

CRIMINAL LAW – PRACTICE AND PROCEDURE

e) Victimology & Compensation

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Proddatur

The Criminal Justice System consists of mainly three parts. They are:

1. **Criminology**
 2. **Penology**
 3. **Victimology**
1. **Criminology** is a science which makes scientific study of crimes and it finds the causes for crime. It investigates as to why the crime is being committed and it also finds preventive measures. The Criminology students study as to how the crime should be prevented as the study of crime. Criminology is Study of Crimes.
2. **Penology**: Penology is study of penal action consequent to the crime committed. The accused is put on trial and if he is found guilty, he is convicted and sentenced. That is penology. While imposing penalty or punishment the victim is virtually ignored. Therefore, new branch has emerged i.e. Victimology.
3. **Victimology** is a scientific study of sufferance of victims due to crime. It is now a growing branch. Students of Victimology study as to how justice should be provided to the victim of crime. It formulates the methods to determine compensation for the crime victim. It also provides remedies to the victim if compensation is not paid. For the purpose of rehabilitation, reparation of the victim or his legal heirs as the case may be, the Courts have felt it necessary to pay compensation. Merely because the offender is convicted, the victim may not get full justice. To complete the wheel of criminal justice, the crime victim shall have to be compensated appropriately. Victimology is a branch of Humane Criminal Justice System. Therefore, the study is now being made approximately since 1975 onwards in India. For every crime committed, there are at least three victims, first is society, the second is the actual or primary victim and the third is dependent of victim.

Who is a Victim?

Persons who individually or collectively have suffered harm including physical and mental injury emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that are violation of criminal law.

Section 2 (wa) - Code of Criminal Procedure /Section 2 (y) of BNSS Defines victim as

“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.”

“Society” is also a victim, because Society suffers the violation of its laws. Basically and generally, in India, we consider that the crime committed by a person is against the State. Only in few cases, the offences are exclusively committed not against the State but against an individual. Since we treat the crime is against the State, the State prosecutes every crime with its funds. Society is bothered of law and order problem. Society wants to punish the wrong doers by taking care of innocent people. The Society has found out the method of punishing the accused as per law i.e. with the help of Indian Penal Code, Cr.P.C. etc., The society as a victim gets justice by punishing wrong doer as per law.

The next victims are the actual victim and his dependents. It is disturbing to note that the victim, though is a primarily affected person in terms of loss of life, limb, property, honour, dignity etc., he is relegated to secondary position though he is primarily affected. He has got no say or very little say in the investigation process and criminal trials. Generally the criminal trials are being conducted by the Prosecution. During investigation he does not have any voice and he is at the mercy of Investigating Officer. During trial also, the victim is at the mercy of Public Prosecutor. State conducts the trial. So, the victim has got very little voice. Of course, nowadays, the law is amended, so as to enable the victim to file appeal. What is the use of filing the appeal by the victim, since the trial would have been already conducted by the third parties. At the most we can say that the unreasonable acquittals are permitted to be appealed against by the victim. But, if the material is not collected in accordance with law by the investigation agency or during trial, the victim will definitely be affected. Simply speaking or generally speaking, the victim is a forgotten party in criminal justice system. Entire focus is on the offender, to protect his rights, his fundamental rights, human rights, fair trial, the protection from custodial harassment, etc. faced by the accused. All the

problems of the accused are taken care of by the Society/State ignoring the plight of the victim. The resources are spent by the State to take care of the accused. Of course, accused will have to be treated with dignity as he is deemed to be innocent till he is convicted; but the victim, more often, is left to himself/herself without there being any assistance from any quarter including the State. Why should he be ignored? Ultimately, he is the person who is mainly affected. More often little or no assistance would be coming in his way.

Take for example, a case of a murder. If the deceased is a sole bread earner, what should happen to the family? His entire family will be on streets. What should happen to the wife of the deceased? minor children of the deceased? On the contrary in our Society, accused is protected. (If he is powerful), the people will back him and not the victim. If a person's limb is amputated in the crime or some grievous injuries are inflicted, he and his dependents will have to suffer all through.

