

# Index

Sr. No.	Particulars	Page No.
1.	Introduction	1
2.	Section 357 Cr.P.C.	2
3.	Section 357 A Cr.P.C.	3
4.	Main features of Victim Compensation Scheme	4
5.	Other Important Provisions in the Code of Criminal Procedure	9
6.	Haryana Victim Compensation Scheme (VCS) 2013 (Amended)	10-16
7.	Important Judgements of Hon'ble Supreme Court of India	17-57
	(a) Ankush Shivaji Gaikwar - Versus State of Maharashtra- Respondent	18-37
	(b) Suresh & Anr. Versus State of Haryana	38-53
	(c) Laxmi Versus Union of India & Ors.	54-57

# VICTIM COMPENSATION LAW

## Introduction:

According to Oxford dictionary, "Compensation means to provide something good to balance or reduce the bad effect of damage, loss, injury etc".

Victim is an important part of Criminal Justice System. Victim should not be forgotten in Criminal Justice System. As per section 2(wa) of Code of Criminal Procedure, 1973 "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir. The Supreme Court of India in *Rattiram & Ors. v. State of M.P.* AIR 2012 SC 148 has aptly emphasized on protection of victims rights:

"Criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. It is the duty of the court to see that the victims' right is protected."

Justice Krishna Iyer, speaking for the Supreme Court of India in *Maru Ram & Ors. v. Union of India and Ors.* (1981) 1 SCC 107, said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment said the Court, not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn.

In *Hari Singh v. Sukhbir Singh and Ors.*, 1988(2) R.C.R.(Criminal) 394 : (1988) 4 SCC 551, the Supreme Court of India lamented the failure of the Courts in awarding compensation to the victims in terms of Section 357 (1) of the Criminal Procedure Code. The Court recommended to all Courts to exercise the power available under Section 357 of the Criminal Procedure Code liberally so as to meet the ends of justice. The Hon'ble Supreme Court said :-

"... Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.

There are different statutory provisions in criminal justice under which the

compensation can be awarded to the victim of crime, viz. Fatal Accident Act, 1855, Probation of Offenders Act, 1958 and Code of Criminal Procedure, 1973( Cr.P.C).

This booklet makes an attempt to give birds eye view of the law relating to compensation to the victim of crime under sections 357 and 357A of the Code of Criminal Procedure, 1973( Cr.P.C).

### **Section 357 Cr.P.C**

According to s. 357 subs. (1) and sub-s. (3) of Cr.P.C, the court may award compensation to the victim of crime at the time of passing judgment. These provisions make the trial courts and the appellate courts competent to award compensation to the victims of crime only after conviction of the accused.

Under Section 357(1), court can order for payment of compensation out of the finding post. For payment of compensation under Section 357 (1) of Cr.P.C. imposition of fine is must as compensation can be ordered to be paid out of the fine imposed. Section 357(3) Cr.P.C empowers the Court to award compensation for loss or injury suffered by a person, in cases where fine does not form a part of the sentence. It is left to the discretion of the court to decide the amount of compensation, depending on the facts and circumstances of each case. Capacity of the accused is one of the factors to be kept in view while granting compensation.

In **Ankush Shivaji Gaikwad v. State of Maharashtra 2013(2) R.C.R. (Criminal) 1036**, the Supreme Court of India held as follows:

“While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Criminal Procedure Code would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.”

The combined reading of **Hari Singh v. Sukhbir Singh and Ors., 1988(2) R.C.R.(Criminal) 394 : (1988) 4 SCC 551**, and **Ankush Shivaji Gaikwad v. State of Maharashtra 2013(2) R.C.R.(Criminal) 1036** reflects the following:

1. Power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto
2. This power is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system

3. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes.
4. Section 357 Cr.P.C. confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case.
5. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Criminal Procedure Code would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

### **Interim Compensation**

In **Suresh v. State of Haryana**, criminal appeal No.420 of 2012 decided on 28<sup>th</sup> November, 2014 the Supreme Court lamented that compensation was not being granted by courts.

The Supreme Court gave the following directions:

1. It is the duty of the court, on taking cognizance of a criminal offence , to ascertain whether there is tangible material which showed the commission of the crime, whether the victim was identifiable and whether the victim of crime require immediate financial relief.
2. On being satisfied either on application or suo moto, the court ought to direct the grant of interim compensation, subject to the final determination of compensation at a later stage. This duty continues at every stage of criminal case, where compensation ought to be given but not given, irrespective of the application by the victim.
3. At the stage of final hearing , it is obligatory on the part of the court to advert to the provision and record a finding as to whether a case for grant of compensation had been made, if so who is entitled to compensation and how much.
4. Award of the compensation can be interim.
5. Gravity of the offence and need of victim are to be the guiding factors, apart from other factors which are relevant to the facts and circumstances of the case.

### **Section 357 A Cr.P.C**

Under the amended law, sub-section (1) of Section 357A of the Code of Criminal Procedure provides for the preparation of a scheme by every State Government in coordination with the Central Government to provide funds for the compensation of victims or his dependents who have suffered loss or injury as a result of a crime and who require rehabilitation.

Sub-section (2) states that whenever the Court makes a recommendation 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 above-mentioned scheme.

In sub-section (3) the trial court has been empowered to make recommendation for compensation in cases where-

Either the quantum of compensation fixed by the trial court is inadequate for rehabilitation; or,

Where the case ends in acquittal or discharge of the accused and the victim has to be rehabilitated.

Sub-section (4) of Section 357A states that even where no trial takes place and the offender is not traced or identified; but the victim is known, the victim or his dependents can apply to the State or the District Legal Services Authority for award of compensation.

Sub-section (5) says that on receipt of the recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

#### **Main features of the Haryana Victim Compensation Scheme (VCS)**

The State of Haryana has framed Haryana Victim Compensation Scheme 2013. It was notified on 3<sup>rd</sup> April 2013. It was amended vide notification dated 28<sup>th</sup> August, 2015. Under Section 357 (A) of Code of Criminal Procedure read with Haryana Victim Compensation Scheme compensation can be granted in case of:

- (a) Conviction.
- (b) Acquittal.
- (c) Discharge.
- (d) Even if offender is not traced out and trial does not take place but the victim is known.

If Sub-section (2) and (3) of Section 357 A Cr.P.C. is read with Victim Compensation Scheme, recommendation by the trial Court is necessary before District Legal Services Authorities or State Legal Services Authorities can entertain the application for awarding compensation to the victim. Thus, in such cases, where trial has taken place but before or after conclusion of trial, the trial court has not made recommendation for compensation, it is not possible for DLSA or SLSA to decide the quantum of compensation to be awarded under the scheme.

The High Court of Punjab & Haryana in Ramphal Yadav Vs. State of Haryana and others in CWP No.218 of 2016 decided on 08.01.2016 observed as follows:-

*“A perusal of the Section 357 (A)(2) Cr.P.C. provides that wherever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority shall decide the quantum of compensation to be awarded under the Scheme referred to in sub-section (1).”*

*“Sub-section (3) of Section 357(A) Cr.P.C. provides that if the trial court, at the conclusion of the trial, is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.”*

Recommendation can be for payment of interim compensation as well as for final compensation.

Under Section 357 (A) read with the Haryana Victim Compensation Scheme 2013 quantum of compensation is determined by the DLSA or State Legal Service Authority as the case may be.

Compensation can be granted only qua those offences under the Haryana Victim Compensation Scheme 2013, which are spelt out in the schedule-I of the Haryana Victim Compensation Scheme. If we examine the said schedule, it becomes clear that it covers only those offences which are committed against the human body of the victim. It also includes the case of acid attack.

#### **When DLSA can entertain the application:**

On pursuing various Clauses of the Haryana Victim Compensation Scheme, it emerges that District Legal services Authority can entertain application to award compensation to a victim in the following circumstances:-

1. On recommendation of the Court - under Section 357A (2) or (3) Cr.P.C  
[Cl. 4(1) (a) of VCS]
2. On an application moved by the victim/dependent, where the offender is not traced or identified, but the victim is identified and where no trial takes place - under section 357A (4) Cr.P.C.

[Cl. 4(1) (a) of VCS]

3. When application is made for interim relief so as to alleviate the suffering of the victim - under Section 357A(6) Cr.P.C.

[Cl. 5(8) of VCS]

#### **Eligibility criterion for seeking compensation by a victim of crime:**

In order to claim compensation under the Victim Compensation Scheme, the following conditions are required to be satisfied.

1. The victim/claimant reports the crime to the officer in-charge of the police station or any Senior Officer or Executive Magistrate or Judicial Magistrate of the area within 48 hours of the occurrence.

*[Cl. 4(1)(b) of VCS]*

(However, DLSA, if satisfied, for reasons to be recorded in writing, may condone the delay in reporting)

2. In case, where the offender is traced or identified and trial takes place, the victim/claimant has cooperated with the police and prosecution during the investigation and trial of the case.

*[Cl. 4(1)(c) of VCS]*

3. The income of the family does not exceed Rs. 4.5 Lac per annum.

*[Cl. 4(1)(d) of VCS]*

("family" means parents, children and other blood relations living in the same household)

*[Cl. 2) (d) of VCS]*

4. Crime in question, for which compensation is being claimed under the scheme, should have occurred within the jurisdiction of Haryana State.

*[Cl. 4(1)(e) of VCS]*

5. Victim/claimant should not be the employee of Central/ State Government, Boards, Corporations and Public Undertakings.

*[Cl. 4(2) of VCS]*

6. Victim/claimant should not be income tax payee.

*[Cl. 4(2) of VCS]*

7. The case, for which compensation is being claimed, should not be covered under Motor Vehicle Act, wherein compensation is to be awarded by the Motor Accident Claims Tribunal (MACT).

*[Cl. 5(7) of VCS]*

8. Application for seeking compensation by the victim or his dependent under sub-section (4) of Section 357 A Cr.P.C. should be made within a period of 6 months of the crime. (DLSA if satisfied, for reasons to be recorded in writing may condone the delay in filing the claim).

*[Cl. 8 of VCS]*

**Procedure for grant of Compensation:-**

Whenever a recommendation is made by the Court under section 357-A (2) or (3) of Cr.P.C. or application is made to the DLSA under sub-section (4) of Section 357A Cr.P.C, the DLSA shall:

- examine-the case;

- verify the contents of the claim with regard to:
  - the loss or injury caused to victim; and
  - arising out of the reported criminal activity.

*[Cl. 5(1) of VCS]*

**Following steps may be taken in this regard:**

1. In order to determine genuineness of the claim, DLSA may call for any other relevant information.

*[Cl. 5(1) of VCS]*

2. After verifying the claim and conducting due enquiry, the DLSA shall award compensation within two months.

After verifying the claim and conducting due enquiry, the DLSA shall award compensation within two months.

*[Cl. 5(1) of VCS]*

3. The quantum of compensation to be awarded to the victim or dependents shall be decided by DLSA on the basis of:

- (i) loss caused to the victim.
- (ii) Medical expenses to be incurred on treatment.
- (iii) Minimum sustenance amount required for rehabilitation.
- (iv) Incidental charges as funeral expenses etc.

