



# VICTIM COMPENSATION

**JUSTICE N. KOTISWAR SINGH**  
*Chief Justice (Acting), Gauhati High Court*

# Who is a Victim?

**UN Declaration of Basic Principles of Justice for victims of crime, including those law proscribing criminal abuse of power, 1985**

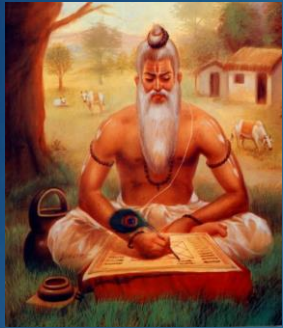
- Persons who individually or collectively have suffered harm including physical and mental injury emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that are violation of criminal law

**Section 2 (wa) - Code of Criminal Procedure**

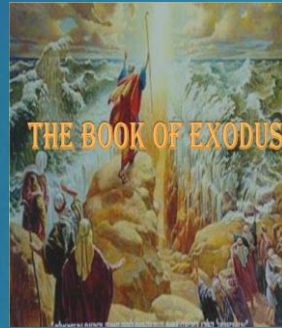
- a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir.

# Genology of Victim Compensation

References of compensation being paid to victims of criminal offences is found, amongst others, in:



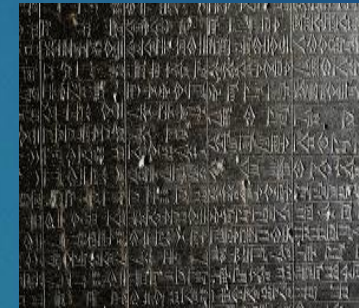
Manusmriti



The Book of Exodus



Homer's Illiad



Code of Hammurabi



one of the first “victim” rights statute” in history

# Historical record of victim compensation in modern Indian history

A story is told how Emperor Jehangir was faced with a problem in one of his daily "*darbars*" and how he solved it.

One day, the Empress in a fit of anger, hit her launderer whose work was not satisfactory and the washer man fell down dead. On being persuaded, the widow attended Jehangir's "*darbar*" the next morning and on being asked by Jahangir as to who killed her husband, she trembled and replied "the Empress".

Jehangir was stunned, he drew his sword and said "The Empress killed your husband. Now, with that sword, you kill the Empress's husband. I command you to do it."

The Laundress was nonplussed. She fell at the Emperor's feet, recovered her equanimity soon enough and said, "Sire, I have suffered, but I do not want either the Empress or the country to suffer by my obeying Your Majesty's command. I am prepared to take any punishment for this disobedience."

The story goes that Jehangir was so touched by the words of the washerwoman that he made her a baroness and showered her with riches beyond measure.

***It is perhaps one of the earliest known cases of victim compensation in modern Indian history.***



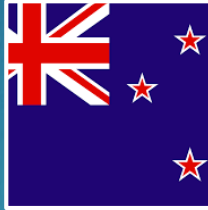
# International Scenario



United Nations

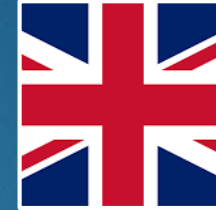
UNITED NATIONS

- The Declaration of Basic principles of Justice for Victims of Crime and Abuse of Power (Declaration) was adopted by consensus in the United Nations General Assembly in 1985, reflecting the collective will of the International Community to address the interests and concerns of victims of crime.



NEW ZEALAND

- New Zealand was one of the first nation to establish a compensation plan in the year 1963.



UNITED KINGDOM

- Criminal injuries compensation was introduced in 1964 as an experiment on a non-statutory basis to provide ex gratia compensation to the victims of crimes of violence and to those hurt in their attempts to arrest the offenders and to prevent crimes.

# International Scenario



NETHARLANDS

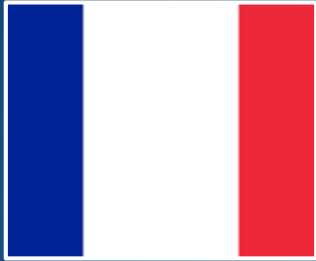
- The idea of establishing a compensation fund whereby compensation would be paid from government funds to victims of serious crimes of violence came up in the Netherlands around the year 1970.



GERMANY

- Germany has a crime victim compensation program to provide financial compensation for victims of violent or personal crime which came into force in the year 1976.

# International Scenario



FRANCE

- In March 1977, Act. No. 77.5 of 3 January 1977 came into force throughout the Republic of France guaranteeing state compensation for certain categories of physical injury resulting from crime.



PHILIPPINES

- The Government of Philippines brought the Victim Compensation scheme in the year 1984.

# Indian scenario : Victim compensation

## 154<sup>th</sup> Law Commission Report, 1996

Compensation was proposed as a recognized method of protection that offered immediate support to the victim. The report stated that compensation could also be extended to the family of the victim in certain instances.

## Malimath Committee recommendations - 2003

Recommended establishment of Victim Compensation Fund.

Victim compensation is a State obligation, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation

A Victim Compensation Fund can be created under the victim compensation law and the assets confiscated in organised crimes can be made part of the fund.





The provisions relating to compensation to victims of crime are contained in sections 357, 357(1), 357 (2), 357 (3), 357A, 358, 359 and 250 of the Code of Criminal Procedure, 1973.

Article 14 and 21 of the Constitution of India encompasses within its fold safeguards to victims of crime.

# Recent Amendment

Amendments made to the **Code of Criminal Procedure (CrPC), 1973 in 2008** as well as through the **Criminal Law (Amendment) Act of 2013**, made a breakthrough in acknowledging the rights of the victim.