Take an example of acid burns case. Generally the victims of acid burns are women. Looking to the present day conviction rate of about 15 to 20%, the victims of acid burns get hardly any compensation or meager compensation. Generally the acid is thrown on the face of the victim. She may or may not know about the actual culprit. The victim's face will be disfigured permanently. She/he may even be incapacitated. Because of disfiguration of victim's face and other parts of her body, the marriage prospects of the victims of acid burns will be very remote. The victim may not be able to get job also. Nowadays, in private sector, the appointments are made from among the candidates who are good looking and good speaking. In the present days of competition, the victims of such offences may not get any opportunity to earn their livelihood also. Under such circumstances, the question to be asked as to what should happen to such victims ?

If the property of the victim is lost in the crime, if a poor man's hut is set on fire, his plight cannot be imagined at all.

If the gold or other valuable ornaments are subject matter of the theft or robbery or dacoity, the fate of victim depends on recovery of property. If the recovery is only to an extent of 20% or 30% etc. (as it generally happens), then how to compensate the victim for that? We have to ponder our attention in that aspect. The violation of victim's rights, invasion of his dignity, the actual losses incurred by him do not constitute matters of concern of any one, but of himself. Strange but true, justice fails to redress the wrong perpetrated by the offender on the victim, on the contrary, it aggregates injustice by solely focusing on the

offender.

In this context, series of debates are conducted & Judgments of the Hon'ble Supreme Court and High Courts right from 1979 onwards are delivered. In the Judgment reported in ***AIR 1980 SC 2147 (Maru Ram's case)***, the Apex Court has observed that while considering the problem of penology the Court should not overlook the plight of Victimology and the suffering of the people who die, suffer or are maimed at the hands of the criminals.

The Apex Court in the case of ***State of Gujarat Vs. High Court of Gujarat - (1998)7 SCC 392***, has observed that in our effort to look after and protect the human rights of the accused or human rights of the convict we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the crime committed by an offender. Subsequently number of similar judgments is delivered by the Apex Court and High Courts in India.

Without any fault of him the victim has to suffer all through his life. On the contrary accused who commits crime enjoys at the cost of State. He is taking advantage of his crime because the law provides the same to him. I am not saying that the law should not aid the accused but the same facility in the sense of rehabilitation, reparation or compensation at least to some extent in any form shall have to be provided to victim.

The law as it stands today, has the provisions relating to compensation of victims such as Sections 357, 357A, 357B, 357C, 358 and 359 of Cr.P.C. the provisions relating to compensation of victims in BNSS are Sections 395, 396, 397, 399, 400. Sec.357 (B) of Cr.P.C., was incorporated in Clause (7) of Sec. 396 of BNSS, except the changing of the section there is no changes in the provisions of the above sections. Under Section 357(1) of Cr.P.C. if fine imposed is part of the sentence, then the entire fine or part of the fine may be given to the victim. Even if the entire fine amount is disbursed to victim, it does not help the victim. We also do not know as to whether the compensation actually reaches the poor victim or not; but this is the fact situation. There is no limit prescribed for imposing compensation under Section 357(3) Cr.P.C. It may be one lakh, two lakhs or three lakhs etc. But in majority of the cases we do not find such award of compensation.

In the year 2003, Gujarat High Court in the case of ***State of Gujarat Vs. Raghu @ Raghavbhai Vashrambhai & others- 2003(1) GLR 205*** passed an order observing that it is high time that the State shall create the victim welfare fund on a statutory basis. Thereafter, the discussion started on all India basis,

ultimately the Section 357A Cr.P.C. is enacted in the year 2009. It says that the State shall frame Victim Compensation Scheme. Compensation shall be paid to the victim depending on the facts and circumstances of the case as per such scheme. Enquiry has to be held by the State Legal Services Authority or the District Legal Services Authority, as the case may be.

Compensation is imposed by the Courts based on facts and circumstances and it is generally ordered to be paid by the accused. If accused himself is not in a position to pay, what should happen to victim? If the accused himself is not in a position to pay, there is no use in imposing the compensation to be paid by the accused. Thus justice fails. Therefore, the State has to take ponder its attention and create a fund and implement the scheme with all seriousness. Unless the fund under Section 357A is created effectively, keeping in mind the present day costs of litigation, escalation in prices and rupee value, the justice cannot be done to the victims.