*[Cl. 5 (3) of VCS]*

**Reliefs/ Compensation, which may be awarded by DLSA:**

1. The quantum of compensation is to be awarded by DLSA as per Schedule I.

*[Cl. 5 (4) of VCS]*

2. Reliefs, which may be ordered to be given by DLSA, to alleviate the suffering of the victim, on the certificate of the Police Officer not below the rank of Officer in Charge of the Police Station or concerned Area Magistrate:

- Immediate first aid facility
- Medical benefits to be made available free of costs

- Any other interim relief, as deemed fit.

[Cl. 5(8) of VCS]

### **Compensation to acid victims**

5(A) Notwithstanding anything in this scheme, the Acid Attack Victim shall be paid amount of Rs. 1.00 lac within 15 days of the occurrence of the incident and the balance amount of Rs. 2.00 lacs shall be paid within two months of such incident.

[Cl. 5(A) of VCS]

### **Other duties of District Legal Services Authorities:-**

1. Copy of order of compensation passed under the scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order for compensation under sub-section (3) of Section 357 Cr.P.C.

[Cl. 6 of VCS]

2. If deemed it proper, DLSA may institute proceedings before Competent Court of law for recovery of compensation granted to the victim/dependent from the person responsible for causing loss or injury as a result of the crime committed by him.

[Cl. 7 of VCS]

### **Other important conditions:-**

1. Before disbursement of the compensation amount to the victim/claimant, DLSA shall take undertaking from him to the effect that if trial court while passing judgment at a later date, orders the accused person to pay any amount by way of compensation under sub-section (3) of Section 357 Cr.P.C., he/she (the victim/claimant) shall remit an amount equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of Section 357 Cr.P.C., whichever is less.

[Cl. 5(2) of VCS]

2. In case, a victim has received compensation from the State in respect of crime in question from any collateral sources like insurance, ex-gratia, 'Rajiv Gandhi Bima Yojna' or under any other Act or any other State-run scheme, that compensation shall be considered as part of compensation under this scheme and therefore, victim/claimant shall be deemed to be compensated under this scheme. He/She shall not be entitled to separate compensation. However, if the eligible compensation amount exceeds the payments received by the victim from collateral sources as above, the balance amount shall be paid out of the fund under this scheme.

[Cl. 5(6) of VCS]

### **Appeal:-**

Any victim aggrieved of the denial of compensation by DLSA may file an appeal before

the State Legal Services Authority within a period of 90 days. However, State Legal Services Authority, if satisfied, for reasons to be recorded in writing, may condone the delay in filing the appeal.

[Cl. 9 of VCS]

### **Claim of acid attack victim**

The Supreme Court of India vide order dated 10.04.2015 in W.P. (Cr.) No.129 of 2006-Laxmi Vs. Union of India & Ors, inter-alia, directed as follows:-

**“The final issue is with regard to the setting up of a Criminal Injuries Compensation Board. In the meeting held on 14.3.2015, the unanimous view was that since the District Legal Services Authority is already constituted in every district and is involved in providing appropriate assistance relating to acid attack victim, perhaps it may not be necessary to set up a separate Criminal Injuries Compensation Board. In other words, a multiplicity of authorities need not be created.**

**In our opinion, this view is quite reasonable. Therefore, in case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District judge and such other co-opted persons who the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purpose.”**

### **Other Important Provisions in the Code of Criminal Procedure**

**357-B. Compensation to be in addition to fine under section 326-A or section 376-D of Indian Penal Code.**- The compensation payable by the State Government under section 357-A shall be in addition to the payment of fine to the victim under section 326-A or section 376-D of the Indian Penal Code (45 of 1860.)

**357-C. Treatment of victims.**- All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326-A, 376, 376-A, 376-B, 376-C, 376-D or section 376-E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident.

# HARYANA VICTIM COMPENSATION SCHEME [VCS] 2013

## Notification

**The 3<sup>rd</sup> April, 2013 (as amended vide Haryana Government Notification 41/C.A. 2/1974/S. 357-A/2013 dated 28<sup>th</sup> August, 2015)**

**No. S.O. 41/C.A. 2/1974/S. 357-A/2013.** - In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Haryana in co-ordination with the Central Government hereby frames the following scheme for providing funds for the purpose of compensation to the victim or his/her dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, namely:-

- |                          |    |   |
|--------------------------|----|---|
| Short title              | 1. | This scheme shall be called the Haryana Victim Compensation Scheme, 2013.   |
| Definitions              | 2. | In this scheme, unless the context otherwise requires,-- <ul style="list-style-type: none"> <li>(a) "Act" means the Code of Criminal Procedure, 1973(2 of 1974);</li> <li>(b) "crime" means illegal act of omission or commission or an offence committed against the human body of the victim;</li> <li>(c) "dependents" means wife/husband, father, mother, unmarried daughter, minor children and includes other legal heir of the victim who, on providing sufficient proof, is found fully dependent on the victim by the District Legal Services Authority;</li> <li>(d) "family" means parents, children and includes all blood relations living in the same household;</li> <li>(e) "Schedule" means Schedule appended to this scheme;</li> <li>(f) "State" means the "State of Haryana".</li> <li>(g) *Victim means victim as defined under the Act and also includes acid attack victim<sup>3</sup>.</li> </ul> |
| Victim Compensation Fund | 3. | (1) There shall be constituted a fund namely Victim Compensation Fund.<br><br>(2) The Victim Compensation Fund shall consist of,-- <ul style="list-style-type: none"> <li>(a) budgetary allocation for which necessary provision shall be made in the annual budget by the State;</li> <li>(b) receipt of amount of fines imposed under section 357 of the Act and ordered to be deposited by the courts in the</li> </ul>  |

<sup>3</sup>. Inserted vide Haryana Government GAZ. (EXTRA) Notification dated 28.8.2015.

Eligibility for compensation

- Fund.
- (c) amount of compensation recovered from the wrongdoer/accused under clause 7 of the Scheme.
  - (d) donations/ contributions from international National Philanthropist/ charitable institution/organization and individuals.
- (3) The Administration of Justice department shall be Nodal Department for regulating, administering and monitoring this scheme.
  - (4) The State Legal Services Authority shall be accountable for its functions under the scheme and for furnishing periodical returns of the sums distributed to them by the State Government through the Nodal Department.
  - (5) The Fund shall be operated by the Member Secretary, State Legal Services Authority.
- 4.** (1) A victim shall be eligible for the grant of compensation where,--
- (a) a recommendation is made by the Court under sub section (2) and (3) of section 357-A of the Act or the offender is not traced or identified, and where no trial takes place, such victim may also apply grant of compensation under sub-section (4) of section 357-A of the Act;
  - (b) the victim/claimant report the crime to the officer-in-charge of the police station or any senior police officer or Executive Magistrate or Judicial Magistrate of the area within 48 hours of the occurrence:  
  
Provided that the District Legal Service Authority if satisfied for the reasons to be recorded in writing, may condone that delay in reporting;
  - (c) the offender is traced or identified, and where trial has taken place, the victim/claimant has cooperated with the police and prosecution during the investigation and trial of the case;
  - (d) The income of the family should not exceed Rs. 4.5 Lac per annum;
  - (e) The Crime on account of which the compensation which to be paid under this scheme should have been occurred within the jurisdiction of Haryana State.
- (2) The employees of Central/State Government, Boards. Corporations and

Public Undertakings and income tax payees shall not be eligible under this scheme.

Procedure for grant of compensation

**5.** (1) Whenever a recommendation is made by the Court under sub-section (2) of section 357-A of the Act or an application is made by any victim or his dependent under sub-section (4) of section 357-A of the Act to the District Legal Services Authority, District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness of the claim. After verifying the claim and by conducting due enquiry, the District Legal Service Authority, shall award compensation within two months, in accordance with provisions of this scheme.

(2) Compensation under this scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim-claimant shall remit an amount equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim-claimant before the disbursement of the compensation amount.

\*Provided that the compensation payable under this scheme shall be in addition to the payment of the fine to the victim under section 326 A or section 376 D of the Indian Penal Code.

(3) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.

(4) The quantum of compensation to be awarded to the victim or his dependents shall be as per Schedule I.

(5) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund. While making payment of amount of compensation, the District Legal Services Authority shall ensure that all the provisions of this scheme are strictly complied with.

\*\*“(5A) Notwithstanding anything in this scheme, the Acid Attack Victim shall be paid an amount of Rs. 1.00 lac within 15 days of the occurrence of the incident and the and the balance amount of Rs.2.00 lacs shall be paid within two months of such incident.

4. Inserted vide Haryana Government GAZ. (EXTRA) Notification dated 28.8.2015.

5. Inserted vide Haryana Government GAZ. (EXTRA) Notification dated 28.8.2015.

(6) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia and/ or payment received under any other Act or 'Rajiv Gandhi Pariwar Bima Yojna' or any other State-run scheme, shall be considered as part of the compensation amount under this scheme. The victim/claimant who has received compensation amount from collateral sources mentioned above shall be deemed to be compensated under this scheme and shall not be entitled to separate compensation under this scheme. If the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Fund.

(7) The cases covered under Motor Vehicle Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(8) The District Legal Services Authority, 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 Magistrate of the area concerned, or any other interim relief, as it may deem fit.

Order to be placed on record.

**6.** Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order of compensation under sub-section (3) of section 357 of the Act.

Recovery of Compensation awarded to victim from wrongdoer/ accused.

**7.** The District Legal Services Authority, if deem it proper, may institute proceedings before the competent court of law for recovery of the compensation granted to the victim or his/her dependent(s) from the person responsible for causing loss or injury as a result of the crime committed by him.

Limitation

**8.** No claim made by the victim or his dependents under sub-section (4) of section 357-A of the Act shall be entertained after a period of six months of the crime:

“Provided further that as a one time measure, the cases occurred on or after first January, 2012 Shall also be considered within six months from the date of this notification.”

Provided that the District Legal Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

Appeal

**9.** Any victim aggrieved of the denial of compensation by the District Legal Services Authority may file an appeal before the State Legal Service Authority within a

6. Inserted vide Haryana Government GAZ. (EXTRA) Notification dated 28.8.2015.

period of ninety days;

Provided that the State Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

<sup>5</sup>Schedule I

<i>Sr. No.</i>	<i>Description of Injures/Loss</i>	<i>Minimum Amount of Compensation</i>
1.	Acid attach	₹ 3 Lakhs
2.	Rape	₹ 3 Lakhs
3.	Physical abuse of minor	₹ 2 Lakhs
4.	Rehabilitation of Victim of Human Trafficking	₹ 1 Lakhs
5.	Sexual assault (Excluding rape)	₹ 50,000/-
6.	Death	₹ 2 Lakhs
7.	Permanent Disability (80% or more)	₹ 2 Lakhs
8.	Partial Disability (40% to 80%)	₹ 1 Lakhs
9.	Burns affecting greater than 25% of the body (excluding Acid Attack cases)	₹ 2 Lakhs
10.	Loss of foetus	₹ 50,000/-
11.	Loss of fertility	₹ 1.5 Lakhs
12.	Women Victims of cross border firing:	₹ 2 Lakhs
	(a) Death or Permanent Disability (80% or more)	₹ 1 Lakhs
	(b) Partial Disability (40% to 80%)	

5. If the victim is less than 14 years of age, the compensation shall be increased by 50% over the amount specified above.

