



# **PENOLOGY**

# **SENTENCING POLICIES &**

# **COMPENSATION:**

नृपस्यपरमोधर्मःप्रजानामपरिपालनं  
दुष्टानि ग्रहनाम् नित्यमानित्यनाऊ विना  
हययाते

***“PROTECTION OF SOCIETY AND  
DETERRING THE CRIMINAL IS THE  
AROWED OBJECT OF LAW & THAT IS  
REQUIRED TO BE ACHIEVED BY  
IMPOSING AN APPROPRIATE  
SENTENCE”.***

# THEORY OF PUNISHMENT

## 1) **Corporal Punishment OR Physical Punishment:**

- A punishment intended to cause physical pain on a person. It is most often practiced on minors, especially in home and school settings. Common methods include spanking or paddling. It has also historically been used on adults, particularly on prisoners and enslaved persons..
- By the late 20th century, corporal punishment had been eliminated from the legal systems of most developed countries. Savage penalties are replaced by imprisonment, although capital punishment remained.

### ❖ **Cumulative punishment:**

- Punishment that increases in severity when person is convicted of the same offence more than once.

## 2) Retributive Theory (Vindictive Theory):-

- Intended to satisfy the community's retaliatory sense of indignation, provoked by injustice.
  - According to retributism, a criminal is thought to have a debt to pay to the society which is paid by punishment.
  - In the early period of all systems of code, the retribution for wrongs took precedence over the enforcement of rights.
  - A rough sense of justice demanded that a criminal should be punished with the infliction of proportionate loss and pain as he inflicted on his victim.
  - Therefore, "*lex talionis*" (an eye for an eye) was very prominent in ancient law.
- a) **Maximalist:-** Society has a duty, not just right to  
**(Immanuel kant)** punish a criminal, guilty, culpable.
- b) **Minimalist:-** In absence of guilt and culpability  
none should be punished.

### 3) **Preventive Theory:-**

- Intended to prevent a repetition of wrongdoing by disabling the offender through methods such as imprisonment, forfeiture, death punishment and suspension of the license..
- Preventive theory was supported by utilitarian law reformers because of its humanising influence on penal law. In their view, it is the certainty of law and its severity which has a real effect on offenders.
- The aim of punishment is to prevent others from committing similar offences.



#### 4) Deterrent Theory:-

- Intended to deter the offender and others from committing crime thereby warning likeminded people of consequences of crime.
- The concept of deterrence has two key assumptions:
  - Specific punishment imposed on offender could prevent the offender from committing further crime;
  - Fear of punishment could prevent others from committing similar crimes.
- Those who commit a crime, it is assumed, derive either a mental satisfaction or a feeling of pervert joy in the act. To neutralize this inclination of the mind, punishment inflicts equal quantum of suffering on the offender so that it is no longer attractive for him to carry out such committal of crimes.

# SENTENCING POLICY IN INDIA

- No structured sentencing guidelines either from legislature or Judiciary for predictability in the matter of sentencing particularly so far as those punishment under the Indian Penal Code (IPC) where for many offences only maximum punishment is prescribed and for some offences the minimum is prescribed. Of course, for Capital Punishment, detailed guidelines/mandate is in existence.
- Resultant Effect:
  - Lack of uniformity.
  - The Judge has wide discretion in awarding the sentence of course within the statutory limits.
  - In March 2003, The committee on Reforms of Criminal Justice System (*MALIMATH COMMITTEE*) by ministry of Home Affairs emphasized the need to introduce sentencing guidelines to minimize uncertainty.
  - In 2008, the committee on Draft National Policy on Criminal Justice (*THE MADHAVA MENON COMMITTEE*) reasserted the need for statutory sentencing guidelines.
  - As per October 2010 news report, the government was looking into establishing a “uniform sentencing policy” in order to ensure that judges do not issue varied sentences.

## **STATE OF PUNJAB V/S PREM SAGAR & OTHERS** **[(2008) 7 SCC 550]**

In this case, The Supreme Court held that:

- Indian judicial system has not been able to develop legal principles as regards sentencing.
- Some committees as for eg., Madhava Menon Committee & Malimath Committee have advocated introduction of sentencing guidelines.
- Whether the sentence granted be deterrent, reformatory or proportional depends upon facts & circumstances of a case.
- Guidelines in U.K-Two separate sources:-
  - Magistrate's association:-Road traffic offence guidelines for lower courts.
  - Court of Appeal:-For assisting Crown Court sentences in the disposal of particular types of offences, mainly the most serious forms of crime Which attract long prison sentences.
- The Crime and Disorder Act, 1998 created a Sentencing Advisory Panel (SAP):-a body with a diverse membership, to assist & advice the Court of Appeal in the promulgation of sentencing guidelines.
- The Sentencing Reforms Act of 1984 created US Sentencing Commission to promulgate binding sentencing guidelines in response to a regime of indeterminate sentencing characterised by broad judicial discretion over sentencing & possibility of parole.



