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## Judicial trend towards compensation to victims of crime

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### Abstract

In India, as far as compensation is concerned, there is neither a comprehensive legislation nor a statutory scheme available for providing compensation by state or offender to victims of crime. The criminal justice system does not provide for a comprehensive payment of compensation to the victims of a crime for any physical, mental, psychological, the Law Commission felt it 'unwise' to create legal right in favour of the victim to join in the criminal proceedings as a third party to avoid mixing up of a civil and criminal proceedings, a confusion of issues and prolongation of the trial. Justice should not only be done to the accused and society but also to the victim which, as a whole justifies the justice delivery system. In spite of the loop holes in the legislature pertaining to compensation, the judiciary has been trying to fill the gaps not as a mere formality or duty but considering it as an essential need of the society.

**Keywords:** Legislature, justifies, victim, compensation

### 1. Introduction

'Justice' has been placed at the highest pedestal in the Preamble as compared to other principle i.e. liberty, equality and fraternity. The quality of justice determines the quality of society and of governance. Just as pollution poisons the physical atmosphere, poor justice system poisons the social atmosphere. Equal and fair justice is the hallmark of any civilized society. Rule of Law, which is so important, must run closely to the Rule of Life. Justice in India seems to be discretionary and a decision making process. Judges have been conferred with discretionary powers so that the remaining gaps can be filled by giving justice to the people, who turn to the judiciary with hope of justice in their eyes. But with the growing complexities of society, the desire and quest for justice has become stronger and deeper. The existing criminal justice system focuses its maximum attention on the offender. Efforts are made to either reform or rehabilitate him. In this effort little or no attention is paid to the victim of crime. President Genald Ford in his address to the American Congress in 1957 said." For too long the law has centred its attention its attention more on the rights of the criminals than on the victims of crime. It is high time we reverse this tend and put the highest priority on the victims and potential offenders."

### Review of Literature

In India, as far as compensation is concerned, there is neither a comprehensive legislation nor a statutory scheme available for providing compensation by state or offender to victims of crime. The criminal justice system does not provide for a comprehensive payment of compensation to the victims of a crime for any physical, mental, psychological, the Law Commission felt it 'unwise' to create legal right in favour of the victim to join in the criminal proceedings as a third party to avoid mixing up of a civil and criminal proceedings, a confusion of issues and prolongation of the tial <sup>[4]</sup>. Justice should not only be done to the accused and society but also to the victim which, as a whole justifies the justice delivery system. In spite of the loop holes in the legislature pertaining to compensation, the judiciary has been trying to fill the gaps not as a mere formality or duty but considering it as an essential need of the society. The courts are the guardians of the human rights. The common man looks upon judiciary as his protector. The courts have from time to time expanded the facets of human rights and upheld the rights of the individual. The courts have been working

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as a sentinel in protecting the human rights of the millions of justice hungry people while maintaining the balance amongst the three organs of States i.e. Legislature, Executive and Judiciary.

### Case Law

“The only friend who follows men even after death is justice; for everything else is lost at the same time when the body perishes.” Transparent justice should also clearly contain the reasons for any particular judgment as the reasons for judgment repose confidence of the people in judiciary especially. “Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions but they apply with equal force and in fact, with a greater degree of precision to judicial pronouncements.” Reason is the very life of law. When the reason of law ceases, the law itself ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty.

### Judicial attitude in cases of sexual assault

In Kunhimon Vs State justifying the necessity of compensation to the rape victim, the Court awarded fine of rupees 3000 to four accused and to one accused rupees 10000 to be paid as compensation to the rape victim of 17 years along with three and a half years imprisonment.

In Gudalure M. J. Cherian Vs Union of India compensation of rupees 250000 to rape victim was awarded by the Court for violation of her fundamental right under Article 21.

In Shri Bodhistwa Gautam Vs Miss Subhra Chakraborty interim compensation of rupees 1000 was directed to be paid to the victim every month during the pendency of the criminal case.

In State of Punjab Vs Gurmeet Singh imprisonment of five years and a fine of rupees 5000 was imposed upon the accused for raping a tenth class girl.

In Hari Kishan and State of Haryana Vs Sukhbir Singh accused were directed to pay a sum of rupees 50000 to the victim as compensation under Section-357(3) Criminal Procedure Code.