**IMPORTANT JUDGMENTS**  
**OF**  
**HON'BLE SUPREME**  
**COURT OF INDIA**

**SUPREME COURT OF INDIA**

Before :- T.S. Thakur and Gyan Sudha Misra, JJ.

Criminal Appeal No. 689 of 2013 (Arising out of S.L.P. (Crl.) No. 6287 of 2011). D/d. 3.5.2013.

**Ankush** Shivaji Gaikwad - Appellant

Versus

State of Maharashtra - Respondent

For the Appellant :- M.Y. Deshmukh, Yatin M. Jagtap and Rameshwar Prasad Goyal, Advocates.

For the Respondent :- Shankar Chillarge and Ms. Asha Gopalan Nair, Advocates.

**Important points:**

**Section 357 Code of Criminal Procedure**

**After order of conviction it is mandatory duty to court to consider the question of award of compensation to victim of crime - However, it is discretion of Court to award or not to award compensation.**

**Occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused.**

**Capacity of accused to pay compensation would involve certain enquiry albeit summary.**

**Section 357 Criminal Procedure Code confers a duty on the Court to apply its mind to the question of compensation in every criminal case. Court must disclose that it has applied its mind to this question . Disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion.**

**Under Section 357(1) Court "may" order for the whole or any part of a fine recovered to be applied towards compensation in the following cases :-**

**(i) To any person who has suffered loss or injury by the offence, when in the opinion of the Court, such compensation would be recoverable by such person in a Civil Court.**

**(ii) To a person who is entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof.**

**(iii) To a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property, and which is ordered to be restored to its rightful owner.**

**(iv) Section 357(3) of Criminal Procedure Code empowers the Court that it "may" award compensation even in such cases where the sentence imposed does not include a fine.**

**Section 357-A Cr.P.C**

**Under Section 357-A the Court is empowered to direct the State to pay compensation to the**

**victim in such cases where "the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated**

**Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation.**

**JUDGMENT**

**T.S. Thakur, J. - Leave granted.**

2. This appeal arises out of a judgment and order dated 24th August, 2010 passed by the High Court of Judicature at Bombay, Aurangabad Bench, whereby Criminal Appeal No. 359 of 2008 filed by the appellant and two others has been dismissed in so far as the appellant is concerned and allowed qua the remaining two, thereby upholding the appellant's conviction for the offence of murder punishable under Section of the Indian Penal Code and the sentence of imprisonment for life with a fine of ₹ 2,000/- awarded to him. In default of payment of fine the appellant has been sentenced to undergo a further imprisonment for a period of three months.

3. The factual matrix in which the appellant came to be prosecuted and convicted has been set out in detail by the trial Court as also the High Court in the orders passed by them. We need not, therefore, recapitulate the same all over again except to the extent it is necessary to do so for the disposal of this appeal. Briefly stated, the incident that culminated in the death of deceased-Nilkanth Pawar and the consequent prosecution of the appellant and two others occurred at about 10.00 p.m. on 3rd February, 2006 while the deceased and his wife P.W. 1-Mangalbai were guarding their Jaggery crop growing in their field. The prosecution story is that the appellant-Ankush Shivaji Gaikwad accompanied by Madhav Shivaji Gaikwad (accused No. 2) and Shivaji Bhivaji Gaikwad (accused No. 3) were walking past the field of the deceased when a dog owned by the deceased started barking at them. Angered by the barking of the animal, the appellant is alleged to have hit the dog with the iron pipe that he was carrying in his hand. The deceased objected to the appellant beating the dog, whereupon the appellant started abusing the former and told him to keep quiet or else he too would be beaten like a dog. The exchange of hot words, it appears, led to a scuffle between the deceased and the accused persons in the course whereof, while accused Nos. 2 and 3 beat the deceased with fist and kicks, the appellant hit the deceased with the iron pipe on the head. On account of the injury inflicted upon him, the deceased fell to the ground whereupon all the three accused persons ran away from the spot. The incident was witnessed by the wife of the deceased, P.W.1- Mangalbai and by P.W.5-Ramesh Ganpati Pawar who was also present in the field nearby at the time of the occurrence. The deceased was carried on a motorcycle to the hospital of one Dr. Chinchole at Omerga from where he was shifted to Solapur for further treatment. Two days after the occurrence when the condition of the deceased became precarious, P.W.1-Mangalbai filed a complaint at the Police Station, Omerga on 5th February, 2006 on the basis whereby Crime No. 25 of 2006 under Sections 326, 504 and 323 read with Section of the Indian Penal Code was registered by the police. Investigation of the case was taken up by P.W.6-Police Sub Inspector Parihar who recorded the panchnama of the scene of the crime and arrested the accused persons. The deceased eventually succumbed to his injuries on 7th February, 2006 whereupon Section 302 read with Section of the Indian Penal Code was added to the case.

4. Post-mortem examination of the deceased revealed a contusion behind his right ear, a contusion on the right arm and an abrasion on the right ankle joint. Internal examination, however, showed that the deceased had sustained an internal injury to the temporal and occipital region under the scalp and a fracture on the base of the skull. Blood clots were noted in the brain tissues and the base of the skull, besides internal bleeding. According to the doctor, the death was caused by the injury to the head. After completion of the investigation that included seizure of the alleged weapon used by the appellant, the police filed a charge-sheet before the judicial Magistrate, who committed the appellant and co-accused to face trial for the offence of murder punishable under Section 302 read with Section of the Indian Penal Code before the Sessions Court. Before the Sessions Court the appellant and his co-accused pleaded not guilty and claimed a trial.

5. The prosecution examined as many as six witnesses including P.W.1-Mangalbai, the widow of the deceased and P.W.5-Ramesh, both of whom were presented as eye witnesses to the occurrence. The remaining witnesses included P.W.3-Dr. Kamble and P.W.6-Police Sub-Inspector Parihar. Appraisal of the evidence adduced by the prosecution led the trial Court to hold the appellant and his co-accused guilty for the offence of murder and sentenced them to imprisonment for life besides a fine of ₹ 2,000/- each and a default sentence of three months rigorous imprisonment.

6. The appellant and his co-accused preferred Criminal Appeal No. 359 of 2008 before the High Court of Judicature at Bombay, Bench at Aurangabad. The High Court has by the judgment impugned in this appeal dismissed the appeal of the appellant before us but allowed the same in so far as the co-accused are concerned. The correctness of the said judgment and order is under challenge before us.

7. When the matter initially came up before us for hearing on 2nd September, 2011 we issued notice to the respondent-State confined to the question of the nature of offence only. We have accordingly heard learned counsel for the parties on the said question. The trial Court as also the High Court have, as noticed earlier, found the appellant guilty of murder. The question, however, is whether in the facts and circumstances of the case the appellant has been rightly convicted for the capital offence and if not whether the act attributed to him would constitute a lesser offence like culpable homicide not amounting to murder punishable under Section 304 Part I or II of the Indian Penal Code.

8. On behalf of the appellant it was contended that the appellant's case fell within Exception 4 to Section of the Indian Penal Code which reads as under:-

*"Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."*

9. It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons. Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the deceased and his wife were

guarding their Jaggery crop in their field at around 10 p.m. when their dog started barking at the appellant and his two companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the appellant and his companions took to their heels - a circumstance that shows that the appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4. Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to Section of the Indian Penal Code.

10. Time now to refer to a few decisions of this Court where in similar circumstances this Court has held Exception 4 to Section of the Indian Penal Code to be applicable and converted the offence against the appellant in those cases from murder to culpable homicide not amounting to murder. In **Surinder Kumar v. Union Territory, Chandigarh, 1989(2) R.C.R.(Criminal) 140 : (1989)2 SCC 217**, this Court held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. This Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300 this Court observed :-

*"..... To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly."*

(emphasis supplied)

11. We may also refer to the decision of this Court in **Ghapoo Yadav and Ors. v. State of M.P., 2003(1) R.C.R.(Criminal) 827 : (2003)3 SCC 528**, where this Court held that in a heat of passion there must be no time for the passions to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart

from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section Indian Penal Code. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. The following passage from the decision is apposite :-

"...The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight: (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section Indian Penal Code is not defined in the Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4 *It is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner.* The expression 'undue advantage' as used in the provision means 'unfair advantage'."

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*...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused appellants had come prepared and armed for attacking the deceased.... This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in cruel or unusual manner. That being so, Exception 4 to Section Indian Penal Code is clearly applicable..."*

(emphasis supplied)

12. In **Sukhbir Singh v. State of Haryana, 2002(2) R.C.R.(Criminal) 57 : (2002)3 SCC 327**, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section Indian Penal Code. In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed :

"...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section Indian Penal Code. *After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position.* It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner."

(emphasis supplied)

13. Reference may also be made to the decision in **Mahesh v. State of M.P., (1996) 10 SCC 668**, where the appellant had assaulted the deceased in a sudden fight and after giving him one blow he had not caused any further injury to the deceased which fact situation was held by this Court to be sufficient to bring the case under Exception 4 to Section of the Indian Penal Code. This Court held :-

*"... Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW-2 or PW-6 who were also present also with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW-1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception-4 to Section Indian Penal Code is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304 (Part- I) Indian Penal Code..."*

(emphasis supplied)

14. To the same effect are the decisions of this Court in **Vadla Chandraiah v. State of Andhra Pradesh, 2007(1) R.C.R.(Criminal) 523 : (2006)14 SCALE 108**, and **Shankar Diwal Wadu v. State of Maharashtra, 2007(4) R.C.R. (Criminal) 141 : 2007(5) R.A.J. 81 : (2007)12 SCC 518**.

15. The next question then is whether the case falls under Section 304 Part I or Part II of the Indian Penal Code. The distinction between the two parts of that provision was drawn by this Court in **Alister Anthony Pereira v. State of Maharashtra, 2012(1) R.C.R.(Criminal) 524 : 2012(1) Recent Apex Judgments 43 : (2012)2 SCC 648**, in the following words :-

"..... For punishment under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death...."

16. Reference may also be made to the decision of this Court in **Singapagu Anjaiah v. State of Andhra Pradesh, 2010(3) R.C.R.(Criminal) 747 : (2010)9 SCC 799** where this Court observed :-

"16. In our opinion, as nobody can enter into the mind of the accused, its intention has to be gathered from the *weapon used, the part of the body chosen for the assault and the nature of the injuries caused...*"

(emphasis supplied)

17. The decision of this Court in **Basdev v. The State of PEPSU, AIR 1956 SC 488**, drew a distinction between motive, intention and knowledge in the following words :

"...Of course, we have to distinguish between motive, intention and knowledge. Motive is

something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things..."

