



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 15.04.2025

Judgment pronounced on: 12.06.2025

+ **W.P.(C) 3476/2013**

SHAKILA

...Petitioner

Through:

Mr. Wills Mathews, Ms.
Nanditta Batra, Mr. Paul
John Edison, Mr.
Dhanesh M. Nair, Ms.
Anila Thakaran Thomas
and Ms. Lakshita Negi,
Advocates.

versus

STATE (NCT OF DELHI) & ORS

...Respondents

Through:

Mr. Dhruv Rohatgi, Ms.
Chandrika Sachdev and
Mr. Dhruv Kumar
Advocates for GNCTD.
Ms. Vrinda Bhandari,
Advocate for DSLSA.

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present petition has been preferred by **Ms. Shakila**¹ (since deceased), seeking, *inter alia*, a judicial inquiry into the death of her deceased son, **Javed @Bhura**², who was in judicial custody at that

¹Mother

²Deceased



time, and for appropriate compensation. The prayers, as sought in the writ petition, are extracted herein below for the sake of convenience: -

“i. Pass a writ, order or direction in the nature of mandamus of other appropriate order directing a judicial inquiry into the death of the Petitioner’s son, and grant her appropriate compensation.

ii. awarding the costs of this litigation to the Petitioner.

iii. Any other order this Court deem just and proper”

2. The facts germane, leading to the institution of the present petition, are as follows:

(i) The Petitioner's son, Javed @ Bhura, was convicted in the case arising out of FIR No. 12/2007 registered at P.S. New Usmanpur, Delhi, under Sections 394, 397 and 34 of the **Indian Penal Code, 1860**³ and was serving a 7-year term of imprisonment at the Tihar Jail. The Deceased was due to be released on 05.05.2013. However, on 03.05.2013, the Mother was informed of the unfortunate demise of her son. The cause of death was apparently a fight between two groups of inmates in the jail.

(ii) On the same day, i.e. 03.05.2013, FIRs bearing No. 194/2013 under Sections 147, 149, 323, 324 and 34 of the IPC and No. 195/2013 under Sections 324, 323, 307, 147, 148, 149 and 34 of the IPC were registered at PS Hari Nagar, Delhi, in respect of the fight that broke out in Tihar Jail.

(iii) The Mother preferred the present Petition seeking a judicial inquiry into the death of the Deceased and grant of appropriate compensation on the ground that the Deceased was

³IPC



the sole bread earner and she was a dependant of the Deceased.

(iv) Admittedly, during the pendency of the present Petition, the Mother was compensated on 29.12.2014 with an amount of Rs.1,00,000/-.

(v) During the pendency of the Petition, the Mother, who apparently suffered from various ailments, passed away on 17.03.2016.

(vi) In light of this fact, this Court, on 22.08.2017, disposed of the present Petition as having abated on her demise.

(vii) The counsel for the Mother preferred applications being CM NO. 36673 of 2018 and CM NO. 36674 of 2018, seeking setting aside of the order dated 22.08.2017 and for substitution of legal representatives of the Mother respectively. This Court, *vide* order dated 27.08.2019, allowed the aforementioned applications and substituted the following persons as **legal heirs of the Mother**⁴ in the present petition:

(1) Ms. Amir Jahan, (2) Ms. Qamar Jahan, (3) Ms. Shahajawan, (4) Mr. Islamuddin, (5) Ms. Nasreen, (6) Ms. Roobi, (7) Ms. Yasmeen, (8) Ms. Israt, (9) Ms. Nargis, and (10) Master Shejan.

(viii) The substituted Petitioner Nos. 1-4 are the siblings of the deceased - Javed @Bhura, the first three being the sisters and the fourth being the brother. Petitioners 5-10 are the grandchildren of the Mother. At the time of filing the amended memo of parties, the substituted Petitioner Nos. 8-10 were

⁴ substituted Petitioners



minors. By the passage of time, it would appear that all have now become major.

SUBMISSIONS OF THE PARTIES:

3. The main contention of the Mother was that the deceased was the sole bread earner for the family, and she had no means to sustain herself and thereby sought compensation. She also sought a judicial inquiry, contending that it is the responsibility of the State to ensure the safety and wellness of the inmates, and she apprehends that the deceased was beaten to death by jail staff.

4. Contesting the relief for a judicial inquiry, Respondent No.4, would contend that the Deceased sustained injuries pursuant to a scuffle between the rival gangs, which led to his demise and not because of any act of the prison officials. It is also stated by Respondent No. 4 that in the said incident, no prison official has been found to be involved in the physical assault. Respondent No. 4 further states that the said rivalry between the inmates was not within the knowledge of the Jail Staff, and neither was it reported by the inmates.

