

(2017) 06 GAU CK 0025
In the Gauhati High Court
Case No : 53 of 2015

Nungshilila

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 23-06-2017

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 126, 127, 128, 357, 357A, 545
Code Of Criminal Procedure, 1898 — Section 545(1b)
Family Courts Act, 1984 — Section 7(2)(a)
Indian Penal Code, 1860 — Section 34, 120B, 201, 302, 364A
Constitution Of India, 1950 — Article 21, 32, 38, 39A, 41, 51A, 226

Citation : (2017) 06 GAU CK 0025

Hon'ble Judges : S. Serto

Bench : SINGLE BENCH

Final Decision : Disposed off

Judgement

1. This is a writ petition under Article 226 of the Contitution of India praying for issuance of writ of mandamus directing the State-respondents to pay compensation of Rs. 5,63,000/- along with simple interest at the rate of 12% p.a. for the death of the petitioner's husband who was killed by an unknown assailants suspected to be members of underground organization on 28-10-2006. 2. The petitioner's husband late Bendang-meren, aged about 48 years of age, and resident of Changtongya Town in Mokokchung district, was killed by unknown assailants suspected to be members of under-gound organization on 28.10.2006 at a place between F.C.I. and Mon view at Changtongya Mokokchung. On the same day, an FIR was registered in the Mon Police Station but no one was arrested in connection with the murder. On 25-5-2007, a final report was submitted by the Investigating Officer of the FIR case which stated that the identity of the culprits could not be ascertained, therefore, no purpose would be served by keeping the case pending. Thereafter, the petitioner has come to this Court praying for issuance of writ of Mandamus directing the respondents to pay compensation for the death of her husband. 3.

Heard Mr. Sentiyaenger, learned counsel for the petitioner and also heard Mr. K. Wotsa, learned Sr. Government Advocate for the State respondent. The case of the petitioner as submitted by her learned counsel, Mr. Sentiyaenger is as follows; That under Article 21 of the Constitution of India, the State of Nagaland owes every individual of the State a duty to protect and safeguard his or her life and liberty. However, due to the existence of large number of underground factions in the State who are well armed, the State of Nagaland has not been able to protect the life and liberty of the people in the State. As such, the petitioner's husband who was an ordinary citizen and had no enmity with any person was murdered by persons suspected to be members of underground organization on 28-10-2006 at Mokokchung without any reason thereby deprived the petitioner and her 3 children of a husband and father who was their only bread earner. Had the State machinery been strong enough and able to maintain law and order, the petitioner's husband would not have been killed and the petitioner and her children would not have been left in destitute. Since the State Government could not protect her husband, adequate compensation has to be given to her so that she can do something which will help her to look after herself and her 3 children.

4. The learned counsel for the petitioner submitted that the prayer of the petitioner is based on the judgments passed by the Hon'ble Supreme Court and the High Court's under Articles 32 and 226 of the Constitution of India and also based on Section 357-A of the Cr.P.C. The learned counsel in support of the case of the petitioner cited two judgments, one of the Delhi High Court and other of the Hon'ble Supreme Court. The case cited are given herebelow:- 1. Smt. Kamla Devi v. Government of NCT of Delhi and another, reported in (2004) 114 DLT 57 : (2004) 76 DRJ 739-Delhi High Court. 2. Suresh and another v. State of Haryana, reported in (2015) 2 SCC 227 : (AIR 2015 SC 518) The relevant portions of the judgments cited by the learned counsel for the petitioner are given herebelow:- First Case Smt. Kamla Devi v. Government of NCT of Delhi & another, reported in (2004) 114 DLT 57, particularly paragraphs 5 to 8. "5. Let us see who are the persons responsible for the wrong. Primarily it is the terrorist who was assembling the bomb. Next, it is the State as it failed in living up to its guarantee that "no person shall be deprived of his life.. except according to procedure established by law". The State failed to prevent the terrorist from harming innocent citizens like Uday Singh. Terrorism itself is an indicia of the inability of the State to curb resentment and to quell fissiparous activities. Social malaise in itself is a reflection of the State's inefficiency in dealing with the situation in a proper manner. Apart from the general inability to tackle the volatile situation, in this case, the State agencies failed in their duty to prevent terrorists from entering Delhi. It was their responsibility to see that dangerous explosives such as RDX were not available to criminals and terrorists. The incident occurred as there was a failure on the part of State to prevent it. There was failure of intelligences they did not pick up the movement of this known and dangerous terrorist. So, it would be extremely difficult even to suggest that the State did not fail in its duty towards the late Uday Singh and his family. The other players in this sad drama could be the owner of the Guest House. Did he