18. This Court in the above decisions quoted the following passage from **Reg. v. Monkhouse, (1849) 4 Cox C. C. 55** where Coleridge J. speaking for the Court observed :

"The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man's mind to see what was passing there at any given time. *What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision.* It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not put a pistol which he knew to be loaded to another's head, and fire it off, without intending to kill him; but even there the state of mind of the party is most material to be considered..."

(emphasis supplied)

19. In **Camilo Vaz v. State of Goa, 2000(2) R.C.R.(Criminal) 607 : (2000)9 SCC 1**, the accused had hit the deceased with a danda during a premeditated gang-fight, resulting in the death of the victim. Both the Trial Court and the Bombay High Court convicted the appellant under Section Indian Penal Code. This Court, however, converted the conviction to one under Section 304, Part II, Indian Penal Code and observed :-

"...When a person hits another with a danda on a vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. *In that situation case will fall in Part II of Section Indian Penal Code as in the present case...*"

(emphasis supplied)

20. In **Jagrup Singh v. State of Haryana, (1981)3 SCC 616** the accused had given a blow on the head of the deceased with the blunt side of a gandhala during a sudden fight causing a fracture to the skull and consequent death. This Court altered the conviction from Section 302 to Section 304, Part II Indian Penal Code placing reliance upon the decision in **Chamru Budhwa v. State of Madhya Pradesh, AIR 1954 SC 652** in which case also the exchange of abuses had led both the parties to use lathis in a fight that ensued in which the deceased was hit on the head by one of the lathi blows causing a fracture of the skull and his ultimate death. The accused was convicted for the offence of culpable homicide not amounting to murder under Section 304, Part II of the Indian Penal Code.

21. Reference may also be made to the decisions of this Court in **Sarabjeet Singh and Ors. v. State of Uttar Pradesh, 1983(1) R.C.R.(Criminal) 634 : (1984) 1 SCC 673, Mer Dhana Sida v. State of Gujarat, 1985(1) R.C.R.(Criminal) 194 : (1985) 1 SCC 200** and **Sukhmandar Singh v. State of Punjab, AIR 1995 SC 583** in which cases also the cause of death was a fracture to the skull in a sudden fight without premeditation. The Court altered the conviction from Section Indian Penal Code to Section 304, Part II of Indian Penal Code.

22. Though the accused had inflicted only one injury upon the deceased, the fact that he had

attempted to stab him a second time was taken as an indication of the accused having any intention to kill for the purpose of Section 304 Part I, Indian Penal Code in **Kasam Abdulla Hafiz v. State of Maharashtra, 1998(1) R.C.R.(Criminal) 135 : (1998) 1 SCC 526**, where this Court observed :-

"...Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above the conclusion is irresistible that the death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the 1st part of Section Indian Penal Code *The guilty intention of the accused to cause such bodily injury as is likely to cause death is apparent from the fact that he did attempt a second blow though did not succeed in the same and it somehow missed...*"

(emphasis supplied)

23. We may lastly refer to the decision of this Court in **Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh, 2006(4) R.C.R.(Criminal) 95 : (2006) 11 SCC 444** where this Court enumerated some of the circumstances relevant to finding out whether there was any intention to cause death on the part of the accused. This Court observed :-

"...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. *The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows.* The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention..."

(emphasis supplied)

24. Coming back to the case at hand, we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the

same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II of the Indian Penal Code.

25. The only other aspect that needs to be examined is whether any compensation be awarded against the appellant and in favour of the bereaved family under Section of the Code of Criminal Procedure, 1973. This aspect arises very often and has been a subject matter of several pronouncements of this Court. The same may require some elaboration to place in bold relief certain aspects that need to be addressed by Courts but have despite the decisions of this Court remained obscure and neglected by the Courts at different levels in this country.

26. More than four decades back Krishna Iyer J. speaking for the Court in **Maru Ram & Ors. v. Union of India and Ors., (1981) 1 SCC 107**, in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment said the Court, not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn. In **Hari Singh v. Sukhbir Singh and Ors., 1988(2) R.C.R.(Criminal) 394 : (1988) 4 SCC 551**, this Court lamented the failure of the Courts in awarding compensation to the victims in terms of Section 357 (1) of the Criminal Procedure Code. The Court recommended to all Courts to exercise the power available under Section of the Criminal Procedure Code liberally so as to meet the ends of justice. The Court said :-

"... Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused *It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction.* In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. *It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.*

(emphasis supplied)

27. The amount of compensation, observed this Court, was to be determined by the Courts depending upon the facts and circumstances of each case, the nature of the crime, the justness of the claim and the capacity of the accused to pay.

28. In **Sarwan Singh and others v. State of Punjab, (1978)4 SCC 111, Balraj v. State of U.P., 1994(2) R.C.R.(Criminal) 558 : (1994)4 SCC 29, Baldev Singh and Anr. v. State of Punjab, 1995(3) R.C.R.(Criminal) 750 : (1995)6 SCC 593, Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr., 2007(2) R.C.R.(Criminal) 636 : 2007(2) Recent Apex Judgments (R.A.J.) 424 : (2007)6 SCC 528**, this Court held that the power of the Courts to award compensation to victims under Section 357 is not ancillary to other sentences but in addition thereto and that imposition of

fine and/or grant of compensation to a great extent must depend upon the relevant factors apart from such fine or compensation being just and reasonable. In Dilip S. Dahanukar's case (supra) this Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said :-

"... The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-Section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge."

29. The long line of judicial pronouncements of this Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid 1960s and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the law makers and courts going back in a great measure to what was in ancient times common place. Harvard Law Review (1984) in an article on "Victim Restitution in Criminal Law Process: A Procedural Analysis" sums up the historical perspective of the concept of restitution in the following words :-

"Far from being a novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken. As the state gradually established a monopoly over the institution of punishment, and a division between civil and criminal law emerged, the victim's right to compensation was incorporated into civil law."

30. With modern concepts creating a distinction between civil and criminal law in which civil law provides for remedies to award compensation for private wrongs and the criminal law takes care of punishing the wrong doer, the legal position that emerged till recent times was that criminal law need not concern itself with compensation to the victims since compensation was a civil remedy that fell within the domain of the civil Courts. This conventional position has in recent times undergone a notable sea change, as societies world over have increasingly felt that victims of the crimes were being neglected by the legislatures and the Courts alike. Legislations have, therefore, been introduced in many countries including Canada, Australia, England, New Zealand, Northern Ireland and in certain States in the USA providing for restitution/reparation by Courts administering criminal justice.

31. England was perhaps the first to adopt a separate statutory scheme for victim compensation by the State under the Criminal Injuries Compensation Scheme, 1964. Under the Criminal Justice Act, 1972 the idea of payment of compensation by the offender was introduced. The following

extract from the Oxford Handbook of Criminology (1994 Edn., p.1237-1238), which has been quoted with approval in **Delhi Domestic Working Women's Forum v. Union of India and Ors., 1995(1) R.C.R.(Criminal) 194 : (1995)1 SCC 14** is apposite :-

"Compensation payable by the offender was introduced in the Criminal Justice Act 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where 'injury', loss, or damage had resulted. The Criminal Justice Act 1982 made it possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. *These developments signified a major shift in penology thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act 1982 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, imposed a duty on the court to give reasons for not doing so.* It also extended the range of injuries eligible for compensation. *These new requirements mean that if the court fails to make a compensation order it must furnish reasons.* Where reasons are given, the victim may apply for these to be subject to judicial review. The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation..."

(emphasis supplied)

32. In the United States of America, the Victim and Witness Protection Act of 1982 authorizes a federal court to award restitution by means of monetary compensation as a part of a convict's sentence. Section 3553(a)(7) of Title 18 of the Act requires Courts to consider in every case "the need to provide restitution to any victims of the offense". Though it is not mandatory for the Court to award restitution in every case, the Act demands that the Court provide its reasons for denying the same. Section 3553(c) of Title 18 of the Act states as follows :

"If the court does not order restitution or orders only partial restitution, *the court shall include in the statement the reason thereof.*"

(emphasis supplied)

33. In order to be better equipped to decide the quantum of money to be paid in a restitution order, the United States federal law requires that details such as the financial history of the offender, the monetary loss caused to the victim by the offence, etc. be obtained during a Presentence Investigation, which is carried out over a period of 5 weeks after an offender is convicted.

34. Domestic/Municipal Legislation apart even the UN General Assembly recognized the right of victims of crimes to receive compensation by passing a resolution titled 'Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985'. The Resolution contained the following provisions on restitution and compensation :-

#### "Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

#### Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to :-

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm."

35. The UN General Assembly passed a resolution titled Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005 which deals with the rights of victims of international crimes and human rights violations. These Principles (while in their Draft form) were quoted with approval by this Court in **State of Gujarat and Anr. v. Hon'ble High Court of Gujarat, 1998(4) R.C.R.(Criminal) 350 : (1998)7 SCC 392** in the following words :-

"94. In recent years the right to reparation for victims of violation of human rights is gaining ground. United Nations Commission of Human Rights has circulated draft Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights, (see Annexure)."

36. Amongst others the following provisions on restitution and compensation have been made :-

"12. Restitution shall be provided to reestablish the situation that existed prior to the violations of human rights or international humanitarian law. Restitution requires *inter alia*, restoration of liberty, family life citizenship, return to one's place of residence, and restoration of employment or property.

13. Compensation shall be provided for any economically assessable damage resulting from violations of human rights or international humanitarian law, such as :-

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity;
- (e) Costs required for legal or expert assistance, medicines and medical services."

37. Back home the Criminal Procedure Code of 1898 contained a provision for restitution in the form of Section 545, which stated in sub-clause 1(b) that the Court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court".

38. The Law Commission of India in its 41st Report submitted in 1969 discussed Section of the Criminal Procedure Code of 1898 extensively and stated as follows :-

"46.12. Under clause (b) of sub-section (1) of Section 545, the Court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court." The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort. The word "substantial" appears to have been used to exclude cases where only nominal damages would be recoverable. *We think it is hardly necessary to emphasise this aspect, since in any event it is purely within the discretion of the Criminal Courts to order or not to order payment of compensation, and in practice, they are not particularly liberal in utilizing this provision. We propose to omit the word "substantial" from the clause.*"

(emphasis supplied)

39. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Criminal Procedure Code Bill, 1970, which aimed at revising Section 545 and introducing it in the form of Section 357 as it reads today. The Statement of Objects and Reasons underlying the Bill was as follows :-

"Clause 365 [now s.357] which corresponds to section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the Court imposes a fine the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and *the Court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors.*"

(emphasis supplied)

40. As regards the need for Courts to obtain comprehensive details regarding the background of the offender for the purpose of sentencing, the Law Commission in its 48th Report on 'Some Questions Under the Code of Criminal Procedure Bill, 1970' submitted in 1972 discussed the

matter in some detail, stating as follows :-

"45. It is now being increasingly recognised that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. *One such deficiency is a lack of comprehensive information as to the characteristics and background of the offender.*

The aims of sentencing - themselves obscure-become all the more so in the absence of comprehensive information on which the correctional process is to operate. The public as well as the courts themselves are in the dark about judicial approach in this regard.