# SUPREME COURT ON CAPITAL PUNISHMENT:

- **BACHAN SINGH V/S STATE OF PUNJAB**  
**(1980)2SCC684**

- what would constitute the “rarest of rare”
- broad illustrative guidelines given only when the option of awarding the sentence of life imprisonment is “unquestionably foreclosed”.
- Regarding (b): Whether death penalty serves any penological purpose.
  - 78. Firstly, in most of the countries in the world, including India, a very large segment of the population, including notable penologists, judges, jurists, legislators and other enlightened people still believe that death penalty for murder and certain other capital offences does serve as a deterrent, and a greater deterrent than life imprisonment. We will set out very briefly, by way of sample, opinions of some of these distinguished persons.
  - 81. *In Jagmohan Singh v/s State of U.P.*, [(1973) 1 SCC 20], also, this Court took due note of the fact that for certain types of murders, death penalty alone is considered an adequate deterrent.
  - 82. *In Ediga Anamma v. State of Andhra Pradesh*, V.R. Krishna Iyer, J., case [(1974) 4 SCC 443] speaking for the Bench to which one of us (Sarkaria, J.) was a party, observed that "deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime." It was further observed that "horrendous features of the crime and the hapless and helpless state of the victim steel the heart of law for the sterner sentence.

# Bachan Singh

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- 83. In *Shiv Mohan Singh v. State (Delhi Administration)* [(1977) 2 SCC 238] the same learned Judge, speaking for the Court, reiterated the deterrent effect of death penalty by referring to his earlier judgment in *Ediga Annamma's*, as follows:
  - In *Ediga Annamma* this Court, while noticing the social and personal circumstances possessing an extenuating impact, has equally clearly highlighted that in India under present conditions deterrence through death penalty may not be a time-barred punishment in some frightful areas of barbarous murder.
- 85. In *Trop v. Dulles* (1958) 356 US 86, *Brennan, J. of the Supreme Court of the United States*, concurring with the majority, emphasised the deterrent end of punishment, in these words:
  - Rehabilitation is but one of the several purposes of the penal law. Among other purposes are deterrents of the wrongful act by the threat of punishment and insulation of society from dangerous individuals by imprisonment or execution.
- 87. Now, we may notice by way of specimen, the views of some jurists and scholars of note. Sir James Fitzjames Stephen, the great jurist, who was concerned with the drafting of the Indian Penal Code, also, was a strong exponent of the view that capital punishment has the greatest value as a deterrent for murder and other capital offence. To quote his words.
  - No other punishment deters men so effectually from committing crimes as the punishment of death. This is one of those propositions which it is difficult to prove, simply because they are in themselves more obvious than any proof can make them. It is possible to display ingenuity in arguing against it, but that is all. The whole experience of mankind is in the other direction. The threat of instant death is the one to which resort has always been made when there was an absolute necessity for producing some result.... No one goes to certain inevitable death except by compulsion. Put the matter the other way. Was there ever yet a criminal who, when sentenced to death and brought out to die. would refuse the offer of commutation of his sentence for the severest secondary punishment. Surely not. Why is this ? It can only be because 'All that a man has will he give for his life'. In any secondary punishment, however terrible, there is hope; but death is death: its terrors cannot be described more forcibly.

## Bachan Singh

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- 93. This eminent social scientist, Prof. *Ehrlich* Whose views we have extracted, has made intensive study of the deterrent effect of capital punishment. Then, a result of his study was also published in the American Economic Review in June, 1975. He includes a specific test for the presence of a deterrent effect of capital punishment to the results of earlier studies. Messenger and Bittner in their Review Year-Book (ibid) have mentioned that Ehrlich has in his study<sup>2</sup> claimed to identify a significant reduction in the murder rate due to the use of capital punishment. A version of his study is said to have been filed with the United States Supreme Court, in the case of *Fowler v. North Carolina*.
- 99. The Law Commission of India in its 35th Report, after carefully sifting all the materials collected by them, recorded their views regarding the deterrent effect of capital punishment. In our view capital punishment does act as a deterrent.
- 101. We may add that whether or not death penalty in actual practice acts as a deterrent, cannot be statistically proved either way, because statistics as to how many potential murderers were deterred from committing murders, but for the existence of capital punishment for murder, are difficult, if not altogether impossible, to collect. Such statistics of deterred potential murderers are difficult to unravel as they remain hidden in the innermost recesses of their mind.
- 132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex & intractable issue.

# Bachan Singh

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- However, the Apex court also laid down the principle of weighing aggravating and mitigating circumstances:
  - 202. Drawing up the penal statutes of the States in U.S.A. framed after Furman v, Georgia, in general, and Clauses 2(a), (b), (c), and (d) of the India Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":
- **Aggravating circumstances** : A Court may, however, in the following cases impose the penalty of death in its discretion:
  - (a) if the murder has been committed after previous planning and involves extreme brutality; or
  - (b) if the murder involves exceptional depravity; or
  - (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed –
    - (i) while such member or public servant was on duty; or
    - (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or
  - (d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the CrPC, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

# Bachan Singh

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❖ 206. Dr. Chitale has suggested these mitigating factors:

❑ **Mitigating circumstances:-** In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:

- (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
- (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
- (4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.
- (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
- (6) That the accused acted under the duress or domination of another person.
- (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.
- Thus, Bachan Singh serves as a watershed moment in the history of death penalty jurisprudence in India as it severed Indian judiciary's normative ambivalence on the subject.



## **MACHHI SINGH & OTHERS V/S STATE OF PUNJAB**

• **(1983) 3 SCC 470**

- ❑ The Supreme Court of India followed the guidelines flowing from Bachan Singh's case and held that “death sentence could be imposed only in the rarest of rare cases when the collective conscience of the community is so shocked that it would expect the holders of judicial power to inflict the death penalty irrespective of their personal opinion as regards the desirability or otherwise of retaining death penalty as a sentencing option”.
- ❑ “Circumstances in which such a sentiment could be entertained by the community:
  - (1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
  - (2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

## Machhi Singh Case

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(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of "bride burning" or "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community"

# **Dhananjoy Chatterjee V/S State Of W.B )**

## **(1994 SCC (2) 220) (Death sentence)**

• The Apex court held that

- “Shockingly large number of criminals go unpunished thereby increasing, encouraging the criminals and in the ultimate making. justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.
- We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a "rarest of the rare" cases which calls for no punishment other than the capital punishment”.