take due care in permitting such a dangerous person to enter and reside in the guest house? Did he maintain his guest house in good repair so as to have prevented the same from collapsing under the impact of the explosion? Then, the municipal officials may also be roped in. Did they inspect the property from time-to-time? Did they take any action if the building was in any way not in accordance with the regulations and law? Did they find the building to be structurally sound? Of course, these are questions which need a thorough investigation and cannot be gone into in this writ petition. But, this does not mean that without these question being answered the petitioner is to be left without a remedy. 6. A crime has been committed. A wrong has been done and a citizen has lost his life because the State was not vigilant enough. A fundamental right has been violated. But, mere declarations such as these will not provide any succour to the petitioner. She needs to be compensated. It is too late in the day to now suggest, that in a situation such as this, the petitioner should be relegated to the ordinary civil courts to seek her tort law remedy. In *D.K. Basu v. State of W.B.*, 1997 Cri LJ 743 : (AIR 1997 SC 610), the Supreme Court held that- "The Court, where the infringement of the fundamental right is established, Therefore cannot stop by giving a mere declaration. It must proceed further and give compensatory relief not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience". The Supreme Court cleared the ground for the grant of compensation under Article 226 in situations where there was a dereliction of public duty on the part of the State. The following passages from *D. K. Basu* (supra) clarifies the legal position:- "44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. 45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to

their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give such solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, Therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family". "54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defense 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 by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit". Earlier, in *Nilabati Behera v. State of Orissa*, 1993 Cri.LJ 2899 : (AIR 1993 SC 1960), the Supreme Court had held:- "35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an

infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah v. State of Bihar* granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law". The current position of the law is stated by the Supreme Court in *M.S. Grewal v. Deep Chand Sood*, AIR 2001 SC 3660 as under :- "28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages. As a matter of fact the decision in *D.K. Basu* has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach". Law courts will lose their efficacy if they cannot possibly respond to the need of the society - technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice". 7. It is true that the cases which came up before the Supreme Court related to custodial death, death of school children on a picnic, death of a passenger in a train as a result of the inaction on the part of the railway employees. In all these cases it could be said that the victims were under some sort of State custody, punitive or protective. It could be argued that Uday Singh was not in any such situation. He died as a result of a terrorist act and, perhaps, contributed, in part, due to the structural defect in the guest house building. What has the State got to do with this. I am afraid, the State has everything to do with this. The state owed a duty to protect the life and liberty of an innocent citizen such as Uday Singh. The State owes a duty to the widow (Kamla Devi) and the child (Mukesh), now that Uday Singh has been snatched away from them, that they live their lives with dignity. Compensation, in this case, would

not only be a balm on their scars, it would also provide them with hope for the future. The fact of the matter is that Uday Singh lost his life on account of an act of terrorism. The State failed to prevent it. The primary duty of the State to maintain peace and harmony amongst its citizens. If for some reason, it is unable to put the lid on simmering discontent, then it is its duty to protect innocent citizens from harm. If it fails in this duty, then it must compensate the citizens who have been wronged. 8. The criminal commits the crime. The State apprehends the accused and bring him to trial. If found guilty, he is convicted and sentenced to undergo punishment. Does this complete the wheel of criminal justice? What about the crime victims? Traditionally, it may have been sufficient that the criminal is caught and punished. But, the modern approach is to focus on the victims of crime. It is all very well that the accused is given a fair and just trial, that the guilty are punished, that the convicts and prisoners are given a humane treatment, that jail conditions are improved and the erstwhile criminals are rehabilitated, but, what about the crime victim? In *State of Gujarat v. Hon'ble High Court of Gujarat*, 1998 Cri.LJ 4561 : (AIR 1998 SC 3164), the Supreme Court observed as under: "99. In our efforts to look after and protect the human rights of the convict, we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the criminal act of the convict. The victims certainly entitled to reparation (sic), restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. The subject of victimology is gaining ground while we are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace". Keeping this in mind, it needs to be examined as to what are the avenues available to the crime victims and their families for seeking compensation. The tort law remedy made possible under the Fatal Accidents Act, 1855 is one such avenue. but, that is a civil law remedy where the victim is relegated to the avenue. But, that is a civil action against identified defendants (wrong-doers). In the context of the Bhopal gas tragedy, the Supreme Court found the 1855 act grossly inadequate. It observed in *Charan Lal Sahu v. Union of India*, AIR 1990 SC 1480 that "the Fatal Accidents Act, on account of its limited and restrictive application, is hardly suited to meet such a challenge". In my view, this observation would apply with equal vigour to the case at hand. So, this "avenue", is not an avenue at all and, if not a dead-end street, is too long, convoluted and winding to provide any relief to the crime victim or his family."

