August, 2004. It was
stated that “in recent times, it has become very common for witnesses in criminal cases
to turn hostile on account of danger to their lives and property or to that of their relations
consequent upon threats or intimidation by the accused. It is in that context this
consultation paper is prepared.”

The Supreme Court in some recent judgments namely NHRC v. State of
Gujarat\textsuperscript{217}, PUCL v. Union of India\textsuperscript{218}, Zahira Habibulla H. Sheikh and another v. State
of Gujarat\textsuperscript{219}, Sakshi v. Union of India\textsuperscript{220} has exhaustively dealt with the subject of
‘witness anonymity’ and ‘witness protection programmes’. The Supreme Court has also
stated that Parliament must consider making a law on the subject at the earliest. In view
of the observations of the Apex Court, the Law Commission suo motu look this subject
for its consultation paper. The Law Commission has dealt with the need of witness
protection and their anonymity, public trial and cross-examination of witnesses in open,
special statutes regarding this namely, (The) Terrorist and Disruptive Activities
(Prevention) Act, 1987 (TADA), Prevention of Terrorism Act, 2002 (POA), Bengal
Suppression of Terrorists Outrages Act, 1932 etc. earlier reports of Law Commission of
India. Protection of witnesses verses rights of accused - Principles of law developed by
High Courts, and the Supreme Court, comparative study of case law of other countries on

\textsuperscript{216} http://lawcommissionofindia.nic.in archives.htm visited on 3rd June,2008 at 1:20PM
\textsuperscript{217} 2003 (9) SCALE 329
\textsuperscript{218} 2003 (10) SCALE 967
\textsuperscript{219} 2004 (4) SCALE 375
\textsuperscript{220} 2004 (6) SCALE 15
this subject along with comparative study of programmes on witness protection in other countries.

This indeed is a very significant development for the witnesses and ultimately quite obviously for the victims of crime. This should be implemented at the earliest and taking suggestions from this consultation Paper a law should be enacted to protect the identity of witnesses, and also witness protection programme should be started. Only then menace of hostile witnesses can be curbed and miscarriage of justice can be prevented. Hence Law Commission has played very significant role in providing justice to the victims of crime.

**CIVIL LAW**

Researcher’s work is mainly focused on the criminal law. But brief reference is given in this chapter of the compensation given under the civil law.

**Law of Torts**

Originally there was no distinction between various wrongs and there was no compartmentalization like crime, tort and breach of contract etc. most part of torts grew out of writs in 14th Century. The success of an action depended upon the availability of writ. There were various kinds of writs and if the situation was thus that no writ could be available for the same, the plaintiff’s action, however justified the same may be failed. The law was to ubi remedium ibi jus (Where there is a remedy there is a right). If he chose a wrong writ which does not cover his case, his case fails. For 500 years the writ determined the right. It was no more necessary to mention any particular form of action (writ) by which the case of the plaintiff was covered. Judicature Act 1873 provided that the pleading was to contain only a statement or a summary of material fact relied upon by a party. Now the position is that whenever the court is convinced the right of a person is violated remedy is provided for the same, the law being, which is ubi jus ibi remedium (where there is a right, there is a remedy). The law of torts is mainly the product of judicial decisions.

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A tort is a species of civil injuries or wrong. The distinction between civil and criminal wrongs depend on the nature of the appropriate remedy provided by the law. A civil wrong is one which gives rise to civil proceedings. For example an action for a recovery of debt, or for the restitution of the property, for the recovery of damages for an injury committed. On the other hand, the object of criminal proceedings is the punishment for the accused. There are various wrongs which find their place both under criminal law and law of torts. Some examples of such wrongs are Assault, Defamation, Negligence, Conspiracy and Nuisance. The definition of any of these wrongs may be different under civil and criminal laws. For the purpose of civil liability for anyone of the wrongs the rules of law of torts will be applicable and for the purpose of criminal liability the rules of criminal law will apply. Generally when the wrong is a serious one or affects a large number of members of the public it is placed under criminal law. It should not be thought that the tort law is uniquely concerned with the relative position of two parties. Tort law has significant social and economic impact. Over many years, legislation has improved the ability of tort law to compensate for accidental harm and to spread the risks of such harm. Currently there is a new political concern with over-extensive liability may affect the provision of public amenities.

Winfield's classic definition declared - Tortious liability arises from breach of a duty primarily fixed by law; such duty is towards persons generally and its breach is redressable by an action for unliquidated damage.

A more recent definition offered by Peter Birks, suggests that a tort is the breach of a legal duty which affects the interests of an individual to a degree which regards as sufficient to allow that individual to complain on his or her own account rather than as a representative of society as a whole.

222 See Kenny, Chap. 1; Allen’ Legal Duties, pp.221-252; Winfield Province, Chap. 8; Williams, “The Definition of Crime” (1951) C.L.P. 107; Pollock, “The Distinguishing mark of crime” (1959) 22 M.L.R. 495. see also R.V. Bateman (1925) 94 L.J.K.B. 791; Proprietary Articles Trade Association V. Att. Gen. for Canada(1931) A.C. 310, 323-325.
223 Tort Law-text, cases and material – Jenny Steele, Oxford p.3
The Fatal Accidents Act, 1855

One will be surprised to know that even before the enactment of the Indian Penal Code in 1860, the Fatal Accidents Act, 1855 was brought on the statute book in 1855 to provide compensation to the families (dependents) for the loss occasioned by the death of a person caused by actionable wrong. For instance, section IA of the Act 13 of 1855 empowers his wife, husband and child, if any, to claim damages from the accused by instituting a civil suit in a court of law.

Two cases decided by the Lahore and Allahabad High Courts as long ago as 1933 and 1949 are worth mentioning. In Sardar Singh,\textsuperscript{226} the appellant filed a suit for the recovery of rupees four thousand as damages on account of death of his father, which was caused by Charan Singh on the head with a Chhavi. The trial court decreed a sum of rupees 1500, but the appellate court dismissed the claim.

Restoring the trial court decree, the High Court of Lahore said that; “Under the Act 13 of 1855, it is sufficient (to award damages, to the deceased’s dependents), if a person by his wrongful act, neglect or default shall have caused the death of another person.”

Similarly, in Jagannath Singh\textsuperscript{227} the Allahabad high Court held that the widow of the deceased Jai Ram, who was killing by shooting, is entitled to recover rupees 2000 as damages under the Fatal Accidents Act, 1855.

However in view of time taking, long, expensive and cumbersome procedure in civil litigation, the victims have hardly resorted to the provisions under the Fatal Accidents Act, 1855. Moreover, the provisions have become obsolete in view of other options available to the victims of claim compensation.

\textsuperscript{225} Section IA, “Suit for compensation to the family person for loss occasioned to it by his death by actionable wrong. Whenever the death of a person shall be caused by wrongful Act, neglect, or default and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an auction or suit for damages, notwithstanding the death of the persons injured, and although the death shall have been caused under such circumstances amount in law to felony or other crimes.

\textsuperscript{226} Sardar Singh V. Charan Singh, AIR 1933 Lah 770

\textsuperscript{227} AIR 1959 ALL 448.
The Workmen’s Compensation Act, 1923

This Act provides compensation to certain classes of workmen by their employers for injury which may be suffered by the workmen as a result of an accident during the course of employment. The general principle is that a workman who suffers injury in course of his employment should be entitled to compensation and in case of a fatal injury his dependents should be entitled to be compensated. The compensation becomes payable under the Act not because of a tort or wrong doing by the employer. The liability under the Act has no connection with any wrong doing by the employer. The rate of compensation is provided in the Schedule IV appended to the Act.

