

# Compensation To The Victims Of Crime - Indian Scenario

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## Synopsis

Remedy Of Compensation: The Indian Constitution .....	297
Remedy Of Compensation: Criminal Laws .....	300
Case Laws Under Section 357 .....	301
Recent Developments In Criminal Law.....	302
Initiatives By The Executive .....	305
Conclusion.....	306

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*“It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention in this matter.”*

*-Justice Krishna Iyer.<sup>2</sup>*

In the Common law system, the criminal justice machinery mostly concentrates on the offender. The aim becomes to find the offender and punish him/ her. The adversarial system of justice considers every crime committed as a crime against the state. Thus, even though a victim is himself a complainant, s/he must remain satisfied to be a witness in the trial and the state becomes the petitioner in the court of law. A crime is considered as a wrong not just against the person who suffers harm but also the society and thus, the state assumes responsibility to prosecute the offender and bring justice on behalf of both, the victim and the society. The other party involved in the crime, the victim, mostly remains neglected and a prosecution witness at the most. The suffering of the victim is neglected and there are no steps taken to repair that.

In the recent past, however, with the advent of the discipline of Victimology, there seems to be a renewed focus on the plight of the victim. In recent times, among the many reforms canvassed for improving the criminal justice system is the one that advocates a victim-orientation to criminal justice administration.<sup>3</sup> . Victim-orientation encompasses increased consideration towards victims and their rights in

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<sup>2</sup> Rattan Singh v. State of Punjab AIR 1984 SC 84 (India).

<sup>3</sup> Murugesan Srinivasan & Jane Eyre Mathew, *Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System*, TEMIDA, 51-62, (2007).

the investigative and prosecution process and a scheme of reparation/compensation particularly for victims of violent crimes.<sup>4</sup>

There could be a variety of remedies that can be made available for a crime victim like those rehabilitation, greater participation in the trial process, apology, among others. However, the remedy of reparation or compensation is beyond compare. It's the most urgent need of the victim. A workable scheme of compensation can work as the first line of repair for the victim. Once this has been addressed, the Indian criminal justice system can venture into more comprehensive remedies.

Compensation as a remedy has featured in multiple ways and avenues in Indian jurisprudence in the recent past. The three pillars of the Indian state - legislature, executive and judiciary - have dealt with compensation in varying degrees. A stepwise perusal of all these initiatives would form the mainstay of this paper.

### **Remedy Of Compensation: The Indian Constitution**

The Constitution of India doesn't subscribe compensation as a remedy directly. However, there are provisions in Part IV of Directive Principles of State Policy that point towards compensation as a remedy. Article 38 lays down that "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, **economic** and political, shall inform all the institutions of the national life."<sup>5</sup> It is clear from this directive that economic justice should be sought to be attained for the welfare of the people. Article 41 also hints at "public assistance in certain cases of disablement" and a compensatory perspective for a crime victim can also be read into it.

Indian judiciary, including the Supreme Court and High Courts, in their duty to interpret and safeguard the Constitution have also interpreted compensation as remedy for victims of crime in the purview of Right to Life and Personal Liberty

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<sup>4</sup> Madhava Menon N.R, *Victim Compensation Law And Criminal Justice: A Plea For A Victim-Oriented In Criminal Justice* (2004).

<sup>5</sup> Article 38 of the Constitution of India.

contained in Article 21. The Courts have held Right to receive compensation as a part of Right to life in multiple cases. A careful perusal of these landmark judgements sheds light on the importance of the remedy.

This catena of important cases was heralded by the judgment in **Rudul Shah v. State of Bihar**<sup>6</sup>, whereby the Supreme Court awarded compensation to the victim for illegal detention in the jail for 14 years after acquittal. It was the first such case which resulted in award of compensation in a writ petition under Article 32 against the abuse of power by the State. It was reasoned that Article 21 would be deprived of its significance if the Court didn't enlarge the gamut of the case and order the ancillary costs to the victim.

The Court held that:

*"..right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country, as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights."*<sup>7</sup>

This was also followed in **R Gandhi's** case<sup>8</sup> where the Madras High Court awarded compensation for not just loss of life and property of the Sikhs because of Anti Sikh riots in the aftermath of assassination of the then PM Mrs. Indira Gandhi, but also because it was considered a failure on the State's part to protect the vulnerable. This judgement also referred to other important cases like **Sebastian M. Hohngray v. Union of India**<sup>9</sup>, where a writ of Habeas Corpus was served on the respondents to produce 2 people in their custody but there was a failure to produce them. The Court

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<sup>6</sup> (1983) 4 SCC 141 (India).

<sup>7</sup> *Id.*

<sup>8</sup> AIR 1989 Mad. 205.