16. The public law demand, as distinct from the private tort remedy, is that crime victims be given compensation even in "no fault" situations by the State. Compensation cannot be limited to cases of police torture or custodial deaths. It must extend to riot victims and victims of terror, indeed, it must ultimately cover all victims of crime and all criminal injuries. Legislature is lacking in this field.

But, that should not deter High Courts, which are courts of unlimited and plenary jurisdiction, from intervening and redressing grievances according to "principles of justice, equality and good conscience". Not to intervene would amount to shirking the responsibilities which High Courts are expected to shoulder. So, compensation is payable to the petitioner by the State for the death of Uday Singh for the breach of the constitutional guarantee of Article 21 that "no person shall be deprived of his life... except according to procedure established by law." Second Case Suresh and another v. State of Haryana, reported in (2015) 2 SCC 227 : AIR 2015 SC 518, paras 12 to 15), particularly paragraphs-13 to 19. "13. It would now be appropriate to deal with the issue. The provision has been incorporated in the Cr.P.C. vide Act V of 2009 and the amendment duly came into force in view of the Notification dated 31st December, 2009. The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of Law Commission. It recognises compensation as one of the methods of protection of victims. The provision has received the attention of this Court in several decisions including Ankush Shivaji Gaikwad v. State of Maharashtra (AIR 2013 SC 2454), In Re : Indian Woman says gang raped on orders of Village Court published in Business and Financial News, AIR 2014 SC 2816; Mohommad Haroon v. Union of India, AIR 2015 SC (Supp) 381 and Laxmi v. Union of India, (2014) 4 SCC 427. 14. In Abdul Rashid v. State of Odisha & Ors., to which one of us (Goel, J.) was party, it was observed:- "6. Question for consideration is whether the responsibility of the State ends merely by registering case, conducting investigation and initiating prosecution and whether apart from taking these steps, the State has further responsibility to the victim. Further question is whether the Court has legal duty to award compensation irrespective of conviction or acquittal. When the State fails to identify the accused or fails to collect and present acceptable evidence to punish the guilty, the duty to give compensation remains. Victim of a crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the victim. There are systemic or other failures responsible for crime remaining unpunished which need to be addressed by improvement in quality and integrity of those who deal with investigation and prosecution, apart from improvement of infrastructure but punishment of guilty is not the only step in providing justice to victim. Victim expects a mechanism for rehabilitative measures, including monetary compensation. Such compensation has been directed to be paid in public law remedy with reference to Article. 21. In numerous cases, to do justice to the victims, the Hon'ble Supreme Court has directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of victims. For example, Kewal Pati v. State of U.P., (1995) 3 SCC 600 : (1996 AIR SCW 2236) (death of prisoner by co-prisoner); Supreme Court Legal Aid Committee v. State of Bihar, (1991) 3 SCC 482 (failure to provide timely medical aid by jail

authorities, *Chairman, Rly. Board v. Chandrima Das*, (2000) 2 SCC 465 : (AIR 2000 SC 988) (rape of Bangladeshi national by Railway staff); *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : (AIR 1993 SC 1960) (Custodial death); *Khatri (I) v. State of Bihar*, (1981) 1 SCC 623 (prisoners blinding by jail staff); *Union Carbide Corporation v. Union of India*, (1989) 1 SCC 674 (gas leak victims). 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 357-A 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 Vhivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770 : AIR 2013 SC 2454, paras 29 to 44, 62 & 63), the matter was reviewed by the Hon'ble Supreme Court with reference to development in law and 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 wrongdoer, 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. Legislation's 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. 35. England was perhaps the first to adopt a separate statutory scheme for victim compensation by the State under the Criminal Injuries Compensation Scheme, 1964. Under the Criminal Justice Act, 1972 the idea of payment of compensation by the offender was introduced. The following extract from the Oxford Handbook of Criminology (1994 Edn., P. 1237-1238), which has been quoted with approval in Delhi Domestic Working Women's Forum v. Union of India and Ors., (1995) 1 SCC 14 is apposite: (SCC pp. 20-21, para-16) "16..... Compensation payable by the offender was introduced in the Criminal Justice Act, 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where "injury" , loss, or damage had resulted. The Criminal Justice Act, 1982 made it possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penology thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act, 1982 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, imposed a duty on the court to give reasons for not doing so. It also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review.... The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation." (Emphasis supplied) 36. In the United States of America, the Victim and Witness Protection Act of 1982 authorizes a federal court to award restitution by means of monetary compensation as a part of a convict's sentence. Section 3553(a)(7) of Title 18 of the Act requires Courts to consider in every case "the need to provide restitution to any victims of the offense". Though it is not mandatory for the Court to award restitution in every case, the Act demands that the Court provide its reasons for denying the same. Section 3553(c) of Title 18 of the Act states as follows: "if the court does not order restitution or orders only partial restitution, the court shall include in the statement the reason thereof." (Emphasis supplied) 37. In order to be better equipped to decide the quantum of money to be paid in a restitution order, the United States federal law requires that details such as the financial history of the offender, the monetary loss caused to the victim by the offence, etc. be obtained during a Presentence Investigation, which is carried out over a period of 5 weeks