The Child Labour (Prohibition and Regulation) Act, 1986

The main object of the Act is to prohibit the engagement of children who have not completed 14th year of age in certain employments and to regulate the conditions of work of children in certain other employments. The Act provides that no child shall be permitted to work between 7P.M and 8A.M. and shall not be permitted to work overtime. No child shall work for more than 3 hours before he has an interval of one hour. Spread over has been fixed at six hours. A child cannot work in more than one establishment on any day. A weekly holiday is allowed. The act also provides for health and safety measures for the children. The employer is required to notify the Factory Inspectors in case he engages a child for employment. Production of certificate of age is also required under the rules of the Act. For contravention of provisions of the Act, the employer will be punishable with imprisonment of not less than three months which may extend to one year or with a fine of rupees 10,000 which may extend to rupees 20,000 or with both. In case the offence is repeated, imprisonment shall not be less than six months which may extend to two years.

The Supreme Court in M.C. Mehta v. State of Tamil Nadu,228 has directed the discontinuance of the employment of child and ordered payment of compensation of rupees 20,000 per child. The court has also laid down certain directions in relation to...
working hours in non-hazardous jobs and providing for education by the employer and the State.

It is pertinent state that the employment of children as domestic servants in dhabas (roadside eateries), restaurants, hotels, motels, teashops, resorts, spas, or in other recreational centres has been banned from October 10, 2006 not only in Delhi but all over the India. The Ban, notified by the Labour Ministry has been imposed under the Child labour (Prohibition & Regulation) Act, 1986. The decision has been taken on the recommendations of the Technical Advisory Committee on Child labour. The committee had stated that the occupations mentioned were hazardous for children and had recommended their inclusion in the occupations which are prohibited for persons below 14 years under the Child Labour (Prohibition & Regulation) Act, 1986.

The Motor Vehicle Act, 1988


Social Welfare Legislation

It is a social welfare legislation under which the compensation is provided by way of award to the people who sustain bodily injuries or get killed in the vehicular accident. Those who sustain injuries or whose kith and kin are killed, are necessarily to be provided such relief in short span of time and the procedural technicalities can’t be allowed to defeat the just purpose of the Act, under which such compensation is to be paid to such claimants.229

In construing social welfare legislation, the courts should adopt a beneficent rule of construction and in any event, that construction should be preferred which fulfils

229 Oriental Insurance Co. V. Mrs. Zarifa, AIR 1995 J&K81 at p.84
the policy of the legislation. Constitution to be adopted should be more beneficial to the purposes in favour of and in whose interest the Act has been passed.\textsuperscript{230}

Victims of accidents are those who sustain bodily injuries causing either permanent or temporarily disability and the legal representatives of the deceased who dies as a result of it. Section 140, 161 and 166 of the Motor Vehicle Act, 1988 entitle a victim of motor accident to prefer a claim for compensation before a duly constituted Motor Accident Claims Tribunal. This Act also incorporated the principle of ‘no fault liability’ which is a laudable piece of social legislation.

\textbf{Administrative Measures}

Besides provisions in criminal law and civil law for the protection, rehabilitation and compensation to the victims there are various administrative measures for the protection and rehabilitation of victims. Here in this research work the researcher has discussed those administrative measures which are specially designed for women and children by the government. Like National Policy for the Empowerment of Women, National Policy for Children, National Charter for Children 2003 etc.

\textbf{National Policy for the Empowerment of Women (2001)\textsuperscript{231}}

The principle of gender equality is enshrined in the Preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State Policy of Constitution of India. The Constitution not only grants equality to women, but also empowers the state to adopt measures of positive discrimination in favour of women. Within the framework of a democratic policy, our laws, development policies, plans and programmes have aimed at women’s advancement in different spheres. From the Fifth Five Year Plan (1974-78) on wards has been a marked shift in the approach to women’s issues from welfare to development. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women. The National Commission for Women was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlements

\begin{itemize}
  \item \textsuperscript{230} Oriental Fire and General Insurance Co. Ltd. V. Alexio Fernandes (1987)61 com cas 130; Hindustan Lever Ltd. V Ashok Vishnu Kate (1995) 6 SCC 326
  \item \textsuperscript{231} http://www.whoindia.org/linkfiles/policy-empowerment-of-women.pdf visited on 21st August 2008 at 1:40 P.M
\end{itemize}
of women. The 73rd and 74th Amendments (1993) to the Constitution of India have
provided for reservation of seats in the local bodies of Panchayats and Municipalities for
women, laying a strong foundation for their participation in decision making at the local
levels.

India has also ratified various international conventions and human rights
instruments committing to secure equal rights of women. Key among them is the
ratification of the Convention on Elimination of All Forms of Discrimination against
Women (CEDAW) in 1993. The Mexico Plan of Action (1975), the Nairobi Forward
Looking Strategies (1985), the Beijing Declaration as well as the Platform for Action
(1995) and the Outcome Document adopted by the UNGA Session on Gender Equality
and Development & Peace for the 21st century, titled “Further actions and initiatives to
implement the Beijing Declaration and the Platform for Action” have been unreservedly
endorsed by India for appropriate follow up.

The Policy also takes note of the commitments of the Ninth Five Year Plan and
the other sectoral policies relating to empowerment of women. The Women’s movement
and a wide-spread network of Non-Government Organisations which have strong grass-
roots presence and deep insight into women’s concerns have contributed in inspiring
initiatives for the empowerment of women. However, there still exists a wide gap
between the goals enunciated in the constitution, legislation, policies, plans, programmes,
and related mechanisms on the one hand and the situational reality of the status of women
in India, on the other. This has been analyzed extensively in the report of the committee
on the status of women in India, “Towards Equality”, 1974 and highlighted in the
National Perspective Plan for Women, 1988-2000, the Shramshakt Report, 1988 and the
Platform for Action, Five Years after- An assessment”.

Gender disparity manifests itself in various forms, the most obvious being the
trend of continuously declining female ratio in the population in the last few decades.
Social stereotyping and violence at the domestic and societal levels are some of the other
manifestations. Discrimination against girl children, adolescent girls and women persists
in parts of the country. The underlying causes of greater inequality are related to social
and economic structure, which is based on informal and formal norms and practices.
Consequently the access of women particularly those belonging to weaker sections including Scheduled Castes/Scheduled Tribes/other backward classes and minorities, majority of whom are in the rural areas and in the informal, unorganized sector—education, health and productive resources, among others, is inadequate. Therefore they remain largely marginalized, poor and socially excluded.

National Policy for Children

The National Policy for Children was adopted by the government of India in 1974. This Policy declares that children are a “Supremely important asset” of the nation and that their “nurture and solicitude” are the responsibility of the nation. The National Policy for Children states that it shall be for the State to provide adequate services for children both before and after birth and during the period of growth to ensure their full physical, mental and social development. India has a high level policy-making body—the National Children’s Board. The Prime Minister is the president of the board. The board provides policy and direction and reviews programmes for children.

The nation’s children are a supremely important asset. Their nurture and solicitude are our responsibility. Children’s programme should find prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizen, physically fit, mentally alert and morally healthy, endowed with the skills and motivations provided by the society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and bring social justice.

The needs of children and our duties towards them have been expressed in the constitution. The resolution on a National Policy on Education, which has been adopted by Parliament, gives direction to State Policy on the educational needs of children. We are also party to the U.N. Declaration of the Rights of the Child. The goals set out in these documents will reasonably be achieved by judicious and efficient use of the available national resources. Keeping in view these goals the government of India adopts this Resolution on the National Policy for Children. It shall be the policy of the state to
provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. There are comprehensive health programmes, free and compulsory education for all the children. Children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities of education, training and rehabilitation and will be helped to become useful citizens. And children shall be protected against neglect, cruelty and exploitation. Children shall be given priority for protection and relief in times of distress or natural calamity.

Girl Child Protection Scheme

The Scheme envisages to generate awareness among society for changing attitudes considering girl child as an asset and not as liability; to ensure proper education and all round development of girl child, to ensure a better rehabilitation and economic security for a girl child and to protect the girl child from discrimination and deprivations. The benefit of the scheme will be open to all. An amount of rupees 5000/- will be deposited in the name of each girl child born in the govt. hospital/Local Bodies which can be drawn after attaining the age of 18 years subject to her completing school education up to 10th class.

