

DISTRICT COURT, BHANDARA
THIRD WORKSHOP

SUMMARY OF LEGAL WORKSHOP PAPER ON THE SUBJECT
“COMPENSATION TO VICTIMS(SECTIONS 357,357-A AND 357-B
OF CODE OF CRIMINAL PROCEDURE)”

Initially, the criminal justice system in India was focused on punishment as part of the crime without much attention on the suffering of victims of crime. The rights of prisoners were protected even after their conviction whereas little concern was shown for the rights of victims of crime.

Expressing concern for the plight of victims of crime Hon'ble Justice V.R. Krishna Iyar commented “ the criminal law in India is not victim oriented and the suffering of victim, often immeasurable are entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-product of crime i.e. the victim.”

No concern is shown for the poor victim of crime who is left to suffer the aftermath of his victimisation except awarding him monetary compensation in certain cases. In response to the UN Declaration, in India the Code of Criminal Procedure was amended in 2008 as to widen the definition of 'victim' as contained in Section 2(wa) of the Code. The term 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 includes his/her guardian

or legal heir.

The legislative framework regarding compensatory relief to victims of crime in India may be traced to the Code of Criminal Procedure. The Probation of Offenders Act, 1958 and the Motor Vehicles Act, 1988 also contain provisions for award of compensation to victims of crime. Besides these legislations, the constitutional scheme for compensatory victim is to be found in the form of decisions of the Supreme Court while interpreting fundamental rights or directive principles of State Policy or Articles 32, 136 and 142, when the Court may direct payment of compensation to victim's of crime.

Compensatory Provisions in Cr.P.C.

Sub-sections (1) and (3) of Section 357 of Cr.P.C. vest power in the trial Court to award compensation to victim of crime whereas similar power is conferred to the appellate and revisional court under sub-section (4). The Court may appropriate the whole or any portion of fine recorded from the offender to be paid as compensation to the victim of crime.

The compensation ordered to be paid under Section 357(1) may be for costs, damage or injury suffered or loss caused due to death or monetary loss incurred due to theft or destruction of property etc.

Sub-section (3) further empowers the court, in its discretion, to order the accused to pay compensation to victim of his crime, even though no fine has been imposed on him.

Under Section 357 an order of compensation can be passed by the trial Court, appellate Court or by the High Court or

Court of Session in revision, at the time of passing judgment, out of the fine imposed, in four cases.

(a) to the complainant, for meeting expenses properly incurred in the prosecution;

(b) to any person, who has suffered loss or injury by the offence, when he can recover compensation in a Civil Court.

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

(d) 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.

Sub-section (3), however, enables the Court to order payment of compensation even in cases where substantive sentence of imprisonment only is awarded.

The section must be taken to exclude those expenses in regard to which the Court has no discretion e.g. payment of Court and process fees.

The imposition of fine is a condition precedent to making an order under sub section (1). (*Pamula Saraswathi v. State of A.P., AIR 2003 SC 2416*). Compensation can be allowed only out of “whole or any part of the fine recovered.”. Any person is entitled to compensation for the loss or injury caused by the offence, and it includes the “wife, husband, parent and child” of the deceased victim. In awarding such compensation, the Court is to take into

consideration various factors such as capacity of the accused to pay, the nature of the crime, the nature of the injury suffered and other relevant factors. (*Sarwan Singh, 1978 Cr LJ 1598 : AIR1978 SC 1525*)

The payment of compensation must be reasonable. The quantum of compensation depends upon facts, circumstances, the nature of the crime, the justness of the claim of the victim and the capacity of the accused to pay. If there are more than one accused, quantum may be divided equally unless their capacity to pay varies considerably. Reasonable period for payment of compensation, if necessary by instalment, may be given. Where power of speech had been impaired permanently compensation to the victim was enhanced. (*Hari Kishan and State of Haryana v. Sukhbir Singh, 1989 Cr LJ 116 : AIR 1988 SC 2127*). Where a homeopath operated a lady for causing abortion and the lady died within few hours, the Supreme Court reduced the sentence of imprisonment but enhanced fine from Rs.5,000 to one lac, which was ordered to be deposited in a nationalised bank in the name of the minor son of the deceased. (*Jacob George (Dr.) v. State of Kerala, (1994) 3 SCC 430 : 1994 Cr LJ 3851 (SC)*)