# **Mohan Anna Chavan vs State Of Maharashtra**

## **(2008) 7 SCC 561**

### **[Rarest of the Rare Case (Death penalty)]**

- Two young girls- Less than 5 years & 10 years respectively.
- Made victim of sexual assault- Raped & Murdered.
- Not the first occasion when the appellant has been convicted for rape of minor girls. Before this raped a minor girl of less than nine years & sentenced to ten years rigorous imprisonment.
- Thus the Apex Court held that “depraved acts of the accused call for only one sentence that is death sentence”.

# **Santosh Kumar Satishbhushan Bariyar**

## **V/S State Of Maharashtra**

### **(2009) 6 SCC 498**

## **(Death Sentence turned to Life Imprisonment)**

- In this case, the appellant killed the victim, a young boy, whom he had kidnapped for ransom.
- Case exclusively based on evidence of approver or circumstantial evidence.
- Thus Hon'ble Supreme Court held that:
  - In all cases, including the most brutal and heinous crimes, circumstances pertaining to the criminal should be given full weight.
  - “Only when criminal cannot be rehabilitated in the society, death penalty can be contemplated in the rarest of rare case. It cannot determine punishment on grounds of proportionality alone”. Thus not only doctrine of proportionality but also doctrine of rehabilitation should be taken into consideration, particularly in view of Section 354(3) Crpc, which must be r/w Article 21 of the Constitution.
  - Thus commuted the death sentence, imposed by the Bombay High Court, to rigorous imprisonment for life as, in its view, the mitigating factors in the case were sufficient to take it out of the “rarest of rare” category.



- **MUKESH V/S STATE (NCT OF DELHI) & OTHERS**  
**[Nirbhaya Rape Case]**  
**(2017) 6 SCC 1**

- In the instant case, the brutal, barbaric gage rape, unnatural sex & assault leading to death of victim.
- Principles of balancing of aggravating & mitigating circumstances applied & death sentence confirmed even though there were many mitigating factors.

- **Aggravating Circumstances:-**

- i. Diabolic nature of the crime & the manner of committing crime:
  - In committing gage rape with victim;
  - Forcing her to perform oral sex;
  - Injuries on the body of the deceased by way of bite marks;
  - Insertion of iron rod in her privates parts & causing fatal injuries to her private parts & other internal injuries;
  - Pulling out her internal organs which caused sepsis & ultimately led to her death;
  - Throwing victim & the complainant naked in the cold wintery night & trying to run bus over them.
- ii. The brazenness & coldness with which the acts were committed in the evening hours by picking up the deceased & the victim from a public space- reflects the threat to which the society would be posed to, in case the accused are not appropriately punished. More so, it reflects that there is no scope of reform.
- iii. The horrific acts reflecting the inhuman extent to which the accused could go to satisfy their lust, being completely oblivious, not only to the norms of the society, but also to the norms of humanity.
- iv. The acts committed so shook the conscience of the society.

- **Mitigating Circumstances:**

- a) Family circumstances such as poverty & rural background;
- b) Young age;
- c) Current family situation including age of parents, ill-health of family members;
- d) Absence of criminal antecedents;
- e) Conduct in jail; &
- f) Likelihood of reformation.

- Per Banumathi, J. (concurring), Due to international obligations, courts while closing the shutter of deterrent approach of sentencing in India, the small window of 'award of death sentence' was left open in the category of 'rarest of rare case'.

As per latest sentencing policy, courts have to choose between either death sentence or life imprisonment or a sentence in between two i.e. a fixed term sentence above 14 yrs.

Though earlier approach concerned crime & criminal, presently, rights of victim & their family & social perception & abhorrence towards crime in context is also taken into account.

Under new sentencing principle, courts sometimes find balance toward death sentence more appropriate considering nature of crime, rights of victim & victim's family, societal perception & aggravating circumstances even if there are mitigating circumstances like poverty, young age, non-criminal antecedent, dependent parents, brothers or sisters, post-crime remorse & good conduct in prison.

- Held, question of awarding sentence is a matter of discretion. Protection of society & deterring the criminal is the avowed object of law. Court should impose such sentence which reflects societal conscience.

## 5) Reformative Theory:-

- This theory is the most humane of all the theories which aims to reform the legal offenders by individual treatment.
- The idea behind this theory is that no one is a born Criminal and criminals are also humans.
- Under this theory, it is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens.
- The reformative theory is also known as **rehabilitative sentencing**.
- The purpose of punishment is to “reform the offender as a person, **so that he may become a normal law-abiding member of the community once again.** Here the emphasis is placed not on the crime itself, the harm caused or the deterrence effect which punishment may have, but on the person and the personality of the offender.”

# RESTITUTIVE OR RESTORATIVE JUSTICE

- Roots in the criminal justice system during 1970s.
- Definition of Restorative justice given by **Tony Marshall** states that:
  - “Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence & its implication for the future”.
- It largely emphasises on the principles such as:
  - Holding the offender accountable in a more meaningful way.
  - Repairing the harm caused by the offence.
  - Achieving a sense of healing for the victim & the community.
  - Reintegrating the offender back into the community.