Setting up of Crisis Intervention Centers for Girls/Women

The aim of the scheme is to provide protection and respite to women in distress within their reach through short temporary shelter. The strengthening of complex Nirmal Chhaya, a protective home in Delhi run by Social Welfare Department is under progress along with setting up of a Counseling centre to provide counseling, referral and rehabilitative services to women, victims of atrocities in the family, society and Training-cum-Production Centre would be a positive step. A piece of land has been taken over at Rohini and building plan has been agreed the constitution work will start shortly.

233 http://wcd.nic.in visited on 17th August 2008 at 11:00AM
234 http://wcd.nic.in visited on 17th August 2008 at 11:00AM

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Realizing the need for an effective service delivery to children in need of care and protection, National Initiative for Child Prevention (NICP) was launched by the Ministry of Social Justice and Empowerment through the National Institute of Social Defence (NISD) and Childline India Foundation (CIF). NICP aims at building partnerships with the State Departments of Social/Child Welfare, Childline Service and allied systems for protection and promotion of children’s rights.

As categorized by the Juvenile Justice (Care and Protection) Act of 2000, the primary target audience for child protection programmes are children in need of care and protection and children in conflict with law. However, for training and sensitization purposes NICP focuses on functionaries of juvenile/childcare institutions being run by NGOs and State Governments/UTs Judiciary, Members of Juvenile Justice Boards and Child Welfare Committee, Police, Public Prosecutors and other functionaries working under juvenile system in the country.

**Social Welfare Department**

The Social Welfare Department is actively engaged in the implementation of various schemes for the welfare of women in need and distress, social security cover for the aged and destitute, programmes for the care and protection of the children through a network of residential care homes and non-institutional services, a programme for the handicapped, financial assistance for physically and socially handicapped and measures for economic empowerment of women, children, handicapped and aged persons, to supplement the ongoing programmes.

**National Charter for Children, 2003**

The Government of India have had for consideration the question of adopting a National Charter for Children to reiterate its commitment to the cause of the children in

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235 http://nicp.nisd.gov.in/aboutnicp.php visited on 19th August 2008 at 10:00AM
236 http://delhiplanning.nic.in visited on 20th August 2008 at 11:20AM
237 http://nicp.nisd.gov/in/pdf/national%20charter%20or%20children.pdf visited on 19th August 2008 at 10:00AM
order to see that no child remains hungry, illiterate or sick. After the consideration it has been decided to adopt the National Charter for Children enunciated below:-

- The State can make special provisions for children, (Art. 15 (3))
- The State shall provide free and compulsory education to all children of the age of six to fourteen years, (Art 21-A)
- No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment, (Art 24)
- The tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength (Art. 39(e),
- And that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment (Art. 39 (f))
- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years, (Art. 45)
- Whereas it is a fundamental duty of a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen year (Art. 51A)

Whereas government affirm that the best interest of children must be protected through combined action of the State, Civil Society, Communities and Families in their obligations in fulfilling children’s basic needs and government also affirm that while State, Society, Community and Family have obligation towards children, these must be viewed in the context of intrinsic and attendant duties of children and inculcating in children a sound sense of values directed towards preserving and strengthening the Family, Society and the Nation. And Government believe that by respecting the child, society in respecting itself, Now therefore, in accordance with government’s pledge in the National Agenda of Governance, the following National Charter for Children, 2003 is announced.
Underlying this Charter is government’s intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the nation. The State and community shall undertake all possible measures to ensure and protect the survival, life and liberty of all children. In particular, the state and community will undertake all appropriate measures to address the problems of infanticide and foeticide, especially of female child and all other emerging manifestations that deprive the girl child of her right to survive with dignity.

The State shall move towards a total ban of all forms of child labour. All children have a right to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishments, torture, exploitation, violence and degrading treatment. The State shall in partnership with the community take up steps to draw up plans for the identification, care, protection, counseling and rehabilitation of child victims and ensure that they are able to recover, physically, socially and psychologically, and re-integrate into society.

The State shall take strict measures to ensure that children are not used in the conduct of any illegal activity, namely, trafficking of narcotic drugs and psychotropic substances, begging, prostitution, pornography or violence. The state in partnership with the community shall ensure that such children are rescued and immediately placed under appropriate care and protection. The State and community shall ensure that crimes and atrocities committed against the girl child, including child marriage, discriminatory practices, forcing girls into prostitution and trafficking are speedily eradicated.

The State shall in partnership with the community take measures including social, educational and legal, to ensure that there is greater respect for the girl child in the family and society. The State shall take serious measures to ensure that the practice of child marriage is speedily abolished.
The Integrated Child Protection Scheme (ICPS)

India is home to almost 19% of the world's children. More than one third of the country's population, around 440 million, is below 18 years. The future and strength of the nation lies in a healthy, protected, educated and well-developed child population that will grow up to be productive citizens of the country. India must invest resources in children proportionate to their huge numbers. An exercise on child budgeting carried out by the Ministry of Women and Child Development revealed that total expenditure on children in 2005-2006 in health, education, development and protection together amounted to merely 3.86% rising to 4.91% in 2006-07. However, the share of resources for children was 0.034% in 2005-06 and the same in 2006-07.

There is an urgent case for increasing expenditure on child protection so that the rights of the children of India are protected. The neglect of child protection issues not only violates the rights of the children but also increases their vulnerability to abuse, neglect and exploitation. The Constitution of India recognizes the vulnerable position of children and their rights to protection. It guarantees in Article 15, special attention to children through necessary and special laws and policies that safeguard their rights. The right to equality, protection of life and personal liberty and the right against exploitation is enshrined in Articles 14, 15, 16, 17, 21, 23 and 24. The concern for children has also been expressed in various international conventions and standards on child protection including the UN Convention of the Rights of the Child (UNCRC) 1989, the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985, and the UN Rules for the Protection of Juveniles deprived of their liberty 1990. The Government of India ratified the UN Convention on the Rights of the Child (UNCRC) in 1992. The Convention prescribes standards to be adhered to by all state parties in securing the best interest of the child. It emphasizes social reintegration of child victims, without resorting to judicial proceedings. The UNCRC outlines the fundamental rights of children, including the right to be protected from economic exploitation and harmful work, from all forms of sexual exploitation and abuse, and from physical or mental violence, as well as ensuring that children will not be separated from their family.

‘Child Protection’ is about protecting children for or against any perceived or real danger or risk to their life, their personhood and childhood. It is about reducing their vulnerability to any kind of harm and protecting them in harmful situations. It is about ensuring that no child falls out of the social security and safety net and those who do, receive necessary care, protection and support so as to bring them back into the safety net. While protection is a right of every child, some children are more vulnerable than others and need special attention. The government recognizes these children as ‘children in difficult circumstances’, characterized by their specific social, economic and geopolitical situations. In addition to providing a safe environment for these children, it is imperative to ensure that all other children also remain protected. Child protection is integrally linked to every other right of the child. Failure to ensure children’s right to protection adversely affects all other rights of the child. Thus, the Millenniu Development Goals (MDGs) also cannot be achieved unless child protection is an integral part of programming strategies and plans. Failure to protect children from such issues as violence in schools, child labour, harmful traditional practices, child marriage, child
abuse, the absence of parental care and commercial sexual exploitation among others, means failure in fulfilling both the Constitutional and international commitments towards children. In light of its expanded mandate, the new Ministry of Women and Child Development views child protection as an essential component of the country’s strategy to place ‘Development of the child at the centre of the 11th Plan’. Violations of the child’s right to protection, in addition to being human rights violations, are massive, under-recognized and under-reported obstacles to child survival and development. Failure to protect children has serious consequences for the physical, mental, emotional, social development of the child, with consequences in loss in productivity and the loss in human capital for the nation.

The National Plan of Action for Children 2005 articulated the rights agenda for the development of children. The NPAC 2005 is the basis for planning for children in the XI Plan in all sectors and the principles articulated in it should guide the planning and investments for children. Moreover, to achieve the Millennium Development Goals also, such a comprehensive approach to child protection is required. All budgets for child protection schemes and programmes should be in the plan category and not in the non-plan category.