We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged, and both the prosecution and the accused should be allowed to cooperate in the process."

(emphasis supplied)

41. The Criminal Procedure Code of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its Objects and Reasons that s.357 was "intended to provide relief to the proper sections of the community" and that the amended Criminal Procedure Code empowered the Court to order payment of compensation by the accused to the victims of crimes "to a larger extent" than was previously permissible under the Code. The changes brought about by the introduction of s.357 were as follows :-

(i) The word "substantial" was excluded.

(ii) A new sub-section (3) was added which provides for payment of compensation even in cases where the fine does not form part of the sentence imposed.

(iii) Sub-section (4) was introduced which states that an order awarding compensation may be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

42. The amendments to the Criminal Procedure Code brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where "the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated." Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively.

43. The 154th Law Commission Report on the Criminal Procedure Code devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal trials was discussed extensively as under :-

"1. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms 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 victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.

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

9.2 However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.

11. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds..."

44. The question then is whether the plenitude of the power vested in the Courts under Section 357 & 357-A, notwithstanding, the Courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the Courts. In other words, whether Courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?

45. The language of Section 357 Criminal Procedure Code at a glance may not suggest that any obligation is cast upon a Court to apply its mind to the question of compensation. Sub-section (1) of s.357 states that the Court "may" order for the whole or any part of a fine recovered to be applied towards compensation in the following cases :

(i) To any person who has suffered loss or injury by the offence, when in the opinion of the Court, such compensation would be recoverable by such person in a Civil Court.

(ii) To a person who is entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof.

(iii) To a *bona fide* purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property, and which is ordered to be restored to its rightful owner.

46. Sub-section (3) of Section 357 further empowers the Court by stating that it "may" award compensation even in such cases where the sentence imposed does not include a fine. The legal position is, however, well- established that cases may arise where a provision is mandatory despite the use of language that makes it discretionary. We may at the outset, refer to the oft quoted passage from **Julius v. Lord Bishop of Oxford, (1880) 5 AC 214** where the Court

summed up the legal position thus :-

"The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so..."

47. There is no gainsaying that Section 357 confers a power on the Court in so far as it makes it "legal and possible which there would otherwise be no right or authority to do" viz. to award compensation to victims in criminal cases. The question is whether despite the use of discretionary language such as the word "may", there is "something" in the nature of the power to award compensation in criminal cases, in the object for which the power is conferred or in the title of the persons for whose benefit it is to be exercised which, coupled with the power conferred under the provision, casts a duty on the Court to apply its mind to the question of exercise of this power in every criminal case.

48. In **Smt. Bachahan Devi and Anr. v. Nagar Nigam, Gorakhpur and Anr., 2008(2) R.C.R.(Civil) 367**, this Court while dealing with the use of the word "may" summoned up the legal position thus :-

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

(emphasis supplied)

49. Similarly in **Dhampur Sugar Mills Ltd. v. State of U.P. and Ors., (2007)8 SCC 338**, this Court held that the mere use of word 'may' or 'shall' was not conclusive. The question whether a particular provision of a statute is directory or mandatory, held the Court, can be resolved by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant thereto.

50. Applying the tests which emerge from the above cases to Section 357, it appears to us that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. We say so because in the background and context

in which it was introduced, the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.

51. If application of mind is not considered mandatory, the entire provision would be rendered a dead letter. It was held in **NEPC Micon Ltd. and Ors. v. Magma Leasing Ltd., 1999(2) R.C.R.(Criminal) 648 : (1999)4 SCC 253**, albeit in the context of s.138 of the Negotiable Instruments Act that even in regard to a penal provision, any interpretation, which withdraws the life and blood of the provision and makes it ineffective and a dead letter should be avoided.

52. Similarly in **Swantraj and Ors. v. State of Maharashtra, (1975)3 SCC 322**, this Court speaking through Justice Krishna Iyer held :-

"1. Every legislation is a social document and judicial construction seeks to decipher the statutory mission, language permitting, taking the cue from the rule in Heydon's case of suppressing the evil and advancing the remedy..."

53. The Court extracted with approval the following passage from Maxwell on Interpretation of Statutes :-

"There is no doubt that 'the office of the Judge is, to make such construction as will suppress the mischief, and advance the remedy, and to suppress all evasions for the continuance of the mischief.' To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined : quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud."

54. This Court has through a line of cases beginning with Hari Singh's case (supra) held that the power to award compensation under Section 357 is not ancillary to other sentences but in addition thereto. It would necessarily follow that the Court has a duty to apply its mind to the question of awarding compensation under Section 357 too. Reference may also be made to the decision of this Court in **State of Andhra Pradesh v. Polamala Raju @ Rajarao, 2000(3) R.C.R.(Criminal) 732 : (2000)7 SCC 75** where a three-judge bench of this Court set aside a judgment of the High Court for non-application of mind to the question of sentencing. In that case, this Court reprimanded the High Court for having reduced the sentence of the accused convicted under Section Indian Penal Code from 10 years imprisonment to 5 years without recording any reasons for the same. This Court said :-

"...We are of the considered opinion that it is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence..."

...To say the least, the order contains no reasons, much less "special or adequate reasons". The sentence has been reduced in a rather mechanical manner without proper application of mind..."

55. In **State of Punjab v. Prem Sagar and Ors., 2008(3) R.C.R.(Criminal) 197 : (2008)7 SCC 550** this Court stressed the need for greater application of mind of the Courts in the field of

sentencing. Setting aside the order granting probation by the High Court, the Court stated as follows :-

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

31. We have noticed the development of law in this behalf in other countries only to emphasise that the courts while imposing sentence must take into consideration the principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind..."

56. Although speaking in the context of capital punishment, the following observation of this Court in **Sangeet & Anr. v. State of Haryana, 2013(1) R.C.R.(Criminal) 114 : 2012(6) Recent Apex Judgments (R.A.J.) 210 : (2013)2 SCC 452** could be said to apply to other sentences as well, particularly the award of compensation to the victim :-

"In the sentencing process, both the crime and the criminal are equally important. We have unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing."

57. Section 357 Criminal Procedure Code confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case. In **Maya Devi (Dead) through LRs and Ors. v. Raj Kumari Batra (Dead) through LRs and Ors., 2010(4) R.C.R.(Civil) 795 : (2010)9 SCC 486**, this Court held that disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. The Court observed :-

"28. ...There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

29. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well-recognised legal principle that orders can be made only after due application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. *Application of mind in turn is best demonstrated by disclosure of mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.*

30. *Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own..."*

(emphasis supplied)

58. Similarly, in **State of Rajasthan v. Sohan Lal and Ors., 2004(3) R.C.R.(Criminal) 730 : (2004)5 SCC 573**, this Court emphasised the need for reasons thus :-

"...The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind..."

59. In **Hindustan Times Ltd. v. Union of India, 1998(2) S.C.T. 256 : (1998)2 SCC 242** this Court stated that the absence of reasons in an order would burden the appellate court with the responsibility of going through the evidence or law for the first time. The Court observed :-

"...In our view, the satisfaction which a reasoned Judgment gives to the losing party or his lawyer is the test of a good Judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal..."

60. In **Director, Horticulture Punjab and Ors. v. Jagjivan Parshad, 2008(2) S.C.T. 725 : 2008(3) R.A.J. 361 : (2008)5 SCC 539**, this Court stated that the spelling out of reasons in an order is a requirement of natural justice :-

"...Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance..."

61. In Maya Devi's case (supra), this Court summarised the existing case law on the need for reasoned orders as follows :-

"22. The juristic basis underlying the requirement that courts and indeed all such authorities, as exercise the power to determine the rights and obligations of individuals must give reasons in support of their orders has been examined in a long line of decisions rendered by this Court. In **Hindustan Times Ltd. v. Union of India, (1998)2 SCC 242** the need to give reasons has been held to arise out of the need to minimise chances of arbitrariness and induce clarity.

23. In **Arun v. Inspector General of Police, (1986)3 SCC 696** the recording of reasons in support of the order passed by the High Court has been held to inspire public confidence in administration of justice, and help the Apex Court to dispose of appeals filed against such orders.

24. In **Union of India v. Jai Prakash Singh, (2007)10 SCC 712**, reasons were held to be live links between the mind of the decision-maker and the controversy in question as also the decision or conclusion arrived at.

25. In **Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity, 2012(5) R.C.R.(Civil) 874 : (2010)3 SCC 732**, reasons were held to be the heartbeat of every conclusion, apart from being an essential feature of the principles of natural justice, that ensure transparency and fairness, in the decision-making process.

26. In **Ram Phal v. State of Haryana, 2011(6) R.C.R.(Civil) 1174 : (2009)3 SCC 258**, giving of

satisfactory reasons was held to be a requirement arising out of an ordinary man's sense of justice and a healthy discipline for all those who exercise power over others.

27. In **Director, Horticulture, Punjab v. Jagjivan Parshad, (2008)5 SCC 539**, the recording of reasons was held to be indicative of application of mind specially when the order is amenable to further avenues of challenge."

62. To sum up: While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Criminal Procedure Code would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

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

64. In the result, we allow this appeal but only to the extent that instead of Section Indian Penal Code the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of five years. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered. The appeal is disposed of in the above terms in modification of the order passed by the Courts below. A copy of this order be forwarded to the Registrars General of the High Courts in the country for circulation among the Judges handling criminal trials and hearing appeals.

Appeal allowed.

.....J.  
(T.S. Thakur)

.....J.  
(Gyan Sudha Misra)

New Delhi May 3, 2013

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 420 OF 2012**

SURESH & ANR. .... APPELLANTS  
VERSUS  
STATE OF HARYANA .... RESPONDENT

**IMPORTANT NOTES:**

**It is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief.**

**On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim.**

**At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much.**

**Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.**

**JUDGMENT**

**ADARSH KUMAR GOEL J.**

1. This appeal has been preferred against conviction and sentence of the appellants under Sections 302 read with [Sections 34, 364-A, 201](#) and [120-B](#) of the Indian Penal Code.