# VICTIM

- The word “victim” arises from the Latin “victima”- term used to describe animals sacrificed in religious ceremonies (Oxford Latin Dictionary, 1982).
- By the late 17<sup>th</sup> century, the English Language incorporated the word “victim”, apparently under the influence of Rhemish translators of the bible (Nash andrew, 2008).
- Etymological, it would mean or will encompass:
  - Anyone suffering physical, emotional or financial harm as a direct result of a crime;
  - Spouses & children of the person who has suffered;
  - Parents, foster parents, siblings, guardian or other custodians of minor victims, mentally or physically incapacitated victims or victims of homicide.
- Victim of crime means & include person who has suffered harm, including i) physical or mental injury, ii) economic loss & iii) emotional sufferings etc. out of the commission of a crime.
- **Types of Victim:**
  - **Primary Victim:** Died as a direct result of an act of violence being committed against him.
  - **Secondary Victim:** A person who is injured as a direct result of witnessing as act of violence against another person. It includes i)related victim who is a close family member, or ii) a dependant, of a primary victim.



# COMPENSATION AS A RIGHT OF VICTIM & ITS HISTORICAL CONTEXT

## The **initial year of human civilization**:

- When the human started living together especially after Stone Age, right to punish was with individual.
- Criminal victim relationship was based on brutal mentality of attack being the best defense.

## In **12<sup>th</sup> & 13<sup>th</sup> centuries**, a distinction was made between various kinds of wrongs:

- i) Civil Wrongs : The injury was specific to the individual; hence the perpetrator was necessitated to pay compensation.
- ii) Public Wrongs: The offence affected the public at large, State took responsibility upon itself to punish the accused.

- **Manu Smriti**: Compensation is payable to a victim for physical injury as well as injury caused by damages of property or goods.
- Due to advent of concept of **Collective Responsibility**, clan or tribe started replacing the victim's right.
- With the advent of **strong monarch after medieval period**:
  - On one hand: Criminal law saw far reaching change:
  - On other hand: Position of victim right to compensation remained unheard.
- With the advent of **democracy**, the cause of victim remained unnoticed until 1950.
- With the stirrings of the **Prison Reform Movement in Europe during 19<sup>th</sup> century**, this position changed. Doctrine of State Compensation to victim again attracted attention of sociologists & jurists.
- **Modern approach** of victimology acknowledge that a crime victim has right to be adequately compensated, rehabilitated & repaired irrespective of identification & prosecution of offender & the payment of such compensation should be made by state. (O' Connell Fiona & Mulvenna, 2011).

# INTERNATIONAL NORMS & STANDARDS

- I. The General Assembly United Nations Declaration of Basic Principles of Justice for Victims of Crime & Abuse of Powers 1985 by the General Assembly.
    - Declaration played a vital role from “Criminal Justice System” to “Victim Justice System”. Known as “Magna Cart”.
    - Required holistic approach.
    - Calls for strengthening & expanding funds for compensating victims of crime including the necessary material, medical, psychological & social assistance through governmental, voluntary, community based & indigenous means.
  - **Article 1** of the Declaration defines victim of crime as “Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws”.
  - **Article 2** of Declaration: “ A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted & regardless of the familial relationship between the perpetrator & the victim. The term “victim” also included, where appropriate, the immediate family or dependants of the direct victim & persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.
- 
- II. Principle 8, UN Resolution No. 40/34 of 29/11/1985 provides that “the offenders should make fair restitution to victims, their families or dependants & restitution should be part of the sentencing in criminal cases.

# Four ways for compensating victims under Indian Law:

- 1) Writ Jurisdiction (**Article 226**)
- 2) Criminal procedure Code 1973:-
  - Section **357**.
  - Recommendations of the Law Commission of India in the 41<sup>st</sup> Report 1969, accepted as under Section 357.
  - Criminal Procedure (Amendment) Act 2008:-
    - The 14<sup>th</sup> Law Commission in its 154<sup>th</sup> Report suggested a comprehensive Victim Compensation Scheme & an amendment in Criminal Procedure Code is made by way of Section **357-A**.
- 3) Fatal Accidents Act, 1855.
- 4) Tort.

## **Scope of Compensation in Bangladesh:**

The Code of Criminal Procedure, 1898: Section 545(1) states about Compensation. Criminal Court may order the whole or any part of the fine in the payment of compensation to the victim of crime.

## **Indian Constitution**

### **□ Fundamental Rights (Part III)**

▪ Article 21: Guarantee against unjustified deprivation of life & liberty.

### **□ Directive Principles of State Policy (Part IV)**

▪ Article 41: State shall make effective provision for “securing public assistance in cases of disablement & in other cases of undeserved want”.

□ Article 51 A – **Fundamental Duty** of every citizen to have compassion for living creatures & to develop humanism.

# **SUPREME COURT OF INDIA ON RESTITUTIVE JUSTICE**

**HARI SINGH V/S SUKHBIR SINGH & OTHERS**

**[(1988) 4 SCC 551]**

**(section 357 of CRPC)**

- ❖ The Apex Court held that:
  - The power of courts to award compensation to victims under Section 357, While passing judgment of conviction, is not ancillary to other sentences but is in addition thereto.
  - Therefore, all the courts are recommended to exercise the power liberally so to meet the ends of justice in a better way.
  - In appropriate cases order for compensation instead of deterrent sentence of imprisonment would be more justifiable.
  - Award of compensation to victims should be reasonable. Reasonableness of the compensation would depend upon facts & circumstances.