The Ministry of Women and Child, therefore, endeavors to create a strong foundation for a protective environment for children. Child protection incorporates both prevention and care and recovery aspects. Children have a right to be prevented from becoming subjects of violence, abuse, neglect and exploitation and once victimized are entitled to services, which hasten their recovery and reduce further trauma. The Ministry will undertake a strong advocacy and implementation strategy to enhance the infrastructure for protection services, increase access to a wider range and better quality of services, and increase the investment for protection of children.

The Integrated Child Protection Scheme concretizes the Government/State responsibility for creating a system to protect children in the country. The integrated child protection scheme is based on the cardinal principles of “protection of child rights” and “best interest of the child”. The ICPS aims to promote the best interest of the child and prevent violations of child rights through appropriate punitive measure against
perpetrators of abuse and crimes against children and to ensure rehabilitation for all children in need of care and protection. It aims to create a protective environment by improving regulatory frameworks, strengthening structures and professional capacities at national, state and district levels so as to cover all child protection issues and provide child friendly services at all levels.

One of the principles of ICPS is reducing child vulnerability. There is a need for a focus on systematic preventive measures not just programmes and schemes to address protection failures at various levels. A strong element of prevention will be integrated into programmes, converging the provisions and services of various sectors on the vulnerable families, like livelihood support (NREGS), SHGs, PDS, health, child day care, education, to strengthen families and reduce the likelihood of child neglect, abuse and vulnerability.

National Population Policy 2000\textsuperscript{239}

The overriding objective of economic and social development is to improve the quality of lives that people lead, to enhance their well-being, and to provide them with opportunities and choices to become productive assets in society.

In 1952, India was the first country in the world to launch a national programme, emphasizing family planning to the extent necessary for reducing birth rates “to stabilize the population at a level consistent with the requirement of national economy”. After 1952, sharp declines in death rates were, however not accompanied by a similar drop in birth rates. The National Health Policy, 1983 stated that replacement levels of total fertility rate (TFR) should be achieved by the year 2000.

On 11 May, 2000 India had 1 billion (100 crores) people, i.e. 16 percent of the world’s population on 2.4 percent of the globe’s land area. If current trends continue, India may overtake China in 2045, to become the most populous country in the world. While global population has increased threefold during this country, from 2 billion to 6 billion, the population of India has increased nearly five times from 238 million (23 crores) to 1 billion in the same period. India’s current annual increase in population of

\textsuperscript{239} \url{http://populationcommission.nic.in} visited on 21st August 2008 3.13P.M.
15.5 million is large enough to neutralize efforts to conserve the resource endowment and environment.

Stabilizing population is an essential requirement for promoting sustainable development with more equitable distribution. However, it is as much a function of making reproductive health care accessible and affordable for all, as of increasing the provision and outreach of primary and secondary education, extending basic amenities including sanitation, safe drinking water and housing, besides empowering women and enhancing their employment opportunities, and providing transport and communications.

The long-term objective is to achieve a stable population by 2045, at a level consistent with the requirements of sustainable economic growth, social development and environmental protection.

**National Crime Records Bureau**

The National Police Commission in 1979 recommended creation of a Nodal Agency which would suggest a common formats for maintenance of Crime-Criminal records at all the Police Stations in the country. The same common format should also be utilized to create shareable databases at Police Stations, Districts, States and National Level. On this recommendation National Crime Records Bureau was created in 1986 with the amalgamation of Directorate of Coordination, Police Computers, Central Finger Print Bureau, Data Section of Coordination, Division of Central Bureau of Investigation and Statistical Section of the Bureau of Police Research and Development. The National Crime Records Bureau under Ministry of Home Affairs brings out the crime statistics at annual basis since 1953. The latest published issue which is 57th in the series is available for the year 2009. The report contains national and state-level statistics on major cognizable crimes and Local and Special Laws applicable in the country. Besides reporting of crimes, reports contains details of disposal of cases by police and courts, crimes in police custody, crime against women, children, SCs/STs etc.\(^{240}\) According to the latest report, crime against women and children have been increased many fold which is evident from the following figures. A total of 2,03804 incidents of crime against

\(^{240}\) www.ncrb2007/ncrb-Empowering Indian Police.htm visited on 4th March 2011 at 5:25PM
women (both under IPC and SLL) were reported in the country during 2009 as compared to 1,95,856 during 2008, recording an increase of 4.1% during 2009.241 Incidents of crime against women and children are increasing day by day but courts are not in a position to provide justice to these victims. As is evident from the table given below that total pendency of IPC cases against women and children were 85.6% while disposal was 14.4% and total pendency of SLL cases were 54.8% and disposal was 45.2%.242

Percent Disposal of IPC and SLL Cases by Courts Crime wise 2009

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Offence</th>
<th>Disposal</th>
<th>Pendency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Rape</td>
<td>16.4</td>
<td>83.6</td>
</tr>
<tr>
<td>2.</td>
<td>Kidnapping &amp; Abduction</td>
<td>12.9</td>
<td>87.1</td>
</tr>
<tr>
<td>3.</td>
<td>Dowry Deaths</td>
<td>17.5</td>
<td>82.5</td>
</tr>
<tr>
<td>4.</td>
<td>Molestation</td>
<td>15.7</td>
<td>84.3</td>
</tr>
<tr>
<td>5.</td>
<td>Cruelty by Husband &amp; Relatives</td>
<td>13.7</td>
<td>86.3</td>
</tr>
<tr>
<td>6.</td>
<td>Importation of Girls</td>
<td>7.1</td>
<td>92.9</td>
</tr>
<tr>
<td>7.</td>
<td>Sexual Harassament</td>
<td>24.1</td>
<td>75.9</td>
</tr>
<tr>
<td>8.</td>
<td>Immoral Traffic Act</td>
<td>19.5</td>
<td>80.5</td>
</tr>
<tr>
<td>9.</td>
<td>Dowry Prohibition Act</td>
<td>18</td>
<td>82</td>
</tr>
<tr>
<td>10.</td>
<td>Indecent Rep. of Women (P)Act</td>
<td>47.5</td>
<td>52.5</td>
</tr>
</tbody>
</table>

241 www.ncrb.nic.in visited on 8th April 2011 at 9:30PM
242 www.ncrb.nic.in visited on 8th April 2011 at 9:30PM
As is evident from the figure, given the highest percentage of crime against women is committed within the family, which depicts that women are not safe even in their own families.
The proportion of IPC crimes committed against women towards total IPC crimes has increased during last five years from 7.9% in 2005 to 9.2% during 2009.\textsuperscript{243}
Despite stringent laws, crime against children is increasing day by day. And the conviction rate during 2009 at the national level for crimes against children stood at 33.9%. 244

<table>
<thead>
<tr>
<th>Crime Against Children</th>
<th>Crime head-wise Percentage Distribution during 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exposure And Abandonment</td>
<td>3.5%</td>
</tr>
<tr>
<td>Murder (Other than Infanticide)</td>
<td>6.1%</td>
</tr>
<tr>
<td>Kidnapping &amp; Abduction</td>
<td>37.0%</td>
</tr>
<tr>
<td>Other Crimes</td>
<td>31.2%</td>
</tr>
<tr>
<td>Rape</td>
<td>22.2%</td>
</tr>
</tbody>
</table>

244 ibid
Figure given above shows the incidence of crime against children during 2005-2009 which clearly shows that over the period of 5 years crime against has been increased.\textsuperscript{245}

\textbf{Sarva Shiksha Abhiyan}\textsuperscript{246}

Sarva Shiksha Abhiyan is Government of India’s flagship programme for achievement of Universalization of Elementary Education in a time bound manner, as

\begin{itemize}
\item \textsuperscript{245} www.ncrb.nic.in visited on 8\textsuperscript{th} April 2011 at 9:30PM
\item \textsuperscript{246} http://ssa.nic.in/#documentcontent visited on 1st September 2008 at 4:00PM
\end{itemize}
mandated by 86th amendment to the Constitution of India making fee and compulsory Education to the Children of 6-14 years age group, a Fundamental Rights.