In Utrakhand Stir (Rallyst) Case 24 persons were killed, seven women were raped, 17 were sexually molested and many others were injured and illegally detained as a result of police firing and atrocities committed on a peaceful demonstration for separate state of Uttaranchal in September/October 1994. The Court awarded compensation of rupees 10 lakh each to deceased victims' family and rupees 10 lakh for rape victim judging the crime of rape equivalent to death; rupees 5 lakh to victims of sexual molestation and rupees 2.5 lakh to rupees 50000 for less serious injures.

In A.K. Singh Vs Utrakhand Jan Morcha the Supreme Court set aside the High Court's award of rupees 10 Lakh compensation to the victims. The Court observed, “Of Course, those who were paid compensation in pursuance of the High Court's order were not required to refund the money to the State government, but at the same time those who did not get the money, could no more claim the amount from the State government.” Perhaps the amount was too large for the crime.

### Judicial attitude in cases of murder

#### Guruswamy Vs State of Tamil Nadu

The accused was found guilty under Section-302 Indian Penal Code and was sentenced to death by the High Court. The sentence was reduced for life imprisonment and a fine of rupees 10000 was imposed to be paid to the heirs of the deceased.

#### Sarwan Singh Vs State Punjab

A person died as a result of dispute amongst brothers in a family. A fine rupees 3500 was imposed on each accused to be paid to the widow of the deceased as compensation.

#### Venkatesh Vs State of Tamil Nadu

Compensation of rupees 10000 was given to the widow and unmarried daughter of the deceased.

#### Palaniappa Gounder Vs State of Tamil Nadu

Compensation of rupees 20000 awarded by the High Court was reduced to rupees 3000 by the Apex Court.

### Bhopal Gas Tragedy 1984

On the intervening night of December 02-03- 1984, methyl isocyanate gas leaked from Union Carbide India Limited plant at Bhopal about 15000 people and injuring over 5 lakh leaving them sick and passing the harmful effects to the next generations. It was the world's worst industrial disaster that killed and maimed thousands in Bhopal. After a long wait of 26 years, on 27<sup>th</sup> June 2010, Chief Judicial Maistrate Mohan Tiwari pronounced the judgment and awarded two years of imprisonment to the Union Carbide India Chairman, Keshub Mahindra and seven others for causing death by negligence under Section-304 A and for gross negligence under Section-336, 337 and 338 of Indian Penal Code. All the convicts were also awarded a fine of rupees one lakh each under Section-304(a), imprisonment of three months and a fine of rupees 250 under Section-336, imprisonment of six months and a fine of rupees 500 under Section-337 and imprisonment of two years and fine of rupees 1000 under Section-338; all the sentences to run concurrently. All the convicts applied for bail immediately after the sentencing and were granted relief on a surety of rupees 25000 each. The main accused Warren Anderson, the then Chairman of the Union Carbide Corporation of USA, who lives in United States is still an absconder as he did not subject himself to trial. As far as compensation is concerned it is not only delayed but also meagre. The total compensation which has been disbursed is rupees 1548.93 crore. The tabular history of compensation granted in this case mentioned below:

Initial compensation demand from Union Carbide Corporation (UCC), USA, the parent company of UCIL	US \$ 3.3 billion
Compensation paid by UCC in February 1999	US \$ 470 million (Just 14.24% of the original demand)
Supreme Court orders release of full amount <sup>75</sup>	Rupees 1500 Crore with interest: July 2004
Total Compensation cases	10,29,517
Cases awarded	5,74,336
Cases rejected	4,55,151
Total compensation disbursed	Rupees 1548.93 Crore

## Conclusion

It can be concluded by saying that we are standing on the first step and we have to cover a long distance. Now is the time to utilise the quality of farsightedness. It not now then never. An internally strong and well fabricated system of giving compensation is the urgent demand of the day. Mere announcements and judgements are not enough. They must be implemented in a transparent manner. A well designed legislation on compensation can bring the agony of millions of victims to an end.

Apart from this, in serious offences like murder and sexual assault special attentions need to be given. The victim must feel that he/she is cared for by the criminal justice system and has got adequate compensation for the crime committed upon him or her. Whether the judgement is pronounced for violation of his fundamental rights under the Constitution or under any other law for the time being in force, the victim must feel that he/she will be adequately compensated because the sufferings remain the same irrespective of the statute. If the penal law for the accused is uniform, the compensatory law for the victims should also be on the similar pattern.

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