2. Case of the prosecution is that on 18th December, 2000, the deceased Devender Chopra and his son deceased Abhishek Chopra had left their factory for their house in D.L.F., Gurgaon but did not reach their house. At about 9.41 P.M., PW-12 Pooja Chopra, daughter of Devender Chopra gave a call to her father to find out as to why he was late. She learnt that her father and brother had been kidnapped and ransom of rupees fifty lacs was demanded for their release. She contacted her father's business partner informing him that Devender Chopra and Abhishek Chopra were kidnapped and the kidnappers had demanded a ransom amount of rupees fifty lacs on telephone. The kidnappers also talked to the wife of the deceased Devender Chopra at 11 P.M. demanding ransom money. Raman Anand also talked to Devender Chopra. There were frequent calls from

the kidnappers from the morning of 19th December, 2000 which were recorded on audio cassettes EX. P1 to P9. Since, the family could not fulfil the demand and offer to pay rupees ten lacs was not accepted by the kidnappers but negotiations continued. The police was not informed on account of the fear that the victims may be killed as was threatened. When the kidnappers did not release Devender Chopra and Abhishek Chopra, and finding no way out, the matter was reported to the police on 24th December, 2000 at 5 A.M. Statement of PW-2, Raman Anand EX. PC was recorded by Inspector Randhir Singh (PW-17) who deputed police officials at nearby STD booths. PW-14, SI Rajender Singh found the accused at STD booth Jawala Petrol Pump on Jaipur Highway at 8.15 A.M. He overheard accused Manmohan telling accused Suresh that ransom demand be not reduced below rupees twenty five lacs. He was in plain clothes and gave signal to PW-17 and the accused were apprehended. A slip EX. P-35 carrying residential phone number of Devender Chopra was recovered from Manmohan. Ashok accused made disclosure statement EX. PS that Devender Chopra and Abhishek Chopra had been killed and their bodies thrown in gutters in Sectors-39 and 46. Mobile of Devender Chopra was kept concealed in the house of the accused. Accused Manmohan made similar disclosure statement EX. PT and that he had kept concealed car of the deceased in his house at Palwal and a knife in his rented house at Sohna. Accused Suresh made similar disclosure statement EX. PJ and that he had concealed mobile of the deceased at the shop of his brother at Sohna. Accused Mahesh made similar disclosure statement EX. PV and that suitcase of the deceased was concealed in his old house. Accordingly, recoveries were effected. Post mortem of dead bodies was conducted and other steps for investigation were completed.

3. After investigation, the accused were sent up for trial. The prosecution examined Dr. B.K. Rajora (PW-1), complainant Raman Anand (PW-

2), Mrs. Vivek Bharti, Additional Chief Judicial Magistrate, Bhiwani (PW-

3), Head Constable Naresh Kumar (PW-6), Sub Inspector Balwan Singh (PW-7), Mahabir Singh (PW-8), Assistant Sub Inspector Budh Ram (PW-9), Surender Singh Rahman (PW-10), Head Constable Mohan Lal (PW-11), Pooja Chopra (PW-

12), Sub Inspector Sanjeev Kumar (PW-13), Sub Inspector Rajender Singh (PW-

14), Brij Bhushan Mehta (PW-15), Sub Inspector Shakuntla (PW-16) and Inspector Randhir Singh (PW-17) and produced documents and material exhibits. The accused denied the prosecution allegations.

4. After considering the evidence on record the trial Court convicted and sentenced the appellants for kidnapping and murder and concealing evidence in conspiracy and by common intention. All the accused stand sentenced to undergo imprisonment for life and other lesser sentences which have been affirmed by the High Court.

5. We have heard learned counsel for the parties.

6. Learned counsel for the appellants submitted that there was no legal evidence to sustain the conviction and that the evidence of disclosure statements and recoveries was not reliable.

7. Learned counsel for the State opposed the above statement and pointed out that the dead

bodies were recovered at the instance of the appellants, apart from the recovery of car and personal belongings of the deceased. SI Rajender Singh (PW-14) and Inspector Randhir Singh (PW-17) had overheard the conversation of the accused making demand of ransom on telephone at the STD Booth. The accused refused to give their voice sample as recorded in the Order dated 1st January, 2001 passed by the Additional Chief Judicial Magistrate, Gurgaon on application (Exhibit PF). Pooja Chopra (PW-12) deposed that the deceased Devender Chopra had a talk with her mother on 18th December, 2000 that the deceased had been kidnapped for ransom which was followed up by further conversation with the kidnappers. Raman Anand (PW-2) also had talks with the kidnappers from the mobile phone of his friend Neeraj. According to the post mortem reports, the death of Devender Chopra was on account of strangulation and cutting of throat by sharp weapon. Death of Abhishek Chopra was on account of stab injuries in chest and abdomen and the head injury caused by blunt force impact.

8. Apart from the above, this is a case where [Section 106](#) of the Evidence Act is clearly attracted which requires the accused to explain the facts in their exclusive knowledge. No doubt, the burden of proof is on the prosecution and [Section 106](#) is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused. Recovery of dead bodies from covered gutters and personal belongings of the deceased from other places disclosed by the accused stood fully established. It casts a duty on the accused as to how they alone had the information leading to recoveries which was admissible under [Section 27](#) of the Evidence Act. Failure of the accused to give an explanation or giving of false explanation is an additional circumstance against the accused as held in number of judgments, including [State of Rajasthan vs. Jaggu Ram](#) [1].

9. In view of the above, we do not find any ground to interfere with the conviction and sentence of the appellants. The appellants are on bail. They may be taken into custody for undergoing the remaining sentence.

10. We had asked learned counsel for the parties to make their submissions as to applicability of [Section 357A](#) of the Code of Criminal Procedure providing for compensation by the State to the victims of the crime and also requested Shri L. Nageshwara Rao, Additional Solicitor General of India to assist the Court on this aspect.

11. Accordingly, Shri Rao has made his submissions and also furnished a written note of his submissions mentioning the legislative history and purpose of the said provision and the guidelines for determining the quantum of compensation and the power of Court to grant the interim compensation. We place on record our appreciation for the valuable contribution of Shri Rao.

12. It would now be appropriate to deal with the issue. The provision has been incorporated in the [Cr.P.C.](#) vide Act V of 2009 and the amendment duly came into force in view of the Notification dated 31st December, 2009. The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under [Section 357](#) was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of Law Commission. It recognises compensation as one of the methods of protection of victims. The provision has received the attention of this Court in several decisions including [Ankush Shivaji](#)

[Gaikwad vs. State of Maharashtra](#)[2], In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News[3], Mohommad Haroon vs. Union of India[4] and [Laxmi vs. Union of India](#)[5]. In Abdul Rashid vs. State of Odisha & Ors.[6], to which one of us (Goel, J.) was party, it was observed:-

"6. Question for consideration is whether the responsibility of the State ends merely by registering a case, conducting investigation and initiating prosecution and whether apart from taking these steps, the State has further responsibility to the victim. Further question is whether the Court has legal duty to award compensation irrespective of conviction or acquittal. When the State fails to identify the accused or fails to collect and present acceptable evidence to punish the guilty, the duty to give compensation remains. Victim of a crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the victim. There are systemic or other failures responsible for crime remaining unpunished which need to be addressed by improvement in quality and integrity of those who deal with investigation and prosecution, apart from improvement of infrastructure but punishment of guilty is not the only step in providing justice to victim. Victim expects a mechanism for rehabilitative measures, including monetary compensation. Such compensation has been directed to be paid in public law remedy with reference to Article

21. In numerous cases, to do justice to the victims, the Hon'ble Supreme Court has directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of victims. For example, Kewal Pati Vs. State of U.P. (1995) 3 SCC 600 (death of prisoner by co-prisoner), Supreme Court Legal Aid Committee Vs. State of Bihar, (1991) 3 SCC 482 (failure to provide timely medical aid by jail authorities, Chairman, Rly. Board Vs. Chandrima Das, (2000) 2 SCC 465 (rape of Bangladeshi national by Railway staff), Nilabati Behera Vs. State of Orissa, (1993) 2 SCC 746 (Custodial death), Khatri (I) Vs. State of Bihar (1981) 1 SCC 623 (prisoners' blinding by jail staff), Union Carbide Corporation Vs. Union of India, (1989) 1 SCC 674 (gas leak victims).

7. Expanding scope of [Article 21](#) is not limited to providing compensation when the State or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family where crime is committed by an individual without any role of the State or its functionary. Apart from the concept of compensating the victim by way of public law remedy in writ jurisdiction, need was felt for incorporation of a specific provision for compensation by courts irrespective of the result of criminal prosecution. Accordingly, [Section 357A](#) has been introduced in the [Cr.P.C.](#) and a Scheme has been framed by the State of Odisha called 'The Odisha Victim Compensation Scheme, 2012'. Compensation under the said Section is payable to victim of a crime in all cases irrespective of conviction or acquittal. The amount of compensation may be worked out at an appropriate forum in accordance with the said Scheme, but pending such steps being taken, interim compensation ought to be given at the earliest in any proceedings.

8. In [Ankush Vhivaji Gaikwad Vs. State of Maharashtra](#), (2013) 6 SCC 770, the matter was reviewed by the Hon'ble Supreme Court with reference to development in law and it was observed :

"33. The long line of judicial pronouncements of this Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to

restitution began in the mid 1960s and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the law makers and courts going back in a great measure to what was in ancient times common place. Harvard Law Review (1984) in an article on "Victim Restitution in Criminal Law Process: A Procedural Analysis" sums up the historical perspective of the concept of restitution in the following words:

"Far from being a novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken. As the state gradually established a monopoly over the institution of punishment, and a division between civil and criminal law emerged, the victim's right to compensation was incorporated into civil law."

34. With modern concepts creating a distinction between civil and criminal law in which civil law provides for remedies to award compensation for private wrongs and the criminal law takes care of punishing the wrong doer, the legal position that emerged till recent times was that criminal law need not concern itself with compensation to the victims since compensation was a civil remedy that fell within the domain of the civil Courts. This conventional position has in recent times undergone a notable sea change, as societies world over have increasingly felt that victims of the crimes were being neglected by the legislatures and the Courts alike. Legislations have, therefore, been introduced in many countries including Canada, Australia, England, New Zealand, Northern Ireland and in certain States in the USA providing for restitution/reparation by Courts administering criminal justice.

35. England was perhaps the first to adopt a separate statutory scheme for victim compensation by the State under the Criminal Injuries Compensation Scheme, 1964. Under the Criminal Justice Act, 1972 the idea of payment of compensation by the offender was introduced. The following extract from the Oxford Handbook of Criminology (1994 Edn., p.1237-1238), which has been quoted with approval in Delhi Domestic Working Women's [Forum v. Union of India and Ors.](#) (1995) 1 SCC 14 is apposite: (SCC pp.20-21, para-16) "16.....Compensation payable by the offender was introduced in the Criminal Justice Act 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where 'injury', loss, or damage' had resulted. The Criminal Justice Act 1982 made it possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penology thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act 1982 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, imposed a duty on the court to give reasons for not doing so. It also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review....."

The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation." (emphasis supplied)

36. In the United States of America, the Victim and Witness Protection Act of 1982 authorizes a federal court to award restitution by means of monetary compensation as a part of a convict's sentence. Section 3553(a)(7) of Title 18 of the Act requires Courts to consider in every case "the need to provide restitution to any victims of the offense". Though it is not mandatory for the Court to award restitution in every case, the Act demands that the Court provide its reasons for denying the same. Section 3553(c) of Title 18 of the Act states as follows:

"If the court does not order restitution or orders only partial restitution, the court shall include in the statement the reason thereof." (Emphasis supplied)

37. In order to be better equipped to decide the quantum of money to be paid in a restitution order, the United States federal law requires that details such as the financial history of the offender, the monetary loss caused to the victim by the offence, etc. be obtained during a Presentence Investigation, which is carried out over a period of 5 weeks after an offender is convicted.