Sarva Shiksha Abhiyan is being implemented in partnership with State Governments to cover the entire country and address the needs of 192 million children in 1.1 million habitations. It seeks to provide quality elementary education including life skills. SSA has a special focus on girl’s education and children with special needs. SSA also seeks to provide computer education to bridge the digital divide.

**National Human Rights Commission**

Victim compensation has always been weeping beggar at the door of criminal justice. The edifice of criminal justice is built up on the logic that an offence is only against the society. Hence nothing short of punishment can respond to the ends of justice but remedy by way of compensation to the victims of crime is equally important as it can provide some relief to the family.

To secure the agenda of fundamental rights into attainable goals the Protection of Human Rights Act, 1993 has provided for the Human Rights commissions both at National and State levels. The Commission is mainly an investigating body and it has no judicial power to punish the offender.

National Human Rights Commission 247 is the watchdog of human rights against all violations. One of the important functions of National Human Rights Commission is to inquire suo motu, or on a petition presented to it by victim or any person on his behalf into the complaint of violation of Human Rights or abetment thereof or negligence in the prevention of such violation.248

Since its inception Commission started receiving numerous complaints of violation of human rights. There has been rapid rise in the number of complaints received by the commission. The increase in number of complaints bears evidence of the growing determination of the people of India to defend their rights and there faith in the instrumentality of the commission to do so. In case of violation of human rights or negligence in the prevention of violation of human rights by public servant, section

247 National Human Rights Commission was established under the Protection of Human Rights Act, 1993

248 Section 12 The Protection of Human Rights Act, 1993
18(3) of the Protection of Human Rights Act, 1993 empowers the Commission to recommend to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission considers appropriate. Under this jurisdiction NHRC is playing a significant role to establish an emerging compensatory jurisprudence for the victims. NHRC has taken some positive steps for redressing the human rights violation of victims of crime by state machinery.

Recently due to interference of National Human Rights Commission re-trial of famous Best Bakery Case was ordered. National Human Rights Commission ordered compensation to the next kin of the victims in Punjab Mass Cremation Cases. Supreme Court referred the matter to the Commission in 1996 after C.B.I. report had revealed ‘flagrant violations of human rights on a mass scale’. The Supreme Court order stated that C.B.I. had been able to identify 2097 illegal cremations carried out by the State agencies between 1984 and 1994. Though the Supreme Court had initially asked the Commission to examine the whole manner and determine all issues, the latter after much deliberation it decided to restrict the inquiry to ‘cremation’ of 2097 bodies with in three police districts of Majitha. The Commission very recently directed Punjab Government to pay Rs. 1.75 lakhs to the next kin of more than 1000 persons who had been identified from the ‘unidentified category’.

It also appointed a retired judge of Punjab and Haryana High Court to identify the remaining 814 bodies of the total 2097 reported to have been secretly cremated by the police without following procedures. He has been given 8 months to do the job. Earlier, in its order dated 11 November 2004 the Commission had ordered a grant of Rs. 2.50 lakhs as relief to the families of 194 persons who had been identified as secretly cremated in violation of the law of the land.

There is no doubt that the compensation announced by the Commission will provide some relief to the families that lost their near and dear one but the order is silent on the culpability of the police officers involved. Since the compensation being provided to the victim’s families proves beyond doubt that there indeed was a violation of human rights, how can State be silent on those responsible for it? One can’t be in admission and denial at the same time.

249 (2004) 4 SCC 158
It is therefore suggested that erring police officials must be punished otherwise people will lose faith in the rule of law. It is suggested that National Human Rights Commission should be given more teeth. It does not provide any remedy other than already been provided by way of fundamental rights in the Constitution. The only benefit which victim gets is that after investigation by the Commission if it is established that violation of human rights has taken place it can recommend to the courts to initiate proceedings. The above method provides relief to the victims or to the activists in the sense that in such cases they don’t require the intervention of the courts to initiate the investigation. Further the courts are more likely to look seriously at cases sent by Commission in comparison to the victim or activist approaching directly. It is suggested that National Human Rights Commission should have independent investigative agency, which should be effective in size to make investigations of numerous cases of human rights violations.

In order to remove such deficiencies The National Human Rights Commission set up an Advisory Committee headed by former Chief Justice of India Mr. Justice A.M. Ahmadi to suggest revisions to the protection of human act, 1993. This seven members committee submitted its Report in 1999 where in it recommended financial autonomy of National and State Human Rights Commissions with judicial and three non-judicial members of whom one should be women. The Committee also recommended that definition of armed forces should be changed to bring the Human Rights violation by Para-military personnel under National Human Rights Commission’s purview.

Recently, the Protection of Human Rights (Amendment) Bill, 2005 has been introduced to bring the change in the composition of National Human Rights Commission to enable the appointment of any judge with 3 years experience in the Apex Court. Presently only a retired Chief Justice of India can head National Human Rights Commission which is a statutory body.

The proposed amendment alters section 3 of the Act by an addition that a Chief Justice of Supreme Court with at least 3 years experience can head National Human Rights Commission.

250 http://www.hrdc.net/sardec/hrfeatures/HRF145.htm visited on 7th September 2008 at 4:35PM
The Amendment has come under severe criticism by several retired Chief Justices of India and Judges. They said an institution of the stature of National Human Rights Commission could not be allowed to “lowered down” and the “purpose” of an ex-Chief Justice of India heading it was to give it “strength and authority” it deserved.

This is government’s first initiative since the inception of National Human Rights Commission – to cure some of its structural defects. It indicates certain degree of political willingness on the government’s part, to ensure that National Human Rights Commission could have had the potential to emerge as a powerful actor in the protection of human rights. The Protection of Human Rights (Amendments) Bill, 2005 has been drafted wholly in accordance with the recommendations made by Ahmadi Committee.

**Role of National Commission for Women (NCW)**

Since women are the most vulnerable victims of crime. So here it is important and necessary to mention the role of NCW i.e. National Commission for Women in awarding compensation to such women victims and suggesting needed amendments to the existing laws as one of the objects of NCW is to recommend remedial legislative measures.

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act no. 20 of 1990) with following objectives:--

--- To review the constitutional and legal safeguards for women.
--- To recommend remedial legislative measures.
--- To facilitate redressal of grievances and
--- To advice the government on all policy matters affecting.

**NCW Proposed following Bills/Laws**

Codification of Criminal Laws relating to Women (Amendment) Bill, 1994 and the Criminal Laws (Amendment) Ordinance, 1996 with reference to child rape, which is provides severe punishment for the offence of child rape and incest.

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251 [http://ncw.nic.in/home.htm](http://ncw.nic.in/home.htm) visited on 18th September 2008 at 3:10 PM

252 [http://ncw.nic.in/new_bills_proposed.htm](http://ncw.nic.in/new_bills_proposed.htm) 18th September 2008 at 3:20 PM
Scheme for Relief and Rehabilitation of Offences (by Acids) on Women and Children

In most cases, acid attacks permanently disfigure, debilitate and eventually destroy the victim, both physically and psychologically. While many attacks have resulted in slow and painful deaths, cases like that of Haseena (in April 1999) and in other cases have resulted in young women getting disfigured, maimed and confined to homes for life. They continue to battle medical complications as acid seeps into the body and harms internal organs cover an extended period of time. The victim needs both short term and long term medical facilities in the form of specialized plastic surgery. But it is almost impossible for the victim’s family to pay for the extensive surgeries needed to reconstruct the damaged face of the victims and thus many of the victims remain like a living corpse. As these surgeries are performed at different stages to give a person a close resemblance to their earlier looks, these operations cost the victim from minimum two lacs to several lacs of rupees. It has also been observed that there is no scope for rehabilitation for acid survivors and there is no one to provide support. Despite the fact that in most cases the victim know the violator, the perpetrators often escape the law and are rarely brought to justice under the Code of Criminal Procedure and the Indian Penal Code.