after an offender is convicted. 38. Domestic/Municipal Legislation apart even the UN General Assembly recognized the right of victims of crimes to receive compensation by passing a resolution titled "Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985". The Resolution contained the following provisions on restitution and compensation: "Restitution 8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. 9. Governments should review their practices, Regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions. 10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community. 11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims. Compensation 12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization. 13. The establishment strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm." 39. The UN General Assembly passed a resolution titled "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005" which deals with the rights of victims of international crimes and human rights violations. These Principles (while in their Draft form) were quoted with approval by this Court in *State of Gujarat and Anr. v. Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 : AIR 1998 SC 3164 para 95) in the following words: "94. In recent years the right to reparation for victims of violation of human rights is gaining ground. United Nations Commission of Human Rights has circulated draft basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights, (see Annexure)." 40. Amongst others the following provisions on restitution and compensation have been made: "12. Restitution shall be provided to reestablish the situation that

existed prior to the violations of human rights or international humanitarian law. Restitution requires inter alia, restoration of liberty, family life citizenship, return to one's place of residence, and restoration of employment or property." 13. Compensation shall be provided for any economically Assessable damage resulting from violations of human rights or international humanitarian law, such as: (a) Physical or mental harm, including pain, suffering and emotional distress; (b) Lost opportunities including education; (c) Material damages and loss of earnings, including loss of earning potential; (d) Harm to reputation or dignity; (e) Costs required for legal or expert assistance, medicines and medical services." 41. Back home the Code of Criminal Procedure of 1898 contained a provision for restitution in the form of Section 545, which stated in Sub-clause 1(b) that the Court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court." 42. The Law Commission of India in its 41st Report submitted in 1969 discussed section 545 of the Code of Criminal Procedure, 1973 of 1898 extensively and stated as follows: "46.12. Section 545" Under Clause (b) of sub-section (1) of Section 545, the Court may direct" in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court".The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort. The word "substantial" appears to have been used to exclude cases where only nominal damages would be recoverable. We think it is hardly necessary to emphasise this aspect, since, in any event it is purely within the discretion of the Criminal Courts to order or not to order payment of compensation, and in practice, they are not particularly liberal in utilizing this provision. We propose to omit the word "substantial" from the clause." (Emphasis supplied) 43. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Code of Criminal Procedure Bill, 1970, which aimed at revising Section 545 and introducing it in the form of Section 357 as it reads today. The Statement of Objects and Reasons underlying the Bill was as follows: "Clause 365 [now Section 357] which corresponds to Section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the Court imposes a fine the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the Court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors." (Emphasis supplied). 44. As regards the need for Courts to obtain comprehensive details regarding the background of the offender for the purpose of sentencing, the Law Commission in its 48th Report on "Some Questions Under the Code of Criminal Procedure Bill, 1970" submitted in 1972

discussed the matter in some detail, stating as follows: "45. Sentencing" It is now being increasingly recognised that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One such deficiency is a lack of comprehensive information as to the characteristics and background of the offender. The aims of sentencing-them selves obscure-become all the moreso in the absence of comprehensive information on which the correctional process is to operate. The public as well as the as the courts themselves are in the dark about judicial approach in this regard. We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged, and both the prosecution and the accused should be allowed to co-operate in the process." (Emphasis supplied) 45. The Code of Criminal Procedure of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its objects and Reason that Section 357 was "intended to provide relief to the proper sections of the community" and that the amended Cr.P.C. empowered the Court to order payment of compensation by the accused to the victims of crimes "to a larger extent" than was previously permissible under the Code. The changes brought about by the introduction of Section 357 were as follows: (i) The word "substantial" was excluded. (ii) A new sub-section (3) was added which provides for payment of compensation even in cases where the fine does not form part of the sentence imposed. (iii) Sub-section (4) was introduced which states that an order awarding compensation may be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision. 46. The amendments to the Code of Criminal Procedure brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357-A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where "the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated." Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154 the Reports in 1994 and 1996 respectively. 47. The 154th Law Commission Report on the Code of Criminal Procedure devoted an entire chapter to Victimology in which the growing emphasis on victim's rights in criminal trials was discussed extensively as under: "1 Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied. 9.1 The principals of victimology has foundations in Indian