<sup>9</sup> AIR 1984 SC 1026 (India).

ordered exemplary costs by way of compensation of Rs one lakh each, to the wives of the disappeared persons for the mental agony caused to them due to the callousness of the state.

In **Nilabati Behra v. State of Orissa**<sup>10</sup>, the Court was dealing with a case of custodial death of the petitioner's son. Compensation was awarded to the petitioner on the reasoning that it is an acknowledged remedy in public law for contravention of fundamental rights of in the Constitution. It clarified that such a remedy is in addition to the damages awarded in torts in private law. It was reiterated and reinforced that the "*..Court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available.*"<sup>11</sup>

This is an extremely important passage from the landmark judgement of Nilabati Behra. The Court has repeatedly reinforced its ability to develop new tools to ensure that complete justice is done, and the fundamental rights protected. No defence such as sovereign immunity or duplication of remedy with law of tort would stand in the way of justice being served to the victim. It clearly laid down a distinction between compensation as a remedy in private law through a suit in an appropriate civil court and that of the compensation awarded in writ petitions under Article 32 for the infringement of Fundamental rights. It is a remedy for the failure of the state to protect the rights that are otherwise guaranteed to the public. After all, The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.<sup>12</sup> It reaffirmed the significance of promoting compensation as a remedy

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<sup>10</sup> 1993 AIR 1960 (India).

<sup>11</sup> *Id* at 1963.

<sup>12</sup> *Supra* note 9.

by referring to the statement by Justice Y V Chandrachud in the case of Rudul Shah that “administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt.”<sup>13</sup> Thus, it was reinforced repeatedly that the compensation under Article 21 was in addition to the, and not in substitution to the remedy under other laws of the land.

### **Remedy Of Compensation: Criminal Laws**

The judiciary interpreted Right to compensation as a part of Right to life and personal liberty under Article 21. This was done by writ petitions under Article 32, which is, however, a remedy only in extraordinary cases where fundamental rights are violated. It was awarded as an exemplary remedy to victims of crime. The Courts continuously encouraged the lower courts to make use of the legislative provisions dealing with compensation that were already in place in the Code of Criminal Procedure (CrPC).

Though in a limited manner, the CrPC has provided for the remedy of victim compensation. Other than mentions in Sections 250 and 358, the mainstay of the remedy is contained in Section 357 of the CrPC. It lays down that the court can order compensation to be paid to the victim limited, however, to the extent of fine that is to be recovered from the defendant. Section 357(3) allows the court to award compensation as a part of the sentence irrespective of whether fine is ordered as a part of the sentence or not. Even though this is an unqualified avenue for victim compensation, it is hardly ever used by the courts as it remains a discretionary power. There is no need for any reasons to be recorded when the section is not used in sentencing. It is also subject to the condition that the trial results in conviction.

Other criminal laws such as Probation of Offenders Act, 1958 also provides for restitution to be paid by the offenders. Section 5(1) is of significance in this case:

Power of court to require released offenders to pay compensation and costs:

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<sup>13</sup> *Supra* note 5.

1. The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay-
  - a. such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and
  - b. such costs of the proceedings as the court thinks reasonable.

### **Case Laws Under Section 357**

The first significant case to be decided under Section 357 CrPC was that of **Palaniappa Gounder v. State of Tamil Nadu**<sup>14</sup> wherein the descendants of the deceased were awarded compensation out of the fine ordered to be recovered from the offender. Even though the Supreme Court eventually reduced the fine amount from Rs. 20,000 to Rs.3000 having regard to the economic abilities of the offender, it is a landmark case for the compensation that was paid to the kin out of the fine under Section 357(1) of the CrPC.

This precedent was also followed in the case of **Guruswamy v. State of Tamil Nadu**<sup>15</sup> where the punishment of the accused was reduced from death sentence to life imprisonment and a compensation of Rs. 10,000 was awarded for the benefit of the kin of the deceased. The whole fine that was ordered was paid to the victim's family.

**Hari Krishnan and the State of Haryana v. Sukhbir Singh and others**<sup>16</sup> is the next milestone in compensatory jurisprudence in India. The victim was awarded compensation under Section 357(3) based on the reasoning that the abovementioned clause is a remedy that is not ancillary to other remedies, but in addition thereto. The Court stressed on the importance of the provision that it provides an opportunity to the system to reaffirm to the victim and his kin that they are not forgotten entities in the criminal justice system. Noting that the remedy is used rather scarcely by the

<sup>14</sup> AIR 1977 SC 1323 (India).

<sup>15</sup> 1979 CrLJ 704.

<sup>16</sup> AIR 1988 SC 2127 (India).