Though one generally assumes compensation to be a remedy granted by civil courts and sentencing a function of criminal courts, **Section 357 clubbed the two remedies together**, thereby ensuring that the victim would not have to approach two different courts, hence expediting the compensation process.

- ▶ Every State Government in co-ordination 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.
- ▶ Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)
- ▶ If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
- ▶ 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.
- ▶ On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- ▶ The State or the 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 the officer incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.



**Sec 357-A CrPC**

# Difference Between S:357 & S:357 A - CrPC

Sec : 357 CrPC

the offender who is made to pay compensation

Sec : 357-A CrPC

it is the state that pays compensation to the victim in accordance with the state's victim compensation scheme

the state can provide interim compensation as listed under the state's victim compensation scheme, regardless of whether the case has resulted in a conviction

- ▶ Under Section 357-A of the CrPC each state formulated a victim compensation scheme.
- ▶ Despite the existence of statutory provisions and schemes of the States, the victims of crimes rarely received any compensation. The same was taken note of by the Hon'ble Supreme Court in **Ankush Shivaji Gaikwad v State of Maharashtra (2013) 6 SCC 770** and the Apex Court made mandatory for trial Courts to consider grant of interim compensation and to give reasons for not recommending compensation to the victims of the crime

Notification dated 14<sup>th</sup> October , 2015 : Central government set up the **Central Victim Compensation Fund Scheme**. The Scheme aims at supporting and supplementing existing victim compensation schemes notified by states and union territories and reducing the disparity in the quantum of compensation notified thereof. It defines the scope for budgetary allocation and provides for accounting and audit. It also opens public participation by inviting funding.

# Writ Court and Grant of Compensation

In *Rudal Sah V State of Bihar AIR 1983 SC 1086*

The petitioner remained in illegal detention for more than 14 years. After notices were issued and when the petition was taken up for hearing, the Government informed that the petitioner has been released from custody.

Under the general rule, the writ petition had become infructuous. However, the Supreme Court issued notice on the ancillary relief and after hearing the parties deemed it fit to grant a compensation of Rs. 30000/-.

This was perhaps the first case where writ court in India granted compensation for illegal detention.



# Writ Court and Grant of Compensation

Contd.

*In MC Mehta V Union of India AIR 1987 SC 965*

The Supreme Court held that the power under Article 32 is not confined to preventive measures when fundamental rights are violated or threatened to be violated but it also extends to remedial measures including compensation when the rights are already violated.

## Other judicial pronouncements

### Hitendra Vishnu Thakur Vs State of Maharashtra (1994) 4 SCC 602

The Supreme Court observed as follows:

*“...A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties ...”*

A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation.

As **Amendment Act of 2008** created new liabilities on the State, it appears to be **retrospective in nature**.

## Other judicial pronouncements

### **Suresh v. State of Haryana (2015) 2 SCC 227:**

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

On being satisfied on an application or on its own motion, **the court ought to direct grant of interim compensation, subject to final compensation** being determined later.

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

## Other judicial pronouncements

### **Nipun Saxena v. Union of India Cri MP 16041/2014**

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

#### **Important features of the Scheme:**

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

Subsequently Supreme Court laid down that **NALSA's Compensation Scheme** for Women/Victims **should function as a guideline to the Special Courts for the award of compensation of victims of child** sexual abuse under Rule 7 until the Rules are finalized by the Central Government.

# Other judicial pronouncements

## **In Re Alarming Rise in the Number of Reported Child Rape Incidents [Suo Motto Writ (Crl) 1 of 2019]:**

- The Supreme Court awarded as an interim measure compensation of Rs 25,00,000 (Rupees twenty five lakhs only) to the rape victim and called for reports from States and UT as regard payment of compensation including interim compensation to victims of crime.

*Report on victim compensation received and tabulated as under:*

<b>Interim compensation NOT provided</b>	-	<b>99%</b>
<b>Interim compensation provided</b>	-	<b>1%</b>
<b>Final compensation NOT provided</b>	-	<b>99%</b>
<b>Final compensation provided</b>	-	<b>1%</b>



# Challenges

## Lack of uniformity:

- State victim compensation schemes are non-uniform, fail to comply with the centre's guidelines and continue to suffer from various other inadequacies, such as the usage of wide umbrella-like terms that cover several offences under one amount of compensation, resulting in a grave injustice to the victims of crimes differing in their nature and gravity.

Each state set a different compensation amount based on the category of victim. Moreover, there is no systematic method for categorization of the victim based on the nature of the crime or the age of the victim. Some states took the age of the victim into account while others did not.

## Funds & Disbursement:

- The State exchequer must cater for contingencies and be supportive of the expenditure incurred by the victims.
- Disbursements which are sparingly done, has to be increased and consolidated.

## Implementation:

The major problem in implementation of victim compensation schemes is the serious lack of awareness. The victims availing compensation under the scheme is nowhere close to the incidents of crime being reported every year

# Measures

**Victimology** is the only way forward, which could reinstall confidence in the criminal justice system, for it is not the imposition of harsh prison sentences on the criminal that ultimately benefits the victim; rather it is the reparative actions that would lessen the victim's injuries and losses.

Introduction of formal mechanism of **victim impact assessment** to bring in objectivity and consistency in deciding the quantum of compensation.

Focus on **effective implementation**: While Sections 357 and 357A of the CrPC are steps in the right direction, their implementation requires much fine-tuning.

*Thank You*