Acid attacks can be termed as an act of gender-based violence that results in, or is likely to result in physical, sexual, psychological harm or suffering to women. The Declaration on the Elimination of Violence against Women 1993 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 and ensure to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and where appropriate their children have specialized assistance, such as rehabilitation assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and programmes as well as

253 For detail see http://ncw.nic.in/schemeforrehabilitation Acid_Attack_.pdf visited on 10th August, 2010 at 10:35 AM See also 226th Report of Law Commission of India
support structures and should take all other appropriate measures to promote their safety, physical and psychological rehabilitation. And include in government budgets adequate resources for their activities related to the elimination of violence against women. Thus on the basis of the above stated reasons, the proposed law seeks to focus on achieving the following major objectives:

- Classification of acid attack as a separate and most heinous form of offence
- To assist the victim of acid attack by way of providing for her medical treatment services and also provide social and psychological support.
- To provide legal support to the survivors.
- To arrange rehabilitation mechanisms/schemes taking into account the specific needs of the victim.

**NRI Marriages**

Over the years the problem of Indian women trapped in fraudulent marriages with overseas Indians has assumed alarming proportions. This has underscored the urgent need to build safeguards to protect these women and make them aware of their rights and responsibilities on the one hand and about the safety nets and social defense mechanisms that are available and which could assist them. Though, the problem has assumed serious proportions particularly in northern states such as Punjab. The problem is manifold and includes dowry and other kinds of harassment of married women in foreign countries, non-consummation of marriages, marriages of convenience, concealment of earlier existing marriage by the husband before marrying an Indian woman and lack of social security faced by an Indian woman on the foreign soil once the marriage is broken, exparte divorces etc. A most conspicuous disturbing trend, however, appears to be the easy dissolution of such marriages by the foreign courts even though their solemnization took place in India as per the Indian Laws. There is no comprehensive and special law to govern such aspects and also in view of the jurisdictional issues to decide the matrimonial cases.

The National Commission for Women during the year 2005-2006, took up this issue as a priority area, requiring immediate intervention and solutions and conducted

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254 http://ncw.nic.in/new_bills_proposed.htm visited on 18th September 2008 at 3:20 PM

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two workshops at Chandigarh and at Trivandrum, in June and September 2006, in collaboration with the Ministry of Overseas Indian Affairs, to discuss the possible solutions to the vexed issue. On basis of the recommendations made during the workshops the Commission recommends the various measures which need to be adopted.

**Recommendations to Amend the Laws Relating to Rape and Related Provisions**

The need for a new law on sexual assault was felt as the present law does not define and reflect the various kinds of sexual assault that women are subjected to in our country. The Supreme Court in Sakshi v. Union of India had recognized the inadequacies in the law relating to rape and had suggested that the legislature should bring about the required changes. The Law Commission had examined the entire law relating to rape and sexual assault in Indian Penal Code and suggested a complete overhauling of the law. Bill, drafted by Ms Kirti Singh advocate and legal convener of AIDWA, is based on 172nd report of the Law Commission to amend the laws relating to sexual assault in Sections 375, 376, 354 and 509 IPC and the relevant sections of the Code of Criminal Procedure 1973 and the Indian Evidence Act 1872. The recommendations are based on the national consultation on the issue organized by the National Commission for Women.

**The Immoral Traffic (Prevention) Amendment) Bill, 2006 - A Bill, further to Amend the Immoral Traffic (Prevention) Act, 1956**

Draft scheme/legislation providing compensation to and rehabilitation of victims of rape and sexual assault- The Commission had prepared the above scheme in pursuance of the Hon’ble Supreme Court of India’s Judgment in Delhi Domestic Women’s Forum v. Union of India and others provided for compensation to victim women and provided for counseling and rehabilitation of victim women.

The Commission after reviewing the situation recommended for the adoption of Draft SAARC Regional Convention on Prevention and Combating Trafficking in

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255 For details of recommendations see http://new.nic.in/new_bill_proposed.htm. visited on 18th September 2008 at 3:20 PM

256 For details see http://new.nic.in/new_bill_proposed.htm.

257 (WP(Crl.) No. 362/93)
Women and Children, prepared a Draft Bill “The Protection against Sexual Harassment of Women, 2005”. Study revealed that nearly 60% of working women were not aware of guidelines given by Hon’ble Supreme Court in Vishaka v. State of Rajasthan. NCW had prepared a code of conduct at work place in pursuance of the Supreme Court guidelines and circulated the same to all the ministries, educational institutions, public and private sector undertakings and various NGO’s for information and implementation.

NCW prepared a Draft Bill “Compulsory Registration of Marriage Act, 2005” where in the Commission recommended for the enactment of a uniform law relating to marriages providing for the compulsory registration of marriages, with the aim of preventing child marriages and also polygamy in the society.

With a view to provide more effective protection to women, National Commission for Women proposed a certain important legal amendments such as in the Code of Criminal Procedure, 1973 amendment of section 198 and 320, in Indian Penal Code strengthening of laws to curb the incidence of sale of minor girls, Commission of Sati (Prevention) Act, 1987, In Hindu Marriage Act 1955 amendment of section 5 to omit epilepsy as a ground of divorce, it suggested amendment to change the definition of kidnapping under section 359 IPC, to declare the marriage of minor to be void, to make this offence cognizable and non-bailable for the benefit of children. In Indecent Representation of Women Act, 1986 National Commission for Women proposed the amendment of section 1 of the Act to make the definition of derogatory representation of women wider, Immoral Traffic (Prevention) Act, 1956 for elimination of child prostitution and devising a comprehensive package for rehabilitation, The Medical Termination of Pregnancy Act, 1971, Foreign Marriage Act, 1969, Guardians and Wards Act, 1980, amendment of laws relating to rape and sexual assault to redefine rape and allied provision. These recommendations were incorporated in Criminal Law (Amendment) Bill, 2006 and sent to the government, Implementation of PC & PNDT Act, amendment to Dowry Prohibition Act, 1961, Family Courts (Amendment) Bill, 2005.

258 AIR 1997 SC 3011
259 http://www.ncw.nic.in visited on 18th September 2008 at 3:10 PM
Important Court Interventions/Inquiries by National Commission for Women

National Commission for Women suo motu took up the case of Ms. Bhanwari Devi and extended its full support in going for appeal and also providing securing to the victim and appointment of a special public prosecutor to argue her case. Bhanwari Devi was raped in Rajasthan in retaliation for her intervention in a child marriage in September 22, 1992.

Due to timely intervention of NCW in Supreme Court, the order of death sentence was temporarily stayed in Ramshree’s case and the Hon’ble Supreme Court later on commuted the death sentence into life imprisonment.

The Hon’ble High Court of Delhi put an injunction on the launching of +21 adult channels by the Ministry of Information and Broadcasting, Government of India. NCW had moved the Hon’ble High Court of Delhi against Star TV, Zee TV etc. for showing obscene pictures on television and other media.

NCW took up the case of Ms. Maimon Bakari who was allegedly a victim of torture and rape for marrying a person of her choice. The Supreme Court has united the couple.

In the matter of Fakhruddin Mubarak Shaik v. Jaitunbi Mubarak Shaik the NCW has intervened in Supreme Court of India to support the stand of Jaitunbi.

In Y. Abraham Ajith v. Inspector of Police, Chennai and others case the Supreme Court on hearing the contention of parties and examining the relevant sections of Criminal Procedure Code i.e. ordinary places of inquiry and trial, held that no part of cause of action arose in Chennai and therefore the magistrate at Chennai had no jurisdiction to deal with the matter particularly when the alleged offences are not continuing offences and proceedings with liberty to the complainant to file the complain in appropriate Court.

260 http://ncw.nic.in/court interventions.htm visited on 18th September 2008 at 3:30 PM
261 2004 III AD (CRL) SC 468
262 See Sections 177 and 178 of Code of Criminal Procedure, 1973
In the matter of Seema v. Ashwani Kumar\textsuperscript{263} the Hon’ble Supreme Court issued notice to the Commission for placing its views on the registration of marriage and the proposed legislation prepared by the commission.