Courts, the Apex Court encouraged the lower judiciary to take not of the important section and use it liberally for the benefit of the crime victim. It was heralded to be a “constructive approach; a step forward in the criminal justice system.”<sup>17</sup> The quantum of compensation, the Court said, should be reasonable in accordance with the facts and circumstances of each case, with regard to factors such as “the nature of crime, the justness of claim by the victim and the ability of accused to pay.” Keeping in mind all these factors, it is also exemplary in the fact that the Supreme Court also increased the compensation awarded by the High Court from Rs. 20,000 to Rs. 50,000 having regard to the extent of harm and injury suffered by the victim.

**Bipin Bihari v. State of Madhya Pradesh**<sup>18</sup> is another important case which in turn followed the precedent of **Bhaskaran v. Sankaran Vaidhyan Balan**<sup>19</sup> in laying down that the Magistrate is not limited by amount while awarding compensation under Section 357(3) of the CrPC. The only important obligation was to pay due attention to the circumstances of each case before passing a sentence of compensation.

It is clear from the perusal of the above cases that though the remedies in the CrPC have been used, it's scant. The major obstacle remains the discretionary nature of the provision. A section as important as this one remains discretionary and not compulsory.

### Recent Developments In Criminal Law

Looking to all the stifles in way of optimum implementation of victim compensation, Section 357A was introduced in the CrPC by the CrPC amendment act, 2008. It was a result of the recommendation of the 154<sup>th</sup> Report of Law Commission of India. It mainly aimed to enable the Court to direct the State to award compensation to victims in cases that have resulted in acquittal or discretionary power of Section 357 have not been used by the Court. Section 357A requires the State governments to

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<sup>17</sup> *Id.*

<sup>18</sup> 2005 CrLJ 2048 MP.

<sup>19</sup> AIR 1999 SC 3762 (India).

frame a scheme of compensation of victims of crime with assistance from the Central government. The District legal services authority (DLSA) is the nodal agency for implementation of the remedy. It is especially useful in cases where has not been awarded as a part of the sentence or if awarded, is not enough to be of any assistance to the victim even if compensation is awarded.

Where the offender has not been apprehended, the victims can directly apply to the DLSA for compensation. On enquiry and on assent of the police officer incharge, the DLSA can decide upon the incidence and quantum of compensation to be paid to the victim by the State.

The case of **Suresh v. State of Haryana**<sup>20</sup> is of primary importance in this regard. Here, the deceased Devender Chopra and his son Abhishek Chopra (also deceased) were kidnapped for a ransom demand of Rs. 50,00,000. When the demand was not met, they were murdered by the appellant accused and others. The Court paid special attention the the newly inserted Section 357A and requested Shri L. Nageshwara Rao, Additional Solicitor General of India to assist the Court on this aspect. The Court, with assistance from the report submitted by the learned ASG, recognised compensation as a valid remedy for crime victims in the Indian criminal justice system. It analysed that the duty of the State doesn't end with merely nabbing the accused, investigation and a trial. It should take into consideration the plight of the victim and his/her kith and kin. Sometimes, due to systemic failures, offenders remain unapprehended. That doesn't alleviate the suffering of the victim. Victim expects a mechanism for rehabilitative measures, including monetary compensation.<sup>21</sup> Even though the Supreme Court has widened the scope of Article 21 to include the right to compensation, Section 357A serves the purpose of victim assistance irrespective of criminal prosecution.

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<sup>20</sup> Criminal Appeal No.420 of 2012. Read more at: <http://www.livelaw.in/courts-duty-bound-award-just-sentence-effective-rehabilitation-victim-use-sec-357a-victim-compensation-model-supreme-court/>

<sup>21</sup> *Id.*

The case of Rohtash @ Pappu Vs. State of Haryana<sup>22</sup> was referred to by the Apex Court in discussing the rationale for compensation under Section 357 and 357A. It reminisced its earlier reasoning that:

*"..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."*

The judgement in the Suresh case<sup>23</sup> also touched upon the significant aspect of **interim compensation** that must be paid to the victim for urgent medical and other needs. It says that there is nothing in Section 357 and 357A of the CrPC that excludes the award of interim compensation. The Court dismissed the appeal of the appellant accused and awarded an interim compensation of Rs. 10,00,000 to the kin of the two deceased persons, to be paid by the Haryana Legal Services Authority. This is, thus, a landmark judgement that took into account international developments in the field of victim compensation and also paid regard to the recommendations of the Malimath Committee.<sup>24</sup>

The above study of laws and judgements brings to fore the point that even though there have been continuous development in the field of victim compensation, there is still a long way to go. The Calcutta High Court, as recent as in July 2017, is still reiterating the importance of the provisions contained in Sections 357 and 357A and

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<sup>22</sup> CrI.A. No. 250 of 1999

<sup>23</sup> *Supra note* 19.