38. Domestic/Municipal Legislation apart even the UN General Assembly recognized the right of victims of crimes to receive compensation by passing a resolution titled "Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985". The Resolution contained the following provisions on restitution and compensation:

#### **"Restitution**

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, Regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi- official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

#### **Compensation**

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm."

39. The UN General Assembly passed a resolution titled "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005" which deals with the rights of victims of international crimes and human rights violations. These Principles (while in their Draft form) were quoted with approval by this Court in [State of Gujarat and Anr. v. Hon'ble High Court of Gujarat](#) (1998) 7 SCC 392 in the following words:

"94. In recent years the right to reparation for victims of violation of human rights is gaining ground. United Nations Commission of Human Rights has circulated draft Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights, (see Annexure)."

40. Amongst others the following provisions on restitution and compensation have been made:

"12. Restitution shall be provided to reestablish the situation that existed prior to the violations of human rights or international humanitarian law. Restitution requires inter alia, restoration of liberty, family life citizenship, return to one's place of residence, and restoration of employment or property.

13. Compensation shall be provided for any economically Assessable damage resulting from violations of human rights or international humanitarian law, such as:

(a) Physical or mental harm, including pain, suffering and emotional distress;

(b) Lost opportunities including education;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Harm to reputation or dignity;

(e) Costs required for legal or expert assistance, medicines and medical services."

41. Back home [the Code](#) of Criminal Procedure of 1898 contained a provision for restitution in the form of [Section 545](#), which stated in Sub-clause 1(b) that the Court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court".

42. The Law Commission of India in its 41st Report submitted in 1969 discussed [Section 545](#) of the Code of Criminal Procedure of 1898 extensively and stated as follows:

"46.12.. Section 545- Under Clause (b) of Sub-section (1) of [Section 545](#), the Court may direct "in the payment to any person of compensation for any loss or injury caused by the offence when

substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court." The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort. The word "substantial" appears to have been used to exclude cases where only nominal damages would be recoverable. We think it is hardly necessary to emphasise this aspect, since in any event it is purely within the discretion of the Criminal Courts to order or not to order payment of compensation, and in practice, they are not particularly liberal in utilizing this provision. We propose to omit the word "substantial" from the clause." (Emphasis supplied)

43. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced [the Code](#) of Criminal Procedure Bill, 1970, which aimed at revising [Section 545](#) and introducing it in the form of [Section 357](#) as it reads today. The Statement of Objects and Reasons underlying the Bill was as follows:

"Clause 365 [now [Section 357](#)] which corresponds to [Section 545](#) makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the Court imposes a fine the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the Court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors." (Emphasis supplied)

44. As regards the need for Courts to obtain comprehensive details regarding the background of the offender for the purpose of sentencing, the Law Commission in its 48th Report on "Some Questions Under the Code of Criminal Procedure Bill, 1970" submitted in 1972 discussed the matter in some detail, stating as follows:

"45. Sentencing- It is now being increasingly recognised that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One such deficiency is a lack of comprehensive information as to the characteristics and background of the offender.

The aims of sentencing--themselves obscure--become all the more so in the absence of comprehensive information on which the correctional process is to operate. The public as well as the courts themselves are in the dark about judicial approach in this regard.

We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged, and both the prosecution and the accused should be allowed to cooperate in the process." (Emphasis supplied)

45. The Code of Criminal Procedure of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its Objects and Reasons that [Section 357](#) was "intended to provide relief to the proper sections of the community" and that the amended [CrPC](#) empowered the Court to order payment of compensation by the accused to the victims of crimes "to a larger extent" than was previously permissible under [the Code](#). The changes brought about by the introduction of [Section 357](#) were as follows:

(i) The word "substantial" was excluded.

(ii) A new Sub-section (3) was added which provides for payment of compensation even in cases where the fine does not form part of the sentence imposed.

(iii) Sub-section (4) was introduced which states that an order awarding compensation may be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

46. The amendments to [the Code](#) of Criminal Procedure brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left [Section 357](#) unchanged, they introduced [Section 357A](#) under which the Court is empowered to direct the State to pay compensation to the victim in such cases where "the compensation awarded Under [Section 357](#) is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated."

Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively.

47. The 154th Law Commission Report on [the Code](#) of Criminal Procedure devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal trials was discussed extensively as under:

"1. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms 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 victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.

xx xx xx xx xx

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

9.2 However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. [Section 357](#) of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.

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11. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds....."

48. The question then is whether the plenitude of the power vested in the Courts Under [Section 357 & 357-A](#), notwithstanding, the Courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the Courts. In other words, whether Courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?

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66. To sum up: While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order Under [Section 357](#) Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

67. Coming then to the case at hand, we regret to say that the trial Court and the High Court appear to have remained oblivious to the provisions of [Section 357](#) Code of Criminal Procedure. The judgments under appeal betray ignorance of the Courts below about the statutory provisions and the duty cast upon the Courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future."

9. In *Rohtash @ Pappu Vs. State of Haryana* (CrI.A. No. 250 of 1999 decided on 1.4.2008, a Division Bench of the Punjab & Haryana High Court observed:

"18. May be, inspite of best efforts, the State fails in apprehending and punishing the guilty but that does not prevent the State from taking such steps as may reassure and protect the victims of crime. Should justice to the victims depend only on the punishment of the guilty? Should the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed? It can be a long and seemingly endless wait. The need to address cry of victims of crime, for whom the Constitution in its Preamble holds out a guarantee for 'justice' is paramount. How can the tears of the victim be wiped off when the system itself is helpless to punish the guilty for want of collection of evidence or for want of creating an environment in which witnesses can fearlessly present the truth before the Court? Justice to the

victim has to be ensured irrespective of whether or not the criminal is punished.

19. The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by Rule of Law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated.

20. Right of access to justice under [Article 39-A](#) and principle of fair trial mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation. It is a paradox that victim of a road accident gets compensation under no fault theory, but the victim of crime does not get any compensation, except in some cases where the accused is held guilty, which does not happen in a large percentage of cases.

21. Though a provision has been made for compensation to victims under [Section 357](#) Cr.P.C., there are several inherent limitations. The said provision can be invoked only upon conviction, that too at the discretion of the judge and subject to financial capacity to pay by the accused. The long time taken in disposal of the criminal case is another handicap for bringing justice to the victims who need immediate relief, and cannot wait for conviction, which could take decades. The grant of compensation under the said provision depends upon financial capacity of the accused to compensate, for which, the evidence is rarely collected. Further, victims are often unable to make a representation before the Court for want of legal aid or otherwise. This is perhaps why even on conviction this provision is rarely pressed into service by the Courts. Rate of conviction being quite low, inter-alia, for competence of investigation, apathy of witnesses or strict standard of proof required to ensure that innocent is not punished, the said provision is hardly adequate to address to need of victims.

[In Hari Krishan and State of Haryana v. Sikhbir Singh](#) AIR 1998 SC 2127, referring to provisions for compensation, the Hon'ble Supreme Court observed:-

"10. .... This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way."

22. It is imperative to educate the investigating agency as well as the trial Judges about the need to provide access to justice to victims of crime, to collect evidence about financial status of the accused. It is also imperative to create mechanisms for rehabilitation measures by way of medical and financial aid to the victims. The remedy in civil law of torts against the injury caused by the accused is grossly inadequate and illusory.

23. This unsatisfactory situation is in contrast to global developments and suggestions of Indian experts as well. Some of the significant developments in this regard may be noticed as under:-

1) UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, highlighting the following areas:-

(i) Access to Justice and fair treatment;

(ii) Restitution;

(iii) Compensation;

(iv) Assistance.

2) Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure, 1985.

3) Statement of the Victims' Rights in the Process of Criminal Justice, issued by the European Forum for Victims' Services in 1996.

4) European Union Framework Decision on the Standing of Victims in Criminal Proceedings.

5) Council of Europe Recommendations on assistance to Crime victims adopted on 14.6.2006.

6) 152nd and 154th report of the Law Commission of India, 1994 and 1996 respectively, recommending introduction of [Section 357-A](#) in criminal procedure code, prescribing, inter-alia, compensation to the victims of crime.

7) Recommendations of the Malimath Committee, 2003.

24. The subject matter has been dealt with by experts from over 40 countries in series of meetings and a document has been developed in cooperation with United Nations Office at Vienna, Centre for International Crime Prevention and the compilation under the heading "Handbook on Justice for Victims" which deals with various aspects of impact of victimization, victims assistance programmes and role and responsibility of frontline professionals and others to victims. The South African Law Commission, in its "Issue Paper 7" (1997) under the heading "Sentencing Restorative Justice: Compensation for victims of crime and victim empowerment" has deliberated on various relevant aspects of this issue.

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27. In Malimath Committee Report (March 2003), it was observed:-

"6.7.1 Historically speaking, Criminal Justice System seems to exist to protect the power, the privilege and the values of the elite sections in society. The way crimes are defined and the system is administered demonstrate that there is an element of truth in the above perception even in modern times. However, over the years the dominant function of criminal justice is projected to be protecting all citizens from harm to either their person or property, the assumption being that it is the primary duty of a State under rule of law. The State does this by depriving individuals of the power to take law into their own hands and using its power to satisfy the sense of revenge through appropriate sanctions. The State (and society), it was argued, is itself the victim when a citizen commits a crime and thereby questions its norms and authority. In the process of this transformation of torts to crimes, the focus of attention of the system shifted from the real victim who suffered the injury (as a result of the failure of the state) to the offender and how he is dealt with by the State. Criminal Justice came to comprehend all about crime, the criminal, the way he is dealt

with, the process of proving his guilt and the ultimate punishment given to him. The civil law was supposed to take care of the monetary and other losses suffered by the victim. Victims were marginalized and the state stood forth as the victim to prosecute and punish the accused.

6.7.2 What happens to the right of victim to get justice to the harm suffered? Well, he can be satisfied if the state successfully gets the criminal punished to death, a prison sentence or fine. How does he get justice if the State does not succeed in so doing? Can he ask the State to compensate him for the injury? In principle, that should be the logical consequence in such a situation; but the State which makes the law absolves itself.

6.8.1 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. When the sentence of fine is imposed as the sole punishment or an additional punishment, the whole or part of it may be directed to be paid to the person having suffered loss or injury as per the discretion of the Court ([Section 357](#) Cr.PC). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.

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6.8.7 Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The recent decisions in [Nilabati Behera V. State of Orissa](#) (1993 2 SCC 746) and in [Chairman, Railway Board V. Chandrima Das](#) are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the state for failure to protect the rights of the victim.

6.8.8 These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle invoked is the obligation of the state to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably."

10. In Re: State of Assam & 2 Others (PIL (Suo Motu) No. 26/2013) vide judgement dated 24.4.2013, a Division Bench of Gauhati High Court observed :

"We have heard learned counsel for the parties on the issue whether in absence of any prohibition under the scheme, interim compensation ought to be paid at the earliest to the victim irrespective of stage of enquiry or trial, either on application of the victim or suo motu by the Court.