constitutional jurisprudence. The provision on Fundamental Rights (Part III) social order in which social and economic justice would blossom in the national life the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for "securing the right to public assistance in cases of disablement and in other cases of underserved want". So also "Article 51A makes it a fundamental duty of every Indian citizen, inter alia to have compassion for living creatures" and to "develop humanism" . If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology. 9.2 However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. section 357 of the Code of Criminal Procedure, 1973 incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims. xx xx xx xx xx 11. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds...." 48. The question then is whether the plenitude of the power vested in the Courts under Sections 357 & 357-A, notwithstanding, the Courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though has frequently punished by the Courts. In other words, whether Courts have duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them? xx xx xx xx xx 66. To sum up: 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. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under section 357 Code of Criminal Procedure, 1973 would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family. 67. Coming then to the case at hand, we regret to say that the trial Court and the High Court appear to have remained oblivious to the provisions of section 357, Code of Criminal Procedure, 1973. The judgments under appeal betray ignorance of the Courts below about the statutory provisions and the duty cast upon the Courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of

the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future." 9. In Rohtash alias Pappu v. State of Haryana (Cri. A. No. 250 of 1999 decided on 1-4-2008, a Division Bench of the Punjab & Haryana High Court observed: "18. May be, in spite of best efforts, the State fails in apprehending and punishing the guilty but that does not prevent the State from taking such steps as may reassure and protect the victims of crime. Should the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed. It can be a long and seemingly endless wait. The need to address cry of victims of crime, for whom the Constitution in its Preamble holds out a guarantee for "justice" is paramount. How can the tears of the victim be wiped off when the system itself is helpless to punish the guilty for want of collection of evidence or for want of creating an environment in which witnesses can fearlessly present the truth before the Court? Justice to the victim has to be ensured irrespective of whether or not the criminal is punished. 19. The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by Rule of Law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated. 20. Right of access to justice under Article 39-A and principle of fair trial mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation. It is a paradox that victim of a road accident gets compensation under no fault theory, but the victim of crime does not get any compensation, except in some cases where the accused is held guilty, which does not happen in a large percentage of cases. 21. Though a provision has been made for compensation to victims under Section 357, Cr.P.C., 1973 there are several inherent limitations. The said provision can be invoked only upon conviction, that too at the discretion of the Judge and subject to financial capacity to pay by the accused. The long time taken in disposal of the criminal case is another handicap for bringing justice to the victims who need immediate relief, and cannot wait for conviction, which could take decades. The grant of compensation under the said provision depends upon financial capacity of the accused to compensate, for which, the evidence is rarely collected. Further, victims are often unable to make a representation before the Court for want of legal aid or otherwise. This is perhaps why even on conviction this provision is rarely pressed into service by the Courts. Rate of conviction being quite low, inter alia, for competence of investigation, apathy of witnesses or strict standard of proof required to ensure that innocent is not punished, the said provision is hardly adequate to address to need of victims. In Hari Krishan and State of Haryana v. Sikhbir Singh, AIR 1988 SC 2127, referring to provisions for compensation, the Hon"ble Supreme Court observed:- "10. This power was intended to do something to reassure the victim that he or she is not forgotten in