<sup>24</sup> Committee on the Reform of Criminal Justice System; Read full report at [http://mha.nic.in/sites/upload\\_files/mha/files/pdf/criminal\\_justice\\_system.pdf](http://mha.nic.in/sites/upload_files/mha/files/pdf/criminal_justice_system.pdf); last accessed 08/11/2017

encouraging the lower courts to use the remedy of compensation more liberally for the benefit of the victim.<sup>25</sup>

### **Initiatives By The Executive**

The legislature can frame laws and the judiciary can interpret them, but the ultimate efficacy of a provision is determined when the executive implements it. The Central and the State governments have framed various schemes to this effect. In accordance with the requirement of Section 357A, all state governments have Victim Compensation Schemes in place<sup>26</sup> with Sikkim and Andhra Pradesh being the last one to join as late as in 2015. The Central Victim Compensation Scheme (CVCS) by the Union Ministry of Home Affairs also came into effect as recent as August 2015. The CrPC amendment Act in 2008 has, thus, finally become effective only recently.

However, on a **careful analysis of these schemes**, it comes to light that the number of victims benefitted under the schemes is extremely low. Except for Rajasthan scheme having benefitted 1153 victims, the next in order is Odisha and Haryana with only 245 and 190 beneficiaries. That is a far cry from the schemes being successful. With details of implementation not being available for a number of states, it is symbolic of the lack of attention and importance attached to these schemes.

Another major drawback remains the period of limitation within which an application for compensation must be made to the respective DLSA. Himachal

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<sup>25</sup> Apoorva Mandhani, *Victims Of Acid Attacks Before CrPC Amendment Entitled To Compensation: Calcutta HC*. (July 10, 2017), <http://www.livelaw.in/victims-acid-attacks-cr-p-c-amendment-entitled-compensation-calcutta-hc-read-judgment/>.

Live Law News Network, *Courts duty bound to award just sentence for effective rehabilitation of victim – Use of Sec 357A – Victim Compensation Model: Supreme Court*, (Feb. 15, 2015), <http://www.livelaw.in/courts-duty-bound-award-just-sentence-effective-rehabilitation-victim-use-sec-357a-victim-compensation-model-supreme-court/>

<sup>26</sup> For details, refer Victim Compensation Schemes in States

<http://ncpcr.gov.in/showfile.php?lang=1&level=1&sublinkid=1275&lid=1506>; last accessed 08/11/2017

Pradesh gives only 3 months' time while many others give only 6 months. With the current state of the administration, it is difficult to imagine a trial being concluded in a short time for the compensation to be recommended by the Courts. Even if the victim directly applies to the respective DSLA for compensation under Section 357A, the verification and recommendation of a police officer in-charge would also easily take longer than 3 or 6 months.

Lastly, the greatest obstacle in the way of a uniform victim compensation schemes is the disparity between the various states' amounts for the same crime. While the CVCS provides for a compensation of Rs. 3,00,000 for rape, Manipur and West Bengal award only Rs. 30,000. The CVCS has a sub-limit of Rs. 1,00,000 for rehabilitation of crime victims. Even though the amount is low, the existence is a step forward. As many as 13 states including Bihar, Goa and Haryana haven't earmarked any amount of victim rehabilitation at all. This shows that even though Victim compensation has gathered speed, rehabilitation remains a distant goal.

### Conclusion

It is clear beyond doubt from the above analysis that there are steps being taken in the right direction. There is increasing focus on the plight of the victim as a direct consequence of the development of Victimological discourse in India as well as at the international level. All pillars of the state- legislature, executive and judiciary - have exemplified constructive steps towards the welfare of the victims. However, there remains a lot to be done.

Firstly, there need to be laws in place that are uniform across the country. A victim of rape in Bihar suffers as much as one in Delhi but receive varying amounts in compensation. While some states make a provision for compensation for rehabilitation, other states don't. This puts victims in one state in a more disadvantageous position as compared to a victim in another.

Secondly, majority of the remedies discussed still remain discretionary. The writ petitions may result in compensation but not all crimes are violations of fundamental rights. Not all victims have the means to approach the High court or the Supreme Court with writ petitions for a remedy under Article 21. Also, not many

victims have the means to appeal to the higher courts under civil law for a remedy of compensation. The lower judiciary is the primary interface for the victims and they need to be sensitised about the existence and importance of the provisions in Section 357 and 357A for the benefit of the victim.

Lastly, it is necessary that not the state judiciary, but also the police machinery and public in general are sensitive towards the issue. Awareness needs to be raised about the existence and ways of implementation of provisions and state schemes.

No law exists in a vacuum. Law and society are intertwined and inalienable from each other. Any kind of legal change ought to be accompanied with social change for it to make a difference. Thus, it is also up to the society to be responsible and sensitive to the needs of the crime victim.