Against Delhi High Court’s Judgment in Shikha Sharma’s case petition was filed by NCW highlighting the disparities in various legislations, particularly the Child Marriage (Restraint) Act, 1929, The Indian Divorce Act, 1969 and Shariat Law, Juvenile Justice (Care and Protection of Children) Act, 2000.

On 21\textsuperscript{st} April, 2005 “Rape most foul” was perpetrated at police chowki located adjacent to the Marine Lines Railway Station in South Mumbai by as on duty constable named Sunil Atmaram More. The abhorrent incident committed by a policeman who was reportedly in an inebriated condition and raped the victim. The act was condemnable and the incident compelled NCW to take immediate cognizance of the incident.\textsuperscript{264}

An inquiry committee was constituted to inquire into the alleged rape of Imrana, resident of Muzzaffarnagar by her father-in-law. The incident was reported by the Asian Age and other newspapers, on which NCW took immediate cognizance and issued notices to the district police, directing them to register a case of rape.

As one of the main objects of NCW is to advise the government on all policy matters affecting women, accordingly recently NCW has prepared a ‘Revised Scheme for the Relief and Rehabilitation of Victims of Rape’\textsuperscript{265}

The Hon’ble Supreme Court in Delhi Domestic Women’s Forum v. Union of India and others\textsuperscript{266} had directed the NCW to evolve a “scheme so as to wipe out the tears of unfortunate victims of rape”. The Supreme Court observed that having regard to the Directive Principles contained in Article 38 (1) of the constitution, it was necessary to set up Criminal Injuries compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatized to continue in employment. The Court further directed that compensation

\textsuperscript{263} Transfer Petition (Civil) No. 291 of 2005, AIR 2006 SC 1158
\textsuperscript{264} Popularity known as Marine Drive Rape case
\textsuperscript{265} http://ncw.nic.in/schemeforrehabilitation.pdf visited on 19th September, 2010 at 11:40 AM. Earlier the Scheme for the Relief and Rehabilitation of Victims of Rape was drafted in 2005. It was revised on 15th April 2010.
\textsuperscript{266} Writ Petition (CRL) NO. 362/93
for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction of offender and by the criminal injuries compensation Board whether or not a conviction has taken place. The Board shall take into the account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape. Accordingly to give effect to the aforesaid direction of the Hon'ble Supreme Court, NCW sent a draft scheme to the Central Government in 1995, thereafter the committee of secretaries under the chairmanship of Cabinet Secretary gave some guidelines in this regard for NCW to prepare a plan a scheme for disbursing compensation, to work out the quantum of compensation, to work out the quantum of compensation by DWCD in connection with NCW, provision for budgetary requirements for the scheme by state government and attending any complaint in this regard. The Ministry of Home Affairs would issue suitable compensation to the victims, monitoring of the scheme by NCW.

Hence NCW has redrafted the scheme guided by the parameters given by Supreme Court as well as its own assessment of the needs of the victims of rape.

The scheme is titled as “Scheme for Relief and Rehabilitation of Victims of Rape, 2005,” it shall apply to whole of India. Main features of the Scheme are as follows:-

**Criminal Injuries Relief and Rehabilitation Boards**

As per the scheme there is 3 tier system. Criminal Injuries Relief and Rehabilitation Boards shall be established at District, State and National Level upon notification. These Boards shall work in coordination with each other. The State board shall co-ordinate and to monitor the functions of the District Board. National Board shall co-ordinate and to monitor the functioning of the State and District authorities constituted under this scheme for implementation of the scheme.

**District Board for Criminal Injuries Relief and Rehabilitation**

Board shall be established at every District, and it is called as District Board for Criminal Injuries Relief and Rehabilitation. It shall have exclusive jurisdiction to deal with applications received under the scheme in that district. It shall be headed by

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267 [http://ncw.nic.in.schemeforrehabilitation.pdf](http://ncw.nic.in.schemeforrehabilitation.pdf) visited on 19th September, 2010 at 11:40 AM
the Collector or the District Magistrate and comprise of four other members namely - Supdt. of Police or his/her nominee, a woman who has experience in the field of empowerment of women and children nominated by the State Government for a period of 1 year at a time (provided that any nominated member may be nominated twice); District Health and Family Welfare Officer/District Medical and Health officer or his/her nominee; Deputy Director/Project Director/Gazetted District Officer of WCD of the concerned district, who shall also act as Secretary of the Board, maintain records and act as drawing and disbursing officer, Representative of Child welfare Committee ;(in each district or group of districts )

Constitution of State Board

The Chairperson of the State Board shall be the Principal Secretary, Department of women and child or social welfare. And it shall consist of five other members who shall be an officer of the rank of Joint Secretary of Department of Home, an officer not below the rank of Joint Secretary from the Ministry of Law, three Representatives who have experience in working on women’s children and legal issues to be nominated by the Department of Women in child in consultation with the State Legal Services Authority; the Member Secretary of the State Commission for women shall be the secretary of the Board or any other officer appointed by the Chairperson The Term of the nominated members shall be for a period of three years with the provision of extension for one more term.

Constitution of National Board

The National Board shall consist of the Chairperson, National Commission for Women who shall be the President of the Board, and five other members comprising of Member-Secretary, NCW, an officer not below the rank of Joint Secretary of the Central Government in the Ministry of Women and Child Development, one member experienced in law and issues relating to women and children to be nominated by the National Legal Services Authority, one member who has experience in working on issues relating to women and one member who may be a medical practitioner or persons having experience on issues relating to rape, nominated by the Chairperson, NCW. The Member Secretary, National Commission for Women, shall also function as Member Secretary of the National Board. The term of the nominated members of
the National Board shall be for a period of three years with a provision of extension for one additional term.

The District Board

The Board shall be the authority to consider the claims and award financial relief in all cases of rape and order such other relief and rehabilitation measures as deemed fit in the circumstances of the case. Upon the Constitution of the Board, it shall consider the claims and award financial relief/rehabilitation in all cases of rape in accordance with the procedure prescribed under this scheme, monitor the activities for rendering assistance to the rape victim in the form of any legal, medical, psychological or any other form of aid or assistance, make use of any other scheme(s) for rehabilitation of rape victims framed by the State or Central Government, arrange for psychological, medical and legal assistance to the victims, provide counseling, support to the victims, initiate suitable measures to ensure the protection of the victim and witnesses till the conclusion of the trial, periodically review the progress of investigation, provide support to young victims for education, professional training or training for self-employment, provide any other assistance for appropriate rehabilitation of the victims, recommend change of investigating officers in appropriate cases on the request made by the victim, arrange shelter to the victim, for such period as the Circumstances warrant, perform any other function as may be deemed expedient and necessary by the Board or as directed by the State/National Board, given the peculiar facts and circumstances of each case.

As soon as an incident of rape is reported and registered, the SHO of the concerned police station, through the SP/DCP, shall forward within 72 hours the copy of the FIR/complaint, medical report and the preliminary investigation report by the IO to the Secretary of the District Board; A victim, or her legal heir or any person/voluntary organization espousing the cause of women/Commissions may also apply to the District Board for financial relief and rehabilitation in accordance with the provisions of this Scheme within 60 days. In cases where the application is made after 60 days, the Board may, after being satisfied with the reasons for the delay given in writing, condone the delay. In case of a child, the application may be made on his/her behalf by a parent, Guardian, by any voluntary organization/commissions and in case of a mentally ill person within the meaning of the Mental Health Act or a
mentally retarded person, the Application may be made by the person with whom the applicant normally resides or a duly authorized medical officer or a voluntary organization. The application shall be submitted in the prescribed proforma.

The Board may award both financial relief as well as make provisions for rehabilitation but the relief shall not exceed Rs.2 lakhs and this relief may be increased to a maximum of Rs.3 lakhs in some cases by the State Board with prior consultation with the National Board.