the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way." 22. It is imperative to educate the investigating agency as well as the trial Judges about the need to provide access to justice to victims of crime, to collect evidence about financial status of the accused. It is also imperative to create mechanisms for rehabilitation measures by way of medical and financial aid to the victims. The remedy in civil law of torts against the injury caused by the accused is grossly inadequate and illusory. 23. This unsatisfactory situation is in contrast to global developments and suggestions of Indian experts as well. Some of the significant developments in this regard may be noticed as under:- 1) UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, highlighting the following areas:- (i) Access to Justice and fair treatment; (ii) Restitution; (iii) Compensation; (iv) Assistance. 2) Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure, 1985. 3) Statement of the Victim's Rights in the Process of Criminal Justice, issued by the European Forum for Victims-Services in 1996. 4) European Union Framework Decision on the Standing of Victim in Criminal Proceedings. 5) Council of Europe Recommendations on assistance to Crime victims adopted on 14-6-2006. 6) 152nd and 154th report of the Law Commission of India, 1994 and 1996 respectively, recommending introduction of Section 357-A in Criminal Procedure Code, prescribing, inter alia, compensation to the victims of crime. 7) Recommendations of the Malimath Committee, 2003. 24. The subject-matter has been dealt with by experts from over 40 countries in series of meetings and a document has been developed in co-operation with United Nations Office at Vienna, Centre for International Crime Prevention and the compilation under the heading "Handbook on Justice for Victims" which deals with various aspects of impact of victimization, victims assistance programmes and role and responsibility of frontline professionals and others to victims. The South African Law Commission, in its "Issue Paper 7" (1997) under the heading "Sentencing Restorative Justice: Compensation for victims of crime and victim empowerment" has deliberated on various relevant aspects of this issue. xx xx xx 27. In Malimath Committee Report (March 2003), it was observed:- "6.7.1 Historically speaking, Criminal Justice System seems to exist to protect the power, the privilege and the values of the elite section in society. The way crimes are defined and the system is administered demonstrate that there is an element of truth in the above perception even in modern times. However, over the years the dominant function of criminal justice is projected to be protecting all citizens from harm to either their person or property, the assumption being that it is the primary duty of a State under rule of law. The State does this by depriving individuals of the power to take law into their own hands and using its power to satisfy the sense of revenge through appropriate sanctions. The State (and society), it was argued, is itself the victim when a citizen commits a crime

and thereby questions its norms and authority. In the process of this transformation of torts to crimes, the focus of attention of the system shifted from the real victim who suffered the injury (as a result of the failure of the State) to the offender and how he is dealt with by the State. Criminal justice came to comprehend all about crime, the criminal, the way he is dealt with, the process of proving his guilt and the ultimate punishment given to him. The civil law was supposed to take care of the monetary and other losses suffered by the victim. Victims were marginalized and the state stood forth as the victim to prosecute and punish the accused.

6.7.2 What happens to the right of victim to get justice to the harm suffered? Well, he can be satisfied if the State successfully gets the criminal punished to death, a prison sentence or fine. How does he get justice if the State does not succeed in so doing? Can he ask the State to compensate him for the injury? In principle, that should be the logical consequence in such a situation; but the State which makes the law absolves itself.

6.8.1 The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy. When the sentence of fine is imposed as the sole punishment or an additional punishment, the whole or part of it may be directed to be paid to the person having suffered loss or injury as per the discretion of the Court (Section 357, Cr.P.C., 1973). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.

6.8.7 Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in term of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the Apex Court. The recent decisions in *Nilabati Behera v. State of Orissa* (1993 2 SCC 746) : (AIR 1993 SC 1960) and in *Chairman, Railway Board v. Chandrima Das* (AIR 2000 SC 988) are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the State for failure to protect the rights of the victim.

6.8.8 These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle invoked is the obligation of the State to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably."

10. In *Re: State of Assam & 2 others* (PIL (Suo Motu) No. 26/2013) vide judgment dated 24-4-2013, a Division Bench of Gauhati High Court observed: "We have heard learned counsel for the parties on the issue whether in absence of any prohibition under the scheme, interim compensation ought to be paid at the earliest to the victim irrespective of stage

of enquiry or trial, either on application of the victim or suo motu by the Court. In *Savitri v. Govind Singh Rawat* (1985) 4 SCC 337 : (AIR 1986 SC 984) question of interim maintenance under Section 125, Cr.P.C., 1973 was considered and it was observed: "3. It is true that there is no express provision in the Code which authorises a Magistrate to make an interim order directing payment of maintenance pending disposal of an application for maintenance. The Code does not also expressly prohibit the making of such an order. The question is whether such a power can be implied to be vested in a Magistrate having regard to the nature of the proceedings under Section 125 and other cognate provisions found in Chapter IX of the Code which is entitled "Order for Maintenance of Wives, Children and Parents". Section 125 of the Code confers power on a Magistrate of the first class to direct a person having sufficient means but who neglects or refuses to maintain (i) his wife, unable to maintain herself, or (ii) his legitimate or illegitimate minor child, whether married or not, unable to maintain himself, or (iii) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain himself or (iv) his father or mother, unable to maintain himself or herself, upon proof of such neglect or refusal, to pay a monthly allowance for the maintenance of his wife or such child, father or mother, as the case may be, at such monthly rate not exceeding five hundred rupees in the whole as such Magistrate think fit. Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance. Section 126 of the Code prescribes the procedure for the disposal of an application made under Section 125. Section 127 of the Code provides for alteration of the rate of maintenance in the light of the changed circumstances or an order or decree of a competent civil court. Section 128 of the Code deals with the enforcement of the order of maintenance. It is not necessary to refer to the other details contained in the above-said provisions. 6. In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under Section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under section 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under Section 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipse esse non potest" (Where anything is conceded, there is conceded also anything without