It is relevant to note that in ANDHRA PRADESH notified by HOME DEPARTMENT (COURTS.B) THE ANDHRA PRADESH VICTIM COMPENSATION SCHEME, 2015 - NOTIFICATION AND ADAPTION OF "NALSA'S COMPENSATION SCHEME FOR WOMEN VICTIMS/SURVIVORS OF SEXUAL ASSAULT/OTHER CRIMES - 2018" - AS AN ADDITIONAL CHAPTER TO THE EXISTING A. P. VICTIM COMPENSATION SCHEME. The said notification was gazetted on 4th October 2018 vide G.461. Under the said Scheme, the Victim Compensation Fund shall be created.

Pursuant to the Hon'ble Supreme Court directions NALSA drafted the Grant of Compensation to Women Victims/ Survivor of Sexual Assault/Other Crimes-2018.

Important features of the Scheme:

- (i) Woman victim eligible for compensation from multiple schemes
- (ii) Online application for compensation
- (iii) The enquiry to be completed within 60 days &
- (iv) In Acid Attack case, and in all other deserving cases, the Secretary DLSA to grant interim compensation

Central Victim Compensation Scheme:

The Ministry of Home Affairs introduced the Central Victim Compensation Scheme (with effect from August 2015) in addition to the existing Victim Compensation Scheme which further increased the quantum of compensation in

cases of rape and sexual assaults. In addition to this, women of cross border suffering partial or permanent disability were also addressed. Uniform compensation was determined for all states, including Rs. 3 lacs for acid attack and rape victims, Rs. 1 lacs for rehabilitation for victims of human trafficking etc. Cases where the victim was below 14 years of age, the compensation had to be increased by 50% over the amount specified. Various states have amended the scheme in analogy to the directions given by the centre except for Arunachal Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Karnataka, Tamil Nadu, and Uttar Pradesh.

PROCEDURE FOR GRANT OF COMPENSATION:

Wherever, a recommendation is made by the court for compensation under sub-sections (2) and/or (3) of Section 357 A of the Code, or an application is made by any victim or her dependent(s), under sub-section (4) of Section 357 A of the Code, to the State Legal Services Authority or District Legal Services Authority, for interim compensation it shall prima- facie satisfy itself qua compensation needs and identity of the victim. As regards the final compensation, it shall examine the case and verify the contents of the claim with respect to the loss/injury and rehabilitation needs as a result of the crime and may also call for any other relevant information necessary for deciding the claim.

Provided that in deserving cases and in all acid attack cases, at any time after commission of the offence, Secretary, SLSA or Secretary, DLSA may *suo moto* or after preliminary verification of the facts proceed to grant interim relief as may be required in the circumstances of each case.

The inquiry as contemplated under sub-section (5) of Section 357A of the Code, shall be completed expeditiously and the period in no case shall exceed beyond sixty days from the receipt of the claim/petition or recommendation:

Provided that in cases of acid attack an amount of Rs. One lakh shall be paid to the victim within 15 days of the matter being brought to the notice of DLSA. The order granting interim compensation shall be passed by DLSA within 7 days of the matter being brought to its notice and the SLSA shall pay the compensation within 8 days of passing of the order. Thereafter, an amount of Rs.2 lakhs shall be paid to the victim as expeditiously as possible and positively within two months of the first payment.

Provided further that the victim may also be paid such further amount as is admissible under this Scheme.

After consideration of the matter, the SLSA or DLSA, as the case may be,

upon its satisfaction, shall decide the quantum of compensation to be awarded to the victim or her dependent(s) taking into account the factors enumerated in Clause 8 of the Scheme, as per schedule appended to this chapter. However, in deserving cases, for reasons to be recorded, the upper limit may be exceeded.

Moreover, in case the victim is minor, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the Schedule appended to this chapter.

**Victims of Acid attack are also entitled to additional compensation of Rs.1 lac under Prime Minister's National Relief Fund vide memorandum no. 24013 /94 /Misc. /2014- CSR- III/ GoI /MHA dated 09.11.2016(copy attached) Victims of Acid Attack are also entitled to additional special financial assistance up to Rs.5 lacs who need treatment expenses over and above the compensation paid by the respective State/UTs in terms of Central Victim Compensation Fund Guidelines-2016, no. 24013/94/Misc/2014-CSR.III, MHA/GoI*

The SLSA/DLSA may call for any record or take assistance from any Authority/ Establishment/Individual/ Police/Court concerned or expert for smooth implementation of the Scheme.