In [Savitri v. Govind Singh Rawat](#), (1985) 4 SCC 337, question of interim maintenance under [Section 125](#) Cr.P.C. was considered and it was observed :

"3. It is true that there is no express provision in [the Code](#) which authorises a Magistrate to make an

interim order directing payment of maintenance pending disposal of an application for maintenance. The Code does not also expressly prohibit the making of such an order. The question is whether such a power can be implied to be vested in a Magistrate having regard to the nature of the proceedings under [Section 125](#) and other cognate provisions found in Chapter IX of the Code which is entitled "Order For Maintenance of Wives, Children and Parents". [Section 125](#) of the Code confers power on a Magistrate of the first class to direct a person having sufficient means but who neglects or refuses to maintain (i) his wife, unable to maintain herself, or (ii) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (iii) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself or (iv) his father or mother, unable to maintain himself or herself, upon proof of such neglect or refusal, to pay a monthly allowance for the maintenance of his wife or such child, father or mother, as the case may be, at such monthly rate not exceeding five hundred rupees in the whole as such Magistrate thinks fit. Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance. [Section 126](#) of the Code prescribes the procedure for the disposal of an application made under [Section 125](#). [Section 127](#) of the Code provides for alteration of the rate of maintenance in the light of the changed circumstances or an order or decree of a competent civil court. [Section 128](#) of the Code deals with the enforcement of the order of maintenance. It is not necessary to refer to the other details contained in the above-said provisions.

6. In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under [Section 125](#) of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under [Section 125](#) of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under [Section 125](#), the applicant should be alive till the

-date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist). [Vide Earl Jowitt's Dictionary of English Law, 1959 Edn., p. 1797.] Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The Magistrate may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for

interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under [Section 125](#) of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to therein pending final disposal of the application. In taking this view we have also taken note of the provisions of [Section 7\(2\)\(a\)](#) of the Family Courts Act, 1984 (Act 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under [Section 125](#) of the Code to the Family Courts constituted under the said Act."

Above view has been reiterated, inter alia, in [Shail Kumari Devi v. Krishan Bhagwan Pathak](#), (2008)9 SCC 632.

We are of the view that above observations support the submission that interim compensation ought to be paid at the earliest so that immediate need of victim can be met. For determining the amount of interim compensation, the Court may have regard to the facts and circumstances of individual cases including the nature of offence, loss suffered and the requirement of the victim. On an interim order being passed by the Court, the funds available with the District/State Legal Services Authorities may be disbursed to the victims in the manner directed by the Court, to be adjusted later in appropriate proceedings. If the funds already allotted get exhausted, the State may place further funds at the disposal of the Legal Services Authorities."

13. We are informed that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District legal authorities. It has been brought to our notice that even though almost a period of five years has expired since the enactment of [Section 357A](#), the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the Courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.

14. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in

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

15. In the present case, the impugned judgment shows that the de facto complainant, PW-2 Raman Anand, filed Criminal Revision No.1477 of 2004 for compensation to the family members of deceased Devender Chopra and his son Abhishek Chopra. The same has been dismissed by the High Court without any reason. In fact even without such petition, the High Court ought to have awarded compensation. There is no reason as to why the victim family should not be awarded compensation under [Section 357-A](#) by the State. Thus, we are of the view that the State of Haryana is liable to pay compensation to the family of the deceased. We determine the interim compensation payable for the two deaths to be rupees ten lacs, without prejudice to any other rights or remedies of the victim family in any other proceedings.

16. Accordingly, while dismissing the appeal, we direct that the widow of Devender Chopra, who is mother of deceased Abhishek Chopra representing the family of the victim be paid interim compensation of rupees ten lacs. It will be payable by the Haryana State Legal Services Authority within one month from receipt of a copy of this order. If the funds are not available for the purpose with the said authority, the State of Haryana will make such funds available within one month from the date of receipt of a copy of this judgment and the Legal Services Authority will disburse the compensation within one month thereafter.

The appeal stands disposed of accordingly.

.....J.  
[ V. GOPALAGOWDA ]  
.....J.  
[ ADARSH KUMAR GOEL ]

NEW DELHI

November 28, 2014

**IN THE SUPREME COURT OF INDIA CRIMINAL ORIGINAL JURISDICTION**

**WRIT PETITION (CRL.)NO.129 OF 2006**

**LAXMI ...PETITIONER VERSUS**

**UNION OF INDIA & ORS.**

**...RESPONDENTS**

**Important Points:-**

- **Wide and adequate publicity be given to victim compensation scheme so that each acid attack victim can take the benefit of the victim compensation scheme.**
- **The State Government should seriously discuss and take up the matter with all the private hospitals to the effect that the private hospitals should not refuse treatment to the victims of acid attack and that full treatment should be provided to such victims including maintenance, food, bedding and reconstructive surgeries.**
- **The hospital where the victim of an acid attack is first treated should give a certificate that the individual is a victim of an acid attack.**
- **The certificate so given by the hospital may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.**
- **In case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes.**

**ORDER**

**Pursuant to our order dated 06.02.2015, the Ministry of Home Affairs has filed an affidavit dated 8<sup>th</sup> April, 2015.**

We have heard learned counsel for the parties in considerable detail.

A meeting was convened by the Secretary in the Ministry of Home Affairs, Government of India and the Secretary in the Ministry of Health and Family Welfare, Government of India with all the Chief Secretaries/their counterparts in the States/Union Territories on 14.03.2015.

From the affidavit, the provisional figures for 2014 indicate that there were 282 acid attacks in all the States. The majority of acid attacks were in the States of Uttar Pradesh (185), Madhya Pradesh (53) and Gujarat (11).

As far as the Union Territories are concerned, Delhi is the only Union Territory where acid attacks have taken place and the total number of such attacks in the year 2014 provisionally is 27. In all, therefore, 309 acid attacks are said to have taken place provisionally in the year 2014.

As mentioned in our order dated 06.02.2015, with the amendment to the Indian Penal Code, nothing survives in the first prayer made by the petitioner. The second and third prayers relate to the cost of treatment of the acid attack victims and application of Section 357C of the Code of Criminal Procedure, 1973, which was inserted by an Amendment Act in 2013 with effect from 03.02.2013.

In the meeting convened by the Secretary in the Ministry of Home Affairs and the Secretary in the Ministry of Health and Family Welfare on 14.03.2015, it has been noted that a Victim Compensation Scheme has already been notified in almost all the States and Union Territories. However, we are told today that the Victim Compensation Scheme has been notified in all States and Union Territories.

We have gone through the chart annexed along with the affidavit filed by the Ministry of Home Affairs and we find that despite the directions given by this Court in Laxmi Vs. Union of India [(2014) 4 SCC 427], the minimum compensation of Rs.3,00,000/- (Rupees three lakhs only) per acid attack victim has not been fixed in some of the States/Union Territories. In our opinion, it will be appropriate if the Member Secretary of the State Legal Services Authority takes up the issue with the State Government so that the orders passed by this Court are complied with and a minimum of Rs.3,00,000/- (Rupees three lakhs only) is made available to each victim of acid attack.

From the figures given above, we find that the amount will not be burdensome so far as the State Governments/Union Territories are concerned and, therefore, we do not see any reason why the directions given by this Court should not be accepted by the State Governments/Union Territories since they do not involve any serious financial implication.

We also direct the Member Secretary of the State Legal Services Authority to obtain a copy of the Victim Compensation Scheme from the concerned State/Union Territory and to give it wide and adequate publicity in the State/Union Territory so that each acid attack victim in the States/Union Territories can take the benefit of the Victim Compensation Scheme.

Insofar as the proper treatment, aftercare and rehabilitation of the victims of acid attack is concerned, the meeting convened on 14.03.2015 notes unanimously that full medical assistance should be provided to the victims of acid attack and that private hospitals should also provide free medical treatment to such victims. It is noted that there may perhaps be some reluctance on the part of some private hospitals to provide free medical treatment and, therefore, the concerned officers in the State Governments should take up the matter with the private hospitals so that they are also required to provide free medical treatment to the victims of acid attack.

The decisions taken in the meeting read as follows: The States/UTs will take a serious note of the directions of the Supreme Court with regard to treatment and payment of compensation to acid attack victims and to implement these directions through the issue of requisite orders/notifications.

The private hospitals will also be brought on board for compliance and the States/UTs will use necessary means in this regard. No hospital/clinic should refuse treatment citing lack of specialized facilities.

First-aid must be administered to the victim and after stabilization, the victim/patient could be shifted to a specialized facility for further treatment, wherever required. Action may be taken against hospital/clinic for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of Section 357C of the Code of Criminal Procedure, 1973.

We expect the authorities to comply with these decisions. Although it is not made clear in the meeting held on 14.03.2015, what we understand by free medical treatment is not only provision of physical treatment to the victim of acid attack but also availability of medicines, bed and food in the concerned hospital.

We, therefore, issue a direction that the State Governments/Union Territories should seriously discuss and take up the matter with all the private hospitals in their respective State/Union Territory to the effect that the private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, <sup>food,</sup> bedding and reconstructive surgeries.

We also issue a direction that the hospital, where the victim of an acid attack is first treated, should give a certificate that the individual is a victim of an acid attack. This certificate may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.

In the event of any specific complaint against any private hospital or government hospital, the acid attack victim will, of course, be at liberty to take further action. With regard to the banning of sale of acid across the counter, we direct the Secretary in the Ministry of Home Affairs and Secretary in the Ministry of Health and Family Welfare to take up the matter with the State Governments/Union Territories to ensure that an appropriate notification to this effect is issued within a period of three months from today. It appears that some States/Union Territories have already issued such a notification, but, in our opinion, all States and Union Territories must issue such a notification at the earliest. The final issue is with regard to the setting up of a Criminal Injuries Compensation Board. In the meeting held on 14.03.2015, the unanimous view was that since the District Legal Services Authority is already constituted in every district and is involved in providing appropriate assistance relating to acid attack victims, perhaps it may not be necessary to set up a separate Criminal Injuries Compensation Board. In other words, a multiplicity of authorities need not be created.

In our opinion, this view is quite reasonable. Therefore, in case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes.

A copy of this order be sent to learned counsel appearing for the Secretary in the Ministry of Home Affairs and the Secretary in the Ministry of Health and Family Welfare for onward

transmission and compliance to the Chief Secretary or their counterparts in all the States and Union Territories.

The Chief Secretary will ensure that the order is sent to all the District Magistrates and due publicity is given to the order of this Court.

A copy of this order should also be sent to the Member Secretary of NALSA for onward transmission and compliance to the Member Secretary of the State Legal Services Authority in all the States and Union Territories. The Member Secretary of the State Legal Services Authority will ensure that it is forwarded to the Member Secretary of each District Legal Services Authority who will ensure that due publicity is given to the order of this Court.

The writ petition is disposed of in the above terms.

.....J.

(MADAN B. LOKUR)

.....J.

(UDAY UMESH LALIT)

NEW DELHI

APRIL 10, 2015