The power to award compensation under section 357(3) is not ancillary to other sentences but it is in addition thereto. (*Balraj v. State of U.P AIR 1995 SC 1935 : 1995 Cr LJ 3219*)

Compensation for infringement of right to life under Art.21 is an appropriate public law remedy. It does not bar any additional claim for compensation under the private law or u/s 357, Cr.P.C. (*Sube Singh v. State of Haryana, AIR 2006 SC 1117 : 2006 Cr LJ 1242*)

In *Bhim Singh v. State of J. & K.*, AIR 1986 SC 498, the Apex Court observed that “compensation for illegal arrest and detention is an area which unearthed new doctrines pertaining to compensatory jurisprudence in India. In this case, the appellant was

a Member of the J.& K., Legislature Assembly who was arrested by the police in connivance with the local A.D.M. while on his way to attend the assembly session. He was maliciously and deliberately arrested and detained in police custody in order to prevent him from attending the assembly session. Allowing the petition, Justice Chinnappa Reddy, speaking for the Apex Court observed that where a person has been arrested and detained with a malicious and mischievous intent and his legal and constitutional rights are invaded, the malice and the invasion is not washed away by his being set free. The Court has the jurisdiction to order compensation to the victim. The State was therefore, directed to pay a compensation of Rs.50,000/- to the petitioner for the violation of his legal and constitutional right.

The question of award of compensation to a victim of rape came up for adjudication before the Supreme Court in the historic *Bodhisatva Gautam v. Subhra Chakraborty's*, AIR 1996 SC 922, case. The Court in this case noted :

“Rape is a crime not only against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is, therefore, a most dreaded crime. It is violative of the victim's most cherished right, namely right to life, which includes right to live with human dignity as

contained in Art. 21 of the Constitution.”

The Court ordered that the accused shall pay an interim compensation of Rs.1000/- per month to the victim (woman) of his crime (i.e. rape) during the entire period of trial proceedings. The Court further ruled that “compensation to victim under such conditions will be justified even when the accused was not convicted.

In *State of Maharashtra v. Christian Community Welfare Council of India*, AIR 2004 SC 7 (para 10), the Supreme Court was called upon to decide whether the compensation paid by the State to the victim can be recovered from the guilty officer. Hon'ble Justice Shri Hedge, speaking for the Court held that it will depend on the fact whether the alleged misdeed by the officer concerned was committed in the course of the discharge of his official duties and whether it was beyond or in excess of his lawful authority. If it was found that the appellant officers did cause the death of the deceased and exceeded their lawful authority, then they cannot escape the liability to compensate the heirs of the deceased victim.

In *R. Gandhi v. Union of India*, (2004) Cri.LJ 510 (Mad.), the District Collector of Coimbatore had recommended that the State Government shall pay Rs.33,19,003/- as compensation to those families of Sikhs and others living in Coimbatore, who were victims of arson and rioting in the wake of assassination of the former Prime Minister of India, Shri Rajeev Gandhi. The High Court of Madras, upheld the order of the District Collector. Hon'ble Justice Shri S.A.Kadar of the Court observed :

“Legally and morally by all canons of fair play, by all principles of justice, equity and good conscience, the State of Tamil Nadu is bound to pay compensation to victims as assessed and recommended by this senior officer i.e. the Collector of Coimbatore.”

In yet another landmark case on victim's compensatory relief, namely, D.K. Basu v. State of West Bengal, AIR

1997 SC 610, the Supreme Court, inter alia made the following observation :

“The monetary and pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for the redressal of the established infringement of the fundamental right to life of a citizen by the public servants. The State is vicariously liable to which defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State; which shall have the right to be indemnified from the wrongdoer.