In case trial/appellate court gives findings that the criminal complaint and the allegation were false, then Legal Services Authority may initiate proceedings for recovery of compensation, if any, granted in part or full under this Scheme, before the Trial Court for its recovery as if it were a fine.

THE ORDER TO BE PLACED ON RECORD—

Copy of the order of interim or final compensation passed under this Scheme shall be placed on record of the trial Court so as to enable the trial Court to pass an appropriate order of compensation under Section 357 of the Code. A true copy of the order shall be provided to the IO in case the matter is pending investigation and also to the victim/dependent as the case may be.

METHOD OF DISBURSEMENT OF COMPENSATION—

The amount of compensation so awarded shall be disbursed by the SLSA by depositing the same in a Bank in the joint or single name of the victim/dependent(s). In case the victim does not have any bank account, the DLSA concern would facilitate opening of a bank account in the name of the victim and in case the victim is a minor along with a guardian or in case, minor is in a child care institution, the bank account shall be opened with the Superintendent of the Institution as Guardian. However, in case the victim is a foreign national or a

refugee, the compensation can be disbursed by way of cash cards.

Interim amount shall be disbursed in full. However, as far as the final compensation amount is concerned, 75% (seventy five percent) of the same shall be put in a fixed deposit for a minimum period of three years and the remaining 25% (twenty five percent) shall be available for utilization and initial expenses by the victim/dependent(s), as the case may be.

In the case of a minor, 80% of the amount of compensation so awarded, shall be deposited in the fixed deposit account and shall be drawn only on attainment of the age of majority, but not before three years of the deposit.

Provided that in exceptional cases, amounts may be withdrawn for educational or medical or other pressing and urgent needs of the beneficiary at the discretion of the SLSA/DLSA.

The interest on the sum, if lying in FDR form, shall be credited directly by the bank in the savings account of the victim/dependent(s), on monthly basis which can be withdrawn by the beneficiary.

INTERIM RELIEF TO THE VICTIM—

The State Legal Services Authority or District Legal Services Authority, as the case may be, may order for immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief (including interim monetary compensation) as deemed appropriate, to alleviate the suffering of the victim on the certificate of a police officer, not below the rank of the officer-in-charge of the police station, or a Magistrate of the area concerned or on the application of the victim/ dependents or suo moto.

Provided that as soon as the application for compensation is received by the SLSA/DLSA, a sum of Rs.5000/- or as the case warrants up to Rs.10,000/- shall be immediately disbursed to the victim through preloaded cash card from a Nationalised Bank by the Secretary, DLSA or Member Secretary, SLSA.

Provided that the, interim relief so granted shall not be less than 25 percent of the maximum compensation awardable as per schedule applicable to this Chapter, which shall be paid to the victim in totality.

Provided further that in cases of acid attack a sum of Rs.One lakh shall be paid to the victim within 15 days of the matter being brought to the notice of SLSA/DLSA. The order granting interim compensation shall be passed by the SLSA/DLSA within 7 days of the matter being brought to its notice and the SLSA shall pay the compensation within 8 days of passing of order. Thereafter an additional sum of Rs.2 lakhs shall be awarded and paid to the victim as

expeditiously as possible and positively within two months.

RECOVERY OF COMPENSATION AWARDED TO THE VICTIM OR HER DEPENDENT(S)—

Subject to the provisions of sub-section (3) of Section 357A of the Code, the State Legal Services Authority, in proper cases, may institute proceedings before the competent court of law for recovery of the compensation granted to the victim or her dependent(s) from person(s) responsible for causing loss or injury as a result of the crime committed by him/her. The amount, so recovered, shall be deposited in Woman Victim Compensation Fund.

DEPENDENCY CERTIFICATE—

The authority empowered to issue the dependency certificate shall issue the same within a period of fifteen days and, in no case, this period shall be extended:

Provided that the SLSA/DLSA, in case of non-issuance of Dependency Certificate, after expiry of 15 days, may proceed on the basis of an affidavit to be obtained from the claimant.

MINOR VICTIMS-

That in case the victim is an orphaned minor without any parent or legal guardian the immediate relief or the interim compensation shall be disbursed to the Bank Account of the child ,opened under the guardian ship of the Superintendent, Child Care Institutions where the child is lodged or in absence thereof, DDO/SDM, as the case may be.