- **Nilabati Behra V/S State of Orissa**  
**(1993) 2 SCC 746**

- The son of the petitioner was taken in police custody from his home and was later found dead with bodily injuries on a railway track the next day.
- The Supreme Court, while directing the State of Orissa to pay a sum of Rs. 1,50,000 as compensation to the Petitioner and Rs. 10,000 as costs to the Supreme Court Legal Aid Committee, observed:
  - “10.... award of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.”
  - 21.... An enforceable right to compensation under Article 9(5) of the International Covenant on Civil and Political Rights is consistent with the concept of enforcement of guaranteed right.
- According to Justice Verma, the award of compensation for infringement of fundamental right guaranteed by the constitution is justified;
  - (1) Where the award of monetary compensation is the only practicable mode of redress available for the infringement made by the State or its servant in the purported exercise of their powers, and
  - (2) The enforcement of the fundamental right is claimed by Resort to the remedy in public law under the Constitution by recourse to Article 32 and 226 of the Constitution.



## **Delhi Domestic Working Women's Forum V/S Union of India** **[(1995) 1 SCC 14]**

### **(Writ Petition under Article 32 of Indian Constitution) (Rape Victims)**

- Public interest litigation invoked to espouse the pathetic plight of four domestic servants who were subject to indecent sexual assault.
- Direction to set up a Criminal Injuries Compensation Board for rape victims within 6 months.
- Board to give compensation whether or not conviction takes place.
- The Supreme Court explained the justification for this proposal as under
  - “It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape” .....

#### **USA:**

- Federal Act named Victim of Crime Act (VOCA) 1984-Which provides crime victim fund.
- Crime Victim's Rights Act (CVRA) Which is part of the United States Justice for All Act of 2004.

#### **UK:**

- A series of non-statutory schemes were administered by the Criminal Injuries Compensation Board.

## **Criteria for awarding Compensation:**

- Type & severity of the bodily injury suffered by the victim.
- Expenditure incurred or likely to be incurred on medical treatment & psychological counselling to the victim.
- Expenditure consequential on pregnancy, if resulting from rape including expenses connected with abortion, if it is resorted to, in consequence to rape.
- Expenses incurred or likely to be incurred in connection with any education or professional or vocational training for self employment to the victim.
- Loss caused to the victim by cessation or interruption of gainful activity or employment.
- Non pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience.
- Expenses incurred in connection with provision of any alternate accommodation in cases where the victim belongs to any other place other than the place where the offence took place.

# **Bodhisattwa Gautam V/S Subhra Chakraborty**

## **(1996) 1 SCC 490**

### **(Interim Compensation)**

- The petitioner married the victim by putting vermilion on her forehead before the deity & accepted her as his wife & impregnated her twice resulting in abortion on both the occasions & refused to recognize her as his wife.
- A quashing petition when turned down by the High Court in relation to the FIR. The Supreme Court, on its own (suo moto), awarded interim compensation to the respondent, a rape victim, while exercising its inherent power.
- It directed the petitioner to pay a sum of 1000 every month to respondent as interim compensation during the pendency of the criminal case & also directed the petitioner to pay arrears of compensation at the same rate from the date on which the complaint was filed till date.
- This initiated for the victims of sexual assault, interim compensation even during pendency of the criminal trial.

# Chairman Railway Board and Ors V/S Chandrima Das and Ors

## (2000) 2 SCC 465

### **(Illustrative Trend started for awarding justice to victim of Crime)**

- In this case, Apex Court gave a very expansive definition of “life” by bringing it at par with the interpretation of “life” in the Universal Declaration of Human Right.
- The facts of the case are as follows:
  - Victim was a national of Bangladesh who arrived at Howrah station to catch a train for Ajmer.
  - Being new to the busy railway station, she was misled by some employees of the railways and was ultimately taken to a room in the Railway Yatri Niwas which had been booked by some railway employees previously & she was raped by the railway employees.
  - In view of the hue and cry raised by her, she was rescued by the police.
  - Ms Chandrima Das, a practicing advocate of Calcutta High Court, filed a public interest litigation (PIL), asking for compensation for the victim.
  - A division bench of Calcutta High Court, after hearing the parties, granted compensation of **10 lakhs** to be paid to the victim by the Union of India, of which the railways is a wing.
- Challenging the said judgment, the chairman of the Railway Board approached the Supreme Court.
- Upholding the High Court judgment, the Supreme Court laid down that “In view of the expanding horizon of Article 14 read with other articles, every executive action of the government is now amenable to the scrutiny of the writ jurisdiction of the high court and the Supreme Court in appropriate cases”.
- “The writ jurisdiction of the high court is wide enough to be extended in the realm of tort in the matters of granting compensation to a victim who had suffered personal injuries at the hands of the officers of the government”.
- “Public functionaries are involved in matters of invasion of fundamental rights or of enforcement of public duties, the remedy of compensation by writ is available. A case of rape does not merely violate an ordinary right of a victim but it violates a fundamental right to life of the victim and such a right is protected under Article 21 of the Constitution”. Other nationals would also have protection under the Right to life.(Article 21).

# **M. S. Grewal & Anr V/S Deep Chand Sood & Anr**

**AIR 2001 SC 3660**

## **[(Fatal Accident Act) (Section 1 & 2A) & Law Of Tort]**

- Children allowed to play in danger zone of water without any caution or warning being sounded.
- Death of 14 students by drowning was caused by rash & negligent acts of teachers.
- The Apex Court observed in this case that:

32. In the decision of *Susamma Thomas* (1994) 2 SCC 176, this Court in paragraphs 7 & 8 of the report observed:

- 7. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death. How much has the widow and family lost by the father's death? The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* [1942 AC 617] which says:
  - The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.
  - 8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent. Thus except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages. (Per Lord Macmillan in *Davies v. Powell*) Lord Wright in the same case said, The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death. These words of Lord Wright were adopted as the principle applicable also under the Indian Act in *Gobald Motor Service Ltd. v. R.M.K. Veluswami* [AIR 1962 SC 1] where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.
- Award of compensation at Rs.5 lakhs to each parents of 14 students who died in incident is not excessive. Grant of 6% simple interest from the date of judgment of High Court awarded.