In Delhi Democratic Working Women Forum v. Union of India, (1994) 4 Scale 608, seven military jawans raped six village girls who were travelling by train. The Court directed the Central Government to pay Rs.10000/- to each victim as compensation and ordered that the names and identity of the victimised girls be kept secret to save them from social stigma. The Court also directed the National Women Commission to prepare a rehabilitation scheme for such victims and expressed the need for setting up of a Criminal Injuries Compensation Board which should

decide the quantum of compensation to be paid to victims of rape after taking into consideration their shock, suffering as well as loss of earning due to pregnancy and the expenses of child birth, if caused as a result of rape.

In the case of SAHELI (a women social activist organisation) v. Commissioner of Police, Delhi, AIR 1990 SC 513, the Apex Court directed the Delhi administration to pay Rs.75,000/- as exemplary compensation to the mother of a nine year old boy who died due to beating by police officer while extracting information from him regarding the offence. The dispute in this case was related to the land lord (house owner) trying to oust the appellant (mother of the deceased boy) from his house and the police was allegedly favouring the land lord.

In the recent decision delivered on 28-11-2014 in Criminal Appeal No.420/2012 (Suresh & another vs. State of Maharashtra) the Hon'ble Apex Court has laid down that:

“ At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record the 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 factor as may be found relevant in the facts and circumstances of an individual case.”

It is significant to note that a new section 357-A has been inserted by Cr.P.C. (Amendment) Act,2008 (5 of 2009) with effect from December 31, 2009, which envisages 'Victim Compensation Scheme.' The section reads as under :

“357-A. Victim Compensation Scheme.-(1) Every State Government in coordination with the Central Government, shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal authority, as the case may be, shall decide the quantum of

compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of 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.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

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

(6) The State or District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available

free of cost on the certificate of the police officer not below the rank of officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority may deem fit.

While sub-section (1) is an enabling provision, sub-sections (2) to (6) prescribe the modalities for giving effect to the “victim compensation scheme”.

In State of *Rajasthan v. Sanyam Lodha*, (2011) 13 SCC 262, a public interest litigation was filed by a legislator and social activist complaining of arbitrary and discriminatory disbursement of relief under the Chief Minister's Relief Fund under the Rajasthan Chief Minister's Relief Fund Rules, 1999. It was alleged that during the period January 2004 to August 2005, challans/charge-sheets were filed in 392 cases relating to rape of minor girls, out of which, 377 minor girls did not get any relief or assistance from the Relief Fund; 13 were granted relief ranging from Rs.10,000 to 50,000; one victim (minor K) was given Rs.3,95,000/, and another victim (minor S) was given Rs.5,00,000. It was contended that when discretion vested in the Chief Minister in respect of the Relief Fund is exercised in a manner that 377 victims are ignored and 13 are paid amounts varying from Rs.10,000 to 50,000 and two victims alone are paid Rs.3,95,000 and Rs.5,00,000, it leads to inferences of arbitrariness and discrimination. It was further contended that disbursement of monetary relief to the victim cannot be in the absolute discretion or according to the whims and fancies of the Chief Minister, and grant of monetary relief under the Relief Fund should not become distribution of government largesse to a favoured few.

The High Court allowed the writ petition. It was of

the view that all minor victims of rape are required to be treated equally for the purpose of grant of relief by the Chief Minister under the Relief Fund. This was challenged by State before the Supreme Court.

Referring to Section 357-A of Cr.P.C., the Supreme Court observed that it requires every State Government, in coordination with the Central Government to prepare a scheme for providing funds for the purpose of payment of compensation to the victims who require rehabilitation (or who have suffered loss or injury as a result of the crime). This section also does not provide that

the compensation should be an identical amount. The victim may also sue the offender for compensation in a civil proceeding. There also, the quantum may depend upon the facts of each case. Therefore, the inference that the monetary relief awarded under the Relief Fund should be identical for all victims of rape under the age of twelve years, is illogical and cannot be accepted. Holding that whenever the discretion is exercised for making a payment from out of the Relief Fund, the Court will assume that it was done in public interest and for public good, for just and proper reasons.