LIMITATION-

Under the Scheme, no claim made by the victim or her dependent(s), under sub-section (4) of Section 357A of the Code, shall be entertained after a period of 3 years from the date of occurrence of the offence or conclusion of the trial.

However, in deserving cases, on an application made in this regard, for reasons to be recorded, the delay beyond three years can be condoned by the SLSAs/DLSAs.

APPEAL:

In case the victim or her dependents are not satisfied with the quantum of compensation awarded by the Secretary, DLSA, they can file appeal within 30 days from the date of receipt of order before the Chairperson, DLSA.

Provided that, delay in filing appeal may be condoned by the Appellate

Authority, for reasons to be recorded, in deserving cases, on an application made in this regard.

REPEAL&SAVINGS–

In case this Chapter is silent on any issue pertaining to Victim Compensation to Women, the provisions of Victim Compensation Scheme of the State would be applicable.

Nothing in this Scheme shall prevent Victims or their dependents from instituting any Civil Suit or Claim against the perpetrator of offence or any other person indirectly responsible for the same.

Explanation: It is clarified that this Chapter does not apply to minor victims under POCSO Act, 2012 in so far as their compensation issues are to be dealt with only by the Ld. Special Courts under Section 33 (8) of POCSO Act, 2012 and Rules (7) of the POCSO Rules, 2012.

SCHEDULE APPLICABLE TO WOMEN VICTIM OF CRIMES

| S.No. | Particulars of Loss or injury | Minimum Limit of Compensation | Upper Limit of Compensation |
|--------------|--|--------------------------------------|------------------------------------|
| 1. | Loss of Life | Rs.5 Lakh | Rs.10 Lakh |
| 2. | Gang Rape | Rs.5 Lakh | Rs.10 Lakh |
| 3. | Rape | Rs.4 Lakh | Rs.7 Lakh |
| 4. | Unnatural Sexual Assault | Rs.4 Lakh | Rs.7 Lakh |
| 5. | Loss of any Limb or part of Body resulting in 80% permanent disability or above | Rs.2 Lakh | Rs.5 Lakh |
| 6. | Loss of any Limb or part of Body resulting in 40% and below 80% permanent disability | Rs.2 Lakh | Rs.4 Lakh |
| 7. | Loss of any Limb or part of Body resulting in 20% and below 40% permanent disability | Rs.1 Lakh | Rs.3 Lakh |
| 8. | Loss of any limb or part of Body resulting in below 20% permanent disability | Rs.1 Lakh | Rs.2 Lakh |
| 9. | Grievous physical injury or any mental injury requiring rehabilitation | Rs.1 Lakh | Rs.2 Lakh |
| 10. | Loss of Foetus i.e., Miscarriage as a result of Assault or Loss of fertility. | Rs.2 Lakh | Rs.3 Lakh |
| 11. | In case of pregnancy on account of rape | Rs.3 Lakh | Rs.4 Lakh |
| 12. | Victims of Burning | | |
| | a) In case of disfigurement of case | Rs.7 Lakh | Rs.8 Lakh |
| | b) In case of more than 50% | Rs.5 Lakh | Rs.8 Lakh |
| | c) In case of injury less than 50% | Rs.3 Lakh | Rs.7 Lakh |
| | d) In case of less than 20% | Rs.2 Lakh | Rs.3 Lakh |
| 13. | Victims of Acid Attack- | | |

| | | | |
|----|----------------------------------|-----------|-----------|
| a) | In case of disfigurement of face | Rs.7 Lakh | Rs.8 Lakh |
| b) | In case of injury more than 50% | Rs.5 Lakh | Rs.8 Lakh |
| c) | In case of injury less than 50% | Rs.3 Lakh | Rs.5 Lakh |
| d) | In case of injury less than 20% | Rs.3 Lakh | Rs.4 Lakh |

Note: If a woman victim of sexual assault/acid attack is covered under one or more category of the schedule, she shall be entitled to be considered for combined value of the compensation.

The Hon'ble Supreme Court in the case of

Suresh and another Vs. State of Hariyana {(2015)2 SCC 227} has observed that

“the Schedule as announced by the Kerala Government under Section 357A of Cr.P.C. appears to be on the higher side and therefore the same needs to be followed by other States in case if the amounts mentioned in the Schedules of those particular States are on the lesser side.”