which the thing itself cannot exist). [Vide Earl Jowitt's Dictionary of English Law, 1959 Edn., p. 1797.] Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The Magistrate may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim order on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order reasonable sum by way of interim maintenance subject to the other conditions referred to therein pending final disposal of the application. In taking this view we have also taken note of the provisions of section 7(2) (a) of the Family Courts Act, 1984 (Act 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under Section 125 of the Code to the Family Courts constituted under the said Act." Above view has been reiterated, inter alia, in Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632 : (AIR 2008 SC 3006). We are of the view that above observations support the submission that interim compensation ought to be paid at the earliest so that immediate need of victim can be met. For determining the amount of interim compensation, the Court may have regard to the facts and circumstances of individual cases including the nature of offence, loss suffered and the requirement of the victim. On an interim order being passed by the Court, the funds available with the District/State Legal Services Authorities may be disbursed to the victims in the manner directed by the Court, to be adjusted later in appropriate proceedings. If the funds already allotted get exhausted, the

State may place further funds at the disposal of the Legal Services Authorities."

15. We are informed that 25 out of 29 State Government have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District legal authorities. It has been brought to our notice that even though almost a period of five years has expired since, the enactment of Section 357-A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the Courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.

16. We are of the view that 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. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a 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 factors as may be found relevant in the facts and circumstances of an individual case.

17. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order.

18. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.

19. In the present case, the impugned judgment shows that the de facto complainant, PW-2 Raman Anand, filed Criminal Revision No. 1477 of 2004 for compensation to the family members of deceased Devender Chopra and his son Abhishek Chopra. The same has been dismissed by the High Court without any reason. In fact even without such petition, the High Court ought to have awarded compensation. There is no reason as to why the victim family should not be awarded compensation Under Section 357-A by the State. Thus, we are of the view that the State of Haryana is liable to pay compensation to the family of the deceased. We determine the interim compensation payable for the two deaths to be rupees ten lacs, without prejudice to any other rights or remedies of the victim family in any other proceedings."

5. Heard Mr. K. Wotsa, learned Sr. Government Advocate for the State respondents. It is submitted by the learned Sr. Government Advocate that section 357-A of the Cr.P.C. was interested to that

code by Act 5 of 2009 and became a part of the same only from 31-12-2009. And thereafter, the State of Nagaland framed a scheme namely, the Nagaland Victims Compensation Scheme, 2012 by which payment of compensation to victims of crimes is provided for. However, the petitioner cannot claim compensation under the scheme since, the scheme came in to existence only in 2012 whereas her husband was killed on 28-10-2006. Secondly, the Sr. Government Advocate submitted that in Nagaland, there are so many people who have been killed by the undergrounds, therefore, in such circumstances, if compensation is given to the petitioner for the death of her husband, so many other cases are likely to be filed praying for the same relief, and in that event the State Government would be in difficult situation. As such, this Court has to take such facts and circumstances into consideration while deciding this case. 6. I have considered the submissions made by the learned counsel for the petitioner and the learned Sr. Government Advocate. I have also considered the judgments cited by the learned counsel for the petitioner in support of the petitioner's case. Article 21 of the Constitution of India provides for protection of life and personal liberty. It is the sentinel of all the rights guaranteed under the Constitution of India particularly under Part III. Without it, the other provisions of the Constitution which guarantees other rights would be meaningless. The very purpose of formation and existence of the State is to ensure protection of life and personal liberty from both external and internal forces. If the State fails in ensuring the protection of the lives and liberty of its citizens it has failed in its primary duty. Therefore, the State's top priority should be to ensure that the lives and liberty of its citizen are protected. Sadly the reality in this country seems to be that though we have been able to protect our self from external forces we seem to have failed many times in protecting our lives and liberty from forces or elements within. In spite of having a number of Para Military forces, State Forces in place, somewhere, somehow and something seems to have gone wrong. Killing happened so rampantly more so in this part of the country. The more disheartening and frustrating part of it is that most of the time the culprits are not booked and punished either because they could not be identified or because they belong to powerful organizations on whom the writ of the state seems to have become ineffective. In such situation the helpless citizen lives in fear while the perpetrators of the crime remain scot-free and roam freely. This makes the lives of the citizens not only vulnerable and frustrating but deprived of all liberty and peace. The challenge is certainly enormous but that does not mean that the State should shy away from its primary responsibility. It is indeed sad that an ordinary citizen should have been killed and deprived of his life at his early age and also his family members deprived of all the love, care and support they used to enjoy from him. The more disheartening and frustrating fact is that the State machineries failed to apprehend the culprits. The State has failed on two counts, first, it failed to protect the life of the deceased and secondly, it has failed to book the culprit. It would be a total failure on the part of the State if the lives of the family members of the deceased are not at least cared for. The State should have taken appropriate action towards it since, the incident was not