## Suo Moto V/S State of Rajasthan 2005 Law Suit(Raj) 334

- Rape on a foreign (German) lady tourist.
- Rajasthan High Court suo moto took cognizance under Article 226 of the Indian Constitution.
  - 6.9.1 ...In the United States the Supreme Court ruled that consideration of Victim Impact Statements during sentence hearing was Constitutionally permissible [Payne v. Tennessee, III S. Ct. 2597 (1991)]. This enabled victims to describe the extent of any physical, emotional, or psychological effects caused by the crime. Eventually in U.S., Victim Impact Statements became part of plea bargains and parole hearings....
- Thus Rajasthan High Court held that:
  - 42 . In the instant case, the German tourist is not a citizen of India, but she being a tourist, entitled to all the constitutional rights available to a citizen so far as 'right to life' is concerned. She is entitled to be treated with dignity and is also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she cannot be subjected to a treatment which is below dignity, nor could she be subjected to physical violence at the hands of anybody. In this case, it is not merely a matter of violation of an ordinary right of a person, but the violation of fundamental rights is involved.
  - The State of Rajasthan is directed to pay compensation of Rs. 3 lacs to the victim German tourist.

Fundamental Rights under Indian Constitution available to both citizens & foreigners except enemy aliens:

Article 14, 20, 21, 21A, 22, 23, 24, 25, 26, 27 & 28.

## **Delhi Jal Board V/s National Campaign Etc. & Ors**

**(2011) 8 SCC 568**

**(Article 32 & 226)**

- Before the Apex Court the following question arise for consideration:
  - Question 3: “Whether the High court was justified in issuing interim directions for payment of compensation to the families of the victims”?
- Thus held by the Apex Court:
  - Negligence of State authorities in ensuring safe working conditions.
  - Death of sewage worker due to lack of safety measures.
  - Compensation of Rs 1.5 to Rs 2.25 lakhs granted by High Court to victim’s families.
  - High Court should have awarded compensation which could be treated as reasonable.
  - Principle for award of compensation in *Chandrima Das case*, should have been applied by High Court.
  - Award of compensation enhanced to Rs 5 lakhs.



## ANKUSH SHIVAJI GAIKWAD V/S STATE OF MAHARASHTRA (Victimology)

**(2013) 6 SCC 770 (Section 357 & 357-A Crpc)**

- This case has been an eye opener in victim jurisprudence, an essential insertion in progressive interpretation and flagship in economic rehabilitation of sufferers.
- Hon'ble bench consisting of J. Thakur T.S. and J Gyan Sudha Misra laid down the proposition that
  - *“While the award or refusal of compensation under Section 357 of Code of Criminal Procedure, 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”(emphasis supplied)*
- Award of compensation to victim(s) of crime or their dependants under S. 357 CrPC - Factors to be considered :-The amount of compensation is to be determined by the courts depending upon the facts and circumstances of each case, the nature of crime, the justness of the claim & the capacity of the accused to pay.

Drawn from *Delhi Domestic Working Women's Forum Case* that “Court should furnish reason for not ordering compensation”

- Approach has shift from retribution to restitution of victims.
- Developing of law in many countries across the world providing for restitution of victims by criminal courts that was earlier in domain of civil courts.
- Recognition of rights of victim by UN General Assembly.
- Introduction of Section 357 in Crpc for payment of compensation to victims of crime.
- Introduction of S. 357-A vide Act 5 of 2009 to further strengthen victim's rehabilitation.
- Failure of Indian courts in recognising such rights and giving effect to the provisions of S. 357, deprecated.
- Held mandatory duty of criminal court to apply mind to the question of awarding compensation in every criminal case.

In **JITENDRA SINGH V/S STATE OF UP (2013) 11 SCC 193**, view taken in the case Ankush shivaji Gaikwad was applied and remand back the matter to jurisdictional Juvenile Board constituted under the JJ Act 2000 for determining the appropriate quantum of fine that should be levied on appellant and compensation to be awarded to family of the deceased.

- **Raman vs Uttar Haryana Bijli Vitran Nigam Ltd.**  
**(2014) 15 SCC 1**  
**(Personal injury due to negligence) (Law of Tort).**

- A 5 year old boy electrocuted resulting in amputation of his both arms upto armpit & left leg upto Knee. It was 100% permanent disability.
- Tort Law: Award of Compensation: Thus held Compensation once awarded, belongs to victim, even if victim dies, legal heirs or representative would be entitled to such compensation.
- The Supreme Court of India awarded compensation of Rs.60 lakhs to a child who suffered injuries due to negligence of electricity authority.