Under Sections 357, 357-A, 357B, 357C, 358, 359 etc., the actual victims will get compensation. There is one more provision in Section 250 Cr.P.C. If the prosecution is launched based on false accusation, and ultimately after trial, if the person is acquitted and if the trial Court finds that absolutely false case is foisted, then, the compensation is to be levied on the complainant under Section 250 Cr.P.C. The Courts are not exercising Jurisdiction under Section 250 Cr.P.C also. In such matters, the alleged accused is the victim of the illegal prosecution. Because of the guilt of the complainant/State, the accused has suffered. Even FIR attaches a stigma in certain cases. Therefore, if accusation is made without unreasonable cause and if the Court feels that absolutely false case is launched, then the Court may impose compensation under Section 250 Cr.P.C.

As said earlier, the provisions as of now available are mainly Section 357 or 357A, 357B and 357C Cr.P.C. Under Section 357A Cr.P.C. the victim will get some benefit Compensation to be provided under Section 357A Cr.P.C. is in addition to the compensation under Section 357 Cr.P.C. Article 41 of the Constitution of India which comes under Part IV of the Constitution will take care of compensation also. Article 41 reads thus:

“Article 41: Right to work, to education and to public assistance in certain cases. – *The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”*

This provision can be taken assistance of by the State to create fund more

effectively.

Because of the murder, the legal representatives of the victims will become orphans. The victim who has suffered disablement also would be virtually orphan. In this context, it is relevant to note certain of the observations of the Justice Malimath Committee on the subject. Justice Malimath Committee in its Report (paragraphs 6.9.1) has observed thus: (relevant portion)

“Victims of crime are important players in criminal justice administration both as complainant/informant and as witness for the police/prosecution. Despite the system being heavily dependent on the victim, criminal justice has been concerned with the offender and his interests almost subordinating or disregarding the interest of victim. In Civil Law systems generally, the victims enjoyed better status than in Administration of Criminal Justice”

Whenever an accident takes place, a crime is committed either under Section 304A IPC or under Section 338 IPC or under Section 279 IPC, etc. The victim of the accident approaches the Motor Accidents Claims Tribunal claiming compensation. There will be quantification of compensation in systematic method. Substantial amount of compensation would be paid to a victim. Because the law provides for compensation under MV Act, the victim will get compensation though a crime is committed. But who will compensate for the life and liberty or loss of limb and properties of victim suffered in other crimes? If the property is acquired by Government, compensation is paid under Land Acquisition Act. But if property is lost or damaged in crime, the compensation is hardly paid.

The Apex Court in the case of ***Delhi Domestic Working Women’s Forum vs. Union of India and others- (1995) 1 SCC 14*** has quoted the extract with approval from the “Oxford Handbook of Criminology”. The relevant portion reads thus :

“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.”

An interesting case came before the Hon’ble Supreme Court in ***Ramesh Kumar Vs. Ram Kumar - AIR 1984 SC 1029***. It was a case of Section 302 IPC.

The trial Court convicted and sentenced the accused to undergo imprisonment for life. The matter came up before the High Court. The High Court probably on verifying with the accused as well as the victim reduced the gravity of the offence by convicting the accused for the offence under Section 304 part II IPC and imposed sentence of imprisonment for two years (probably because by then the accused had already undergone two years of imprisonment) and as compensation, three acres of land was directed to be given by accused to victim. Most importantly, in that matter, the reduction of sentence was not on merits. But only with a view to compensate the victim, the sentence was reduced probably with the consent of the accused as well as victim. Ultimately the matter went up to the Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the order of the High Court and said that if the judgment of the High Court is accepted then the entire system of Administration of Criminal Justice would be reduced to mockery. Therefore, in our anxiety to award compensation, we should not reduce the sentence or we should not reduce the gravity of the punishment. The power of Court to award compensation is not ancillary to other sentences but it is in addition thereto. On merits, the Court will have to impose punishment and in addition thereto may award compensation.

The Apex Court in the case of ***Ankush Shivaji Gaikwad vs. State of Maharashtra - (2013)6 SCC 770*** in its very detailed judgment authored by Justice T.S. Thakur, has considered the question relating to victim compensation. In that judgment, the Hon'ble Supreme Court has discussed all the previous judgments on the point and has referred to the different laws of the different countries & UN General Assembly resolutions etc. Ultimately it is held that, it is the duty of the Court to consider payment of compensation in each and every case and the Court will have to record reasons, as to why Court is not granting compensation, if the Court has not granted compensation. The Apex Court while concluding observes thus:

"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 also ruled in the said judgment that even where the cases end in acquittal or discharge, the duty lies on the State to pay compensation.