unknown to it. It has been well-settled by several judgments of the Hon''ble Supreme Court and the High Court's in the country passed under Articles 32 and 226 of the Constitution of India, that the State should pay compensation to the family members of victims of crimes as it is the duty of the State to protect the life and liberty of its citizens. The Hon''ble Delhi High Court in the case cited by learned counsel of the Petitioner has referred to the important-landmark judgments of the Hon''ble Supreme Court. There is no need of citing anymore judgment or judgments or to say anything more than what has been said in those judgments by the Hon''ble Supreme Court. It has been made crystal clear by the Hon''ble Supreme Court that it is obligatory on the part of the State to pay compensation to victims of crimes and their family members. The facts and circumstances of the case before the Hon''ble Delhi High Court and the facts and the circumstances of the case before this court are somewhat similar in the sense that the perpetrator of the crimes in both the cases were not known and persecuted.. In that case, the petitioner's husband while he was walking on the public road in Paharganj area of Delhi, a massive explosion broke down a building which caused his death and that of 16 others. The Hon''ble Delhi High Court after referring to the decisions of the Hon''ble Supreme Court in the cases mentioned above, came to the conclusion that compensation is payable to the wife of the deceased i.e., the petitioner in that case by the State for the breach of the constitutional guarantee under Article 21 of the Constitution. The Principle of Law as enunciated and propounded by the Apex Court and applied in that case is applicable in this case also. I find no reason to form or have a different opinion. 7. In the second case, the Hon''ble Supreme Court was faced with an appeal against conviction under section 302 read with Sections 34, 364-A, 201 and 120-B of the IPC. The brief facts of the case was that one Mr. Devender Chopra and his son namely, Abhishek Chopra were kidnapped on 18-12-2000 while they were on their way back home from their work place at Gurgaon. The kidnappers demanded a ransom amount of Rs. 50 lakhs. The matter was not brought to the notice of the police as the family members were negotiating with the kidnappers. However, eventually, the police was informed on 24-12-2000. The accused kidnappers were apprehended however, Devender Chopra and Abhishek Chopra had already been killed. The Hon''ble Supreme Court while upholding the conviction and sentence awarded to the accused persons considered as to whether the family members of the victims would be entitled to get compensation under section 357-A of the Cr. P.C. The Hon''ble Supreme Court dealt with the issue at length in the manner as quoted above and came to the conclusions that the family members of the victims should be given compensation under section 357-A of the Cr.P.C. One thing that needs to be noted from this case is that the crime occurred in the year 2000 yet compensation was awarded under the provision of section 357-A of Cr.P.C. which was inserted to the Code in the year 2009. This shows that victims of crimes that occurred before this provision of Cr.P.C. was brought into the Code are also entitled to get compensation under such provision. 8. From the two judgments cited by the ID counsel of the petitioner it is clear that the hands of this Court

are not tied in granting compensation to victims of crimes and can do so either under public law or under the provision of Cr.P.C. In fact in view of the judgments of the Hon''ble Supreme Court cited in the first case this Court is duty bound to do so. The case of the petitioner is a fit case for granting compensation because the State did not only fail in protecting the live of her husband but also failed in booking the culprits who are suspected to be members of underground organizations. As stated above protecting the lives and liberty of citizens is the most important function of the State and it is guranteed by Article 21 of our Constitution. If the state fails in its duty to do so the very purpose for which it was formed and exist is defeated. Therefore, people who act on behalf of the State must rise to the occasion and do what is needful so that the poor widow and her children who have been deprived of the love and care of the husband and father are not left in destitute and their faith on the State is restored. In view of what has been stated above and considering the social and economic status of the deceased and his bereft family members, the per capita income in the State and consumer price index I am of the view that it would meet both the ends of justice if the petitioner and her children are granted a compensation of rupees 300000/- (Three lakhs). Accordingly, the Respondent Nos. 1 and 2 are hereby directed to deposit sum of Rs. 30,0000/- (Three lakhs) in the Registry of this High Court at Kohima Bench for payment to the petitioner as compensation within a period of three months from the date of receipt of a copy of this judgment and order. The writ petition is disposed. Order accordingly.