## **Indian Woman Says Gang-Raped on Orders of Village Court Published in Business & Financial News: IN RE: (2014) 4 SCC 786**

- Hon'ble Supreme Court, by taking suo motu action on basis of newspaper report, called for reports from District Judge.
- Gang rape of women to purportedly save honour of community/caste.
- Lapses on part of State in taking preventive measures as also procedure safeguards provided for women under CrPC & in protecting victim's fundamental rights.
- **Held:**
  - State has bounden duty to protect fundamental rights of victim which it failed to do.
  - Courts & police should also be vigilant in ensuring effective implementation of amended procedural rights provided to women under CrPC so as to instil sense of security & confidence in them.
  - State machinery should work in harmony & police should work in more organised & dedicated manner.
  - Interim Compensation of Rs. 5 lakhs should be given to victim by State in addition to Rs. 50000 already sanctioned by State Govt. Under Victim Compensation Scheme.
  - Victims also entitled to benefits provided under S. 357-A & S. 357-B CrPC.
  - Other benefits such as rehabilitations, long term measures for safety & security of victim her family.

- **Suresh V/S State of Haryana (2015) 2 SCC 227**  
**(Section 357 & 357-A Crpc)**

➤ In this case, Apex Court referring to the case of *Abdul Rashid V/S State of Odisha*, wherein it was observed:

- 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 Shivaji Gaikwad V/S State of Maharashtra*, the matter was reviewed by the Hon’ble Supreme Court with the reference to development in law & 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.

➤ Thus held by the Apex Court:

- 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.
- Interim compensation to family of murdered victims. State is liable to pay interim compensation of Rs 10 lakhs.

## **V. Krishnakumar V/S State of Tamil Nadu & Others**

### **(2015) 9 SCC 388**

### **(Tort Law)**

- The Supreme Court ordered the Tamil Nadu government to pay Rs. 1.3 crore to a Chennai-based family whose prematurely-born girl child lost her eyesight due to lack of neo-natal medical care provided at a government hospital in Chennai.
- It further ordered the State government to pay Rs. 42.8 lakh as re-imbursement of medical expenses suffered by the family for the years of treatment.
- **Quantification of Compensation:**
  - 19..The principle of awarding compensation that can be safely relied on is restitutio in integrum. This principle has been recognized and relied on in Malay Kumar Ganguly vs. Sukumar Mukherjee, (2009) 9 SCC 221 and in Balram Prasad's case , in the following passage from the latter:
    - “170. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong. (See Livingstone v. Rawyards Coal Co.).”
  - An application of this principle is that the aggrieved person should get that sum of money, which would put him in the same position if he had not sustained the wrong. It must necessarily result in compensating the aggrieved person for the financial loss suffered due to the event, the pain and suffering undergone and the liability that he/she would have to incur due to the disability caused by the event.



# **Laxmi v/s Union of India & Others**

## **(2016) 3 SCC 669**

### **(Acid attack Victim)**

- Issued notices to the Centre as well as the State Governments on a plea for framing rehabilitation policy for acid attack victims.
- Directed the crime to be made a non-bailable offence and had increased the compensation amount to Rs. 3-lakhs for the victims.
- Cost of treatment of acid attack victims to be governed by S. 357-C CrPC.
- Free medical treatment by private hospitals.
- Setting up of a Criminal Injuries Compensation Board for acid attack victims.
- Since District Legal Services Authority is already constituted for acid attack victims, it may not be necessary to set up a separate Criminal Injuries Compensation Board, as multiplicity authorities need not be created.
- Photo identity card containing residential address issued by authorities concerned would be required for purchasing such substances which in any case cannot be sold to a person who is below 18 years.

# SENTENCING POLICY IN NEGOTIABLE INSTRUMENT ACT 1881

## Pre 2002 Amendment;

- Section 4 of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, inserted Chapter XVII in the Negotiable Instruments Act, 1881
- Punishment of imprisonment that **may** extend to a period of **ONE YEAR** or a fine which **may** extend to **twice the amount of the cheque OR BOTH**
- In ***Goa Plast (P) Ltd. vs. Chico Ursula D'Souza (2003.)***
  - In this case the Trial Court as well as the High Court have acquitted the respondent by holding that the **petitioner (complainant) failed to prove the liability**
  - However, the Hon'ble Supreme Court held that **it has to be presumed that a cheque is issued in discharge of any debt or other liability** under Section 139 and **to rebut the said presumption is on the drawer**, thereby, holding that the respondent has committed the offence
  - This transaction, having taken place between the parties in **1993**, stands applicable within the purview of S. 138 **as it stood at the relevant time, where it is stated that (pre 2002) sentence may include imprisonment extending up to one year or a fine which may extend to twice the amount of the cheque**
  - The respondent was granted one month's time to pay a sum of Rs. 80,000 (twice the amount of cheque), and in default, thereof, respondent shall suffer simple imprisonment for 6 months

# **2002 AMENDMENT TO NEGOTIABLE INSTRUMENTS ACT 1881**

## ➤ **Post 2002 Amendment;**

- The post 2002 amendments were put in as safeguards against the **unnecessary** harassment of honest drawers
- Amendment states that punishment of imprisonment may now extend to a period of **TWO YEARS** or be fined up to twice the amount of the cheque or BOTH
- In case of any conviction in **summary trial**, the Magistrate may pass a sentence of imprisonment for a term **NOT EXCEEDING one year AND a fine amount EXCEEDING 5,000 rupees.**
  - Provided when at the commencement of, or in course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing parties, **recall any witness who may have been examined & proceed to hear or rehear the case.**

### **Dilip s. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr [(2007) 6 SCC 528]**

- DIFFERENTIATES between **fine** and **compensation**, **although, in a way it seeks to achieve the same purpose.**
- An amount of compensation can be directed to be recovered as a “fine” but the legal fiction raised is in relation to recovery of fine only, it is in that sense “ fine” stands on a higher footing than compensation awarded by the court.
- Thus held, when fine is not imposed, compensation can be directed to be paid under S. 357(3) CrPc for loss or injury caused to complainant.
- Sub Section 3 of S. 357 does not impose any limitation but the powers thereunder should be exercised only in appropriate cases.
- When fine is imposed, the fine or a part thereof can be directed to be paid as compensation under S. 357(1)(b) CrPc.
- It was enunciated that the amount of compensation sought to be imposed must be reasonable & not arbitrary.
- Before issuing a direction to pay compensation the capacity of the accused to pay the same must be judged.