**Interim Relief and Rehabilitation**

The District Board shall disburse a sum of twenty thousand rupees in favour of the victim preferably within fifteen days and in any case not exceeding three weeks as interim relief. And on receipt of the complaint and examination of the victim the Board shall on merits of each case examine/determine the nature of rehabilitation measures required to be provided to the victim and initiate appropriate action towards such measures and may incur a maximum expenditure up to rupees fifty thousand towards rehabilitation of the victim.

**Final Relief**

The Board shall direct disbursal of the balance amount of relief up to Rs.1.30 lakhs as final installment within a period of one month from the date on which the prosecutrix gives her evidence in the criminal trial or within one year from the date of receipt of the application in cases where the recording of evidence has been unduly delayed for reasons beyond the control of prosecutrix. In case of a minor victim, after the satisfaction of the Board about the proper utilisation of funds in the best interest and for the welfare of the child victim, the amount shall be released to her guardian or whoever has filed the application on behalf of the victim. The Board shall keep the best interests of the victim in mind at all times.

**Principles Governing the Determination of the Relief and Rehabilitation to the Victim**

The Board shall while be guided by the following parameters while determining the compensation and other relief's.
(i) Where death results as a consequence of rape:
   a) Non-earning member of the family - Rs 1,00,000/- (one lakh) towards relief after the post mortem report establishes a prima facie case.
   b) Earning member of the family - Rs 2,00,000/- (two lakh) to the benefit of minor children after the post mortem report establishes a prima facie case for the benefit of minor children.

(ii) In other cases :- The Board shall take into account rehabilitation and other expenses if any, subject to a maximum of Rs. 50,000/- which may include type and severity of the bodily injury suffered by the victim, expenditure incurred or likely to be incurred on medical treatment and psychological counselling to the victim, expenditure consequential on pregnancy, if resulting from rape including expenses connected with abortion, if it is resorted to, in consequence to rape, expenses incurred or likely to be incurred in connection with any education or professional or vocational training or training for self employment to the victim, loss caused to the victim by cessation or interruption of gainful activity or employment on the basis of an assessment made by the Board, non pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience, expenses incurred in connection with provision of any alternate accommodation in cases where the victim belongs to any other place other then the place where the offence took place.

**Enhancement of Relief in Special Cases**

The State Board with prior consultation with the National board shall have the power to provide for enhanced relief subject to a maximum of rupees three lakhs in cases where offences against children below 13 years of age involve specialized treatment and care, offences against mentally challenged, Handicapped Women and Children which may involve specialized treatment and care, victim becomes infected with STDs including affected by HIV/AIDS as a consequence of rape, victim gets pregnant as a consequence of rape and due to circumstances beyond her control delivers the child, where severe medical problems is faced by the victim including both physical and mental.
The application under this scheme will be in addition to any application that may be made under section 357/357A of Criminal Procedure Code. Hence this Scheme provides elaborate provision for relief and rehabilitation of rape victims. This was really needed and much awaited. This effort of NCW under the directions of Hon’ble Apex Court is surely in the direction of restorative justice and is appreciable. It is suggested that it should be implemented expeditiously.

The Commission for Protection of Child Rights Act, 2005

This is an Act to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children’s Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected there with or incidental thereto.

India participated in the United Nations (UN) General Assembly Summit in 1990, which adopted a Declaration on Survival, Protection and Development of Children and India has also acceded to the Convention on the Rights of the Child (CRC) on 11th December, 1992. Convention on the Rights of the Child is an international treaty that makes it incumbent upon the signatory States to take all necessary steps to protect children’s rights enumerated in the Convention. The UN General Assembly Special Session on Children held in May, 2002 adopted an outcome Document titled “A World Fit for Children” containing the goals, objectives, strategies and activities to be undertaken by the member countries for the current decade. Government enacted a law relating to children to give effect to the policies adopted by the Government in this regard, standards prescribed in the CRC, and all other relevant international instruments. In order to ensure protection to right of children one of the recent initiatives that the Government has taken for Children is the adoption of National Charter for Children, 2003.

Constitution of National Commission for Protection of Child Rights

The Central government shall by notification constitute a body to be known as the National Commission for Protection of Child Rights to exercise the powers conferred on, and to perform the functions assigned to it under this Act. And the Commission shall consist of the following members, namely:-

268 Section 3 of the Commission for Protection of Child Rights Act, 2005
(a) a chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and

(b) six members, out of which at least two shall be women, from the following fields, to be appointed by the central Government from amongst persons of eminence, ability, integrity, standing and experience

(i) education;

(ii) child health care, welfare or child development;

(iii) juvenile justice or care of neglected or marginalized children or children with disabilities;

(iv) elimination of child labour or children in distress; child psychology or sociology and laws relating to children.

Functions of the Commission

The Commission shall perform all or any of the following functions namely:-

(a) examine and review the safeguards provided by or under the law for the time being in force for the protection of child rights and recommend measures for their effective implementation;

(b) present to the central government, annually and at such other intervals, as the commission may deem fit, reports upon the working of those safeguards;

(c) Inquire into violation of child rights and recommend initiation of proceedings in such cases;

(d) Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking: maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

(e) Look into the matters relating in children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;
(f) Study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

(g) Undertake and promote research in the field of child rights;

(h) Spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;

(i) Inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organization; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(j) Inquire into complains and take sue moto notice of matters relating to;
   
   (i) deprivation and violation child rights
   
   (ii) non-implementation of laws providing for protection and development of children;
   
   (iii) non-compliance of policy decision, guidelines or instruction aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities; and such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.\(^{269}\)

The Commission shall, while inquiring into any matter referred to in section 13(1)(j) have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

\(^{269}\) Section 13 of the Commission for Protection of Child Rights Act, 2005
(b) discovery and production of any document;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copy thereof from any court or office; and
(e) issuing commissions for the examination of witnesses or documents.

The Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 270 And the Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:-

(i) where the inquiry discloses, the commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to the concerned Government or, authority the initiation of proceedings for prosecution or such other action as the commission may deem fit against the concerned person or persons;
(ii) against the Supreme Court or the High Court concerned for such direction orders or writs as that court may deem necessary;
(iii) recommend to the concerned Government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary. 271

Section 16 of the Act provides that the Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in it is opinion, is of such urgency or importance that it should not be deferred till submission of the annual report. The Central Government and the State Government concerned, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the

270 Section 14 of the Commission for Protection of Child Rights Act, 2005
271 Section 15 of the Commission for Protection of Child Rights Act, 2005

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recommendations, if any, within a period of one year from the date of receipt of such report. The annual report shall be prepared in such form, manner and contain such details as may be prescribed by the Central Government.

4. State Commissions for Protection of Child Rights

The State Government may constitute a body to be known as the, (name of the State) Commission for Protection of Child Rights to exercise the powers conferred upon, and to perform the function assigned to, a State Commission under this chapter. The State Commission shall consist of the following members, namely:-

(a) a chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and

(b) six members, out of which at least two shall be women, from the following, fields, to be appointed by the central Government from amongst persons of eminence, ability, integrity, standing and experience

(i) Education;

(ii) Child health care, welfare or child development;

(iii) Juvenile justice or care of neglected or marginalized children or children with disabilities;

(iv) Elimination of child labour or children in distress;

(v) Child psychology or sociology and laws relating to children.

The head-quarter of the State Commission shall be at such place as the State Government may by notification specify. The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report. And State Government shall cause all the reports be laid before each House of State Legislature, where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations. And the annual report shall be prepared in such

272 Section 17 of the Commission for Protection of Child Rights Act, 2005
form, manner and contain such details as may be prescribed by the State Government.

Children’s Courts

Section 25 provides that for the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children’s Court to try the said offences. It is noted that nothing in this section shall apply if-

(a) a Court of Session is already specified as a Special Court; or

(b) a Special Court is already constituted, for such offences under any other law for the time being in force. For every children’s court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.


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273 Section 23 of the Commission for Protection of Child Rights Act, 2005
274 Section 26 of the Commission for Protection of Child Rights Act, 2005