Accordingly, the Supreme Court concluded that since the Relief Fund is expected to be utilised for various purposes, it may not be proper or advisable to grant huge amounts in one or two cases, thereby denying the benefit of the fund to other needy persons who are also the victims of catastrophes. The amount granted should therefore be reasonable, to meet the immediate need of coming out of the trauma/catastrophe. However, neither two payments of huge compensation from the Relief Fund can form the basis for issuing a

direction to pay similar amounts to other victims of rape, nor is it possible to hold that failure to give uniform ex gratia relief is arbitrary or unconstitutional.

In *Labha Singh v. State of Haryana, (2012)11 SCC 690*, the accused persons were of the age of 82 years, 72 years and 62 years respectively. The incident was of 1985 and the Supreme Court noticed that in the past 27 years, the accused persons have already undergone part of the sentence. The Supreme Court was of the view that sending the accused persons to jail after a lapse of such a long period would not be justified and ends of justice would meet if direction is given to each of the accused to pay Rs.1 lakh to the

complainant/injured persons. Accordingly, while reducing the sentence to the period already undergone by them, it was directed to the accused persons to deposit the said amount of Rs.1 lakh each before the trial court within two weeks, and the trial court was directed to disburse the amount equally among the injured persons.

The legislature has made responsibility as to payment of compensation to the victim to the District Legal Services Authority or the State Legal Services Authority as the case may be on recommendations from the Court on making proper inquiry. In exercise of powers conferred by section 357-A of Cr.P.C. the Government of Maharashtra in co-ordination with the Central Government has framed the scheme for the purpose of compensation to the victims or their dependents, who have suffered loss or injury as a result of a crime and who required rehabilitation which is called as the '**Maharashtra Victim Compensation Scheme, 2014**'. Under the said scheme '**dependents**' means – wife, husband, father, mother,

unmarried daughter, minor children and includes other legal heirs of the victim who on providing sufficient proof, is found fully dependent on the victim by the District Legal Services Authority.

Under this scheme there is provision of constitution of 'The Victim Compensation Fund from which amount of compensation under this scheme will be paid to the victim or their dependents'. State Government has to allot separate budget for the purpose of the scheme every year. It is also provided there-in that amongst other sources of Victim Compensation Fund the source i.e. the receipt of amount of fine imposed u/s.357 of the Code and ordered to be deposited by the Courts in the Victim Compensation Fund. As such, the Court can order the amount of fine imposed to be deposited with the victim Compensation Fund through District Services Authority which is to be maintained by the Maharashtra State Legal Services Authority.

Sections 357-B

Section 357-B provides that compensation payable to a victim shall be in addition to the payment of fine under Section 326-A or section 376-D of the Indian Penal Code. The need of this new provision was based on the corresponding insertion made.

(i) in section 326-A of the Indian Penal Code wherein it has been prescribed that any fine imposed under this section shall be paid to the victim. Simultaneously, the court has also been vested with power to ensure that the fine imposed must be just and reasonable to meet the medical expenses of the treatment of the victims:

(ii) in section 376-D of the Indian Penal Code wherein it has been again prescribed that any fine imposed under this section shall

be paid to the victim. Simultaneously, the court has also been vested with power to ensure that the fine imposed must be just and reasonable to meet the medical expenses and rehabilitation of the victims.

Insertion of this corresponding provision as section 357-B in the Code is meant to give effect to the abovementioned provisions of the Indian Penal Code, wherein fine is a necessary component of the sentence to be awarded to a victim of the said offence.

Sd/-

(S.R.Sharma)

District Judge-1 & Addl.Sessions Judge,
Bhandara.