### **R. Vijayan vs. Baby and Anr [(2012) 1 SCC 260]**

- ADDRESSES THE PAYMENT OF SUFFICIENT COMPENSATION NECESSARY
- Supreme court stressed on the need of ordering adequate compensation in all cases of conviction under S. 138 of NI Act, holding that the apparent intention is to ensure that not only the offender is punished but also ensure that the complainant invariably receives the amount of cheque by way of compensation UNDER S. 357 (1) (b) OF THE CODE
- The court held that as the provisions of chapter XVII of the Act strongly lean towards **grant of reimbursement of the loss by way of compensation**, the court should, unless there are special circumstances, in all the cases of conviction, uniformly EXERCISE THE POWER TO LEVY FINE UPTO TWICE THE AMOUNT OF CHEQUE and **direct payment of such amount as compensation**

# PURPOSE OF IMPRISONMENT

## ➤ *Somnath Sarkar vs. Utpal Basu Mallick and Anr* (2013)16SCC 465

### ❑ The underlying purpose of imprisonment under S. 138

- The court maintains that “...the threat of jail is only a mode to ensure recovery”
- Unlike other crimes, the punishment in S. 138 is more to ensure payment rather than for retribution
- The excessive amount of cases related to dishonouring cheque payments have choked the criminal justice system and the two year imprisonment term is a means to ensure quick recovery of payment
- While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a ‘fine which may extend to twice the amount of the cheque’ serves a compensatory purpose.

### ❑ Courts are not empowered to grant compensation under S. 138 NI Act but empowered to levy a maximum fine of not more than double the amount of cheque amount

- Thus High court erred in directing payment of additional amount of Rs 69,500 as compensation, albeit in lieu of imprisonment, in addition to fine of Rs. 80,000.
- High Court ought to have determined amount of fine to be levied in first instance, & then fixed compensation that was paid from fine so levied.

# **COMPENSATION**

## ***Krishnakant Parmanand Sharma V/s State of Gujarat & 1*** **[ 2015 LawSuit (Guj) 2736 ]** [Criminal Revision Applications 697 of 2013 & 434 of 2014]

In the instant case the respondent was found guilty of offence punishable u/s 138 of the NI Act. Hence, the trial court had awarded compensation under section 357(3) of the CrPC to the tune of Rs.4,95,000/-, over and above the punishment of RI for two months and fine of Rs. 5,000/-.

The said order was challenged by way of filing a Criminal Appeal, wherein the Appellate Court had confirmed the order of conviction as well as award of compensation but the sentence was reduced to 'till the rising of the court”.

Hence, the instant Revision Applications were filed in the High Court,

Wherein the High Court had partially upheld the order of the trial court, i.e. payment of amount of Rs. 4,95,000/- as compensation u/s 357(3) of Cr.P.C.;

Set aside the order of the Appellate Court reducing the sentence “till the rising of the court” and modifying the order of the trial court awarded the sentence of SI for two months;

**And most importantly, directed that the respondent shall pay the fine to the tune of double the amount of the cheque and also the applicant shall be paid an additional amount of Rs. 5,00,000/- from the amount of fine, over and above the receipt of amount of compensation (i.e. Rs. 4,95,000/-) by the applicant earlier.**



# RECOVERY OF COMPENSATION UNDER NI ACT

- **Kumaran V/S State of Kerala (2017) 7 SCC 471**
- Facts of the case:
- Cheque amount was Rs 2,75,000.
- Accused was sentenced to SI of 4 months under S. 138. Further, accused was directed to pay compensation of Rs 2,75,000 under S.375(3) of CrPc. And in default of payment of compensation, imprisonment of 1 month.
- This sentence challenged before Sessions Court: Sessions Court reduced the sentence from 4 months to imprisonment TRC. Default imprisonment was sustained.
- Accused undergone imprisonment for 1 month for default to pay compensation.
- Complainant filed petition under **S. 421 of CrPC for realisation of compensation.**
- Held:
- **Recovery of compensation, whether or not fine is imposed, despite accused serving imprisonment for default thereof, without any need of recording special reasons.**

## REFERENCE WITH THANKS

- 1) SOMA SUNDARAM, P. MADHAVA, (2008) *Crime Victims And Justice*.
- 2) ROGER E. MEINERS, *Victim Compensation*. Lexington Books.
- 3) HOYLE, CAROLYN, Vol. II & III *Restorative Justice*.
- 4) FHAMEDA QUDDER, *Crime Victims' Right to Compensation in Bangladesh: A Comparative Approach*  
<https://eujournal.org/index.php/esj/article/download/6614/6318>
- 5) GIRISH KESAVA PILLAI, [2012] 2.1 NULJ 1. *Restorative Justice In India: An Overview*.
- 6) DR. ADESH KUMAR, [2012] 3 GNLU L. Rev. (April) 93. *Compensation For Victims Of Crime Under Indian Legal System*.
- 7) Revised Scheme For Relief And Rehabilitation Of Victims Of Rape  
<[ncw.nic.in/pdf/files/scheme\\_rape\\_victim.pdf](http://ncw.nic.in/pdf/files/scheme_rape_victim.pdf)>.