Other Legal Provision in relation if Victim Compensation under various Law in India

The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 has been a massive success in relation to the revolution of women rights, towards victims who were suffering from domestic violence after 16 years of struggle. The definition of domestic violence includes physical, sexual, verbal and emotional abuse. The aspect of trauma arising out of physical abuse in the absence of any medical reports was addressed and compensated for, in the recent case of **Smt. Haimanti Mal vs. The State of West Bengal (2019)**. The Calcutta High Court awarded a compensation of Rs.1,00,000/- for mental torture and emotional distress on the basis of Section 22 of the Protection of Women from Domestic Violence Act, 2005.

Prevention of Caste-Based Victimization and Protection for Victims: The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 This Act is formulated to eradicate the atrocities against the members of the Scheduled Castes and Scheduled Tribes. Under this Act, compensation of victim is mandatory, apart from several other reliefs which depend upon the condition and kind of atrocity caused. Monetary compensation varying from Rs.25,000/- to Rs.2,00,000/- is determined according to the severity of the offence.

Compensation under Probation of Offenders Act, 1958

The Probation of Offender Act, 1958 also contains provision for compensatory relief to Victim of crime under Section 5(1) of the Act. The Section provides that the court directing the release of an offender under Section 3 or Section 4 of the Act, may if it deems fit, further direct the accused to pay such compensation to the victim, as the court think reasonable for the loss or injury caused to the latter, as also the cost of the proceedings.

Compensation of Victim under Motor Vehicle Act 1988

The victim of vascular accidents or their legal representatives in case of death of victim are entitled to claim compensation from the offender under section 5 of the Motor Vehicle Act, 1988. However, the power in this regard is vested only with the court and non else.

The relevant judgments are: -

ILR 2015 Karnataka 4879 – State Vs. Rangaswamy :-

This Court ordered for payment of Rs.30,000/- for rehabilitating the victim who had lost his hut in the crime. In the said judgment, the Court had evaluated the loss suffered by the victim at `30,000/-. The Court also said in the very judgment that the provisions of Section 357A of Cr.P.C. and the key framed therein are applicable to all pending matters.

2015(2) SCC 227 – Suresh & another Vs. State of Hariyana:

The Apex Court has ruled out 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.

In **Rudal Sah Vs State of Bihar AIR 1983 SC 1086**, the apex court stated that the petitioner remained in illegal detention for more than 14 years. After notices were issued and when the petition was taken up for hearing, the Government informed that the petitioner has been released from custody. Under the general rule, the writ petition had become infructuous. However, the Hon'ble Supreme Court issued notice on the ancillary relief and after hearing the parties deemed it fit to grant a compensation of Rs.30,000/-.

In **Gudalure Cherian vs UOI** where Hon'ble Supreme Court following an innovative approach first directed the whole matter to be investigated by the CBI afresh and completion of investigation directed the Govt. of U.P. to first suspend the police officials and medical officers who tried to save the accuse but also directed the state to pay compensation of Rs.2,50,000/- to the victim of rape and Rs 1,00,000 to victim of other crime.

In **Manish Jalan vs State of Karnataka** (11 July 2008) – The Hon'ble Supreme Court observed that the quantum of compensation is to be determined by taking into account the nature of crime, injury suffered and the capacity of convict to pay compensation. Nevertheless, the amount of compensation should be reasonable.

In **Nipun Saxena vs Union of India** (11 Dec. 2018) - By noting drawbacks of existing schemes, the apex court found it fit to direct the National Legal Service

Authority (NALSA) to frame a scheme for victims of sexual offences including the offences falling under the Protection of Children against Sexual Offences Act (POCSO).

In **S.S. Ahluwalia vs Union of India** (16 March 2001) - The Hon'ble Supreme Court agreed in principle that the Government should pay compensation to the family members of the persons killed in the riot.

In **Hari Kishan vs Sukhbir Singh** (25 Aug. 1988) - The apex court said awarding compensation is a measure of responding appropriately to crime as well as reconciling the victim with the offender.

I conclude with the note that **"the victims cannot be victimized any further"**.