5. The Respondents would also contend that the police authorities conducted an independent inquiry after registering FIRs and submitted chargesheets, but ultimately, all the accused were acquitted by the Trial Court.

6. Contesting the relief for grant of compensation, the Respondents would contend that having already been compensated with Rs.1,00,000/- on the direction of the **National Human Rights**



Commission⁵ *vide* order dated 19.09.2014, the Petitioners do not merit any further compensation.

7. For the record, it may be noted that this Court *vide* order dated 02.08.2024 directed the **Delhi State Legal Services Authority**⁶ to examine the possibility of releasing any further compensation under the **Delhi Victims Compensation Scheme, 2018**⁷. Order dated 27.09.2024 records that the Secretary, DSLSA made a statement that an interim compensation of Rs. 50,000/- can be made, but thereafter, the order dated 04.11.2024 reflects that the DSLSA has argued that the definition of “a dependent” under Clause 2(b) of the DVCS includes the following persons: wife, husband, father, mother, grandparents, unmarried daughter and minor children etc. of the victim and the Petitioners being “the siblings of the deceased as well as the children of the siblings of the deceased”, they would not fall under the category of Dependents under Clause 2(b) of the DVCS.

8. During oral arguments, it was canvassed that the siblings being “married daughters” would disentitle them from any benefits. The Respondents would argue that being married, they would cease to be Dependent.

9. It is stated that the Mother never approached any of the Jail Authorities to redress her grievances, if any.

10. While reasoning that the Jail Staff could not have had any apprehension of the occurrence of such an incident, the Respondents would argue that the Jail authorities cannot be held accountable for the unfortunate demise of the Deceased since, there was no apparent lack

⁵ NHRC

⁶ DSLSA

⁷ DVCS



in providing security to the inmates and the said liability can only be attributed to the sudden physical assault between the two groups.

11. The Respondents would also contend that the Deceased had an aggressive disposition and had already been convicted for heinous crimes of robbery, etc and had a history of felony.

12. The Respondents also contend that the death did not occur due to any act or omission on the part of the Respondent-Jail authorities, and in fact, the Deceased was an active participant in the inter-gang feud leading to his demise.

ANALYSIS AND FINDINGS:

13. As aforesaid, the present petition has been filed broadly for the following substantive reliefs:

- a) A judicial inquiry into the death of the Deceased, and
- b) Grant of appropriate compensation to the Petitioners.

PRAYER FOR JUDICIAL INQUIRY:

14. Adverting to the first prayer, pursuant to the occurrence of the scuffle between the inmates on 03.05.2013, two FIRs bearing nos. 194 of 2013 and 195 of 2013 came to be registered at P.S. Hari Nagar, Delhi. Concurrently, inquest proceedings were also undertaken by the Metropolitan Magistrate, West Delhi, and *vide* report dated 02.12.2013, it was held that the death of the son of the Petitioner/Javed @Bhura occurred due to the injuries suffered during the clash between the inmates and the two rival gangs. The findings of the report dated 02.12.2013 are reproduced herein for the sake of convenience.

“6. From the material available on record, it is clear that scuffle took place between two groups of jail inmates. During the



incident, deceased Javed got severely injured and was shifted to DDU Hospital where he expired on 03.05.2013. doctors who had carried out the post mortem of the deceased have been examined during the proceedings. Dr. Santosh Kumar, CW8, Dr. B.N. Mishra and DW9 Dr. Komal Singh were the doctors who carried out the post mortem of the deceased. As per post mortem report "the cause of death is due to shock caused by multiple contusions over extensive parts of body including contused multiple vital organs (i.e. lungs, kidney etc.) as a of blunt, forceful impacts upon the body, subsequent to assault/scuffle". Manner of death is compatible to homicide. During post mortem, viscera of the deceased was also preserved and was sent to FSL Ahmedabad for comparison. I have also gone through the viscera report wherein it is mentioned that 'no poison' could be detected in the viscera of the deceased.

7. In view of the facts and circumstances, particularly, post mortem report of the deceased Javed, viscera report and statement of CW4 Ravi, CW5 Rahul, CW6 Mukesh and CW7 Prithvi Singh, it is apparent that the death of the deceased occurred due to injuries suffered by him during scuff which occurred on 03.05.2013 between the two groups.

CONCLUSION:

8. On the basis of record of inquest proceedings, it is clear that deceased Javed expired on 03.05.2013 during treatment at DDU Hospital. His death was unnatural. He died was a result of "shock caused by multiple contusions over extensive parts of body including contused multiple vital organs (i.e. lungs, kidney etc.) as a of blunt, forceful impacts upon the body, subsequent to assault/scuffle". It is pertinent to mention here that case FIR bearing no. 195/13 under 302/323/324/147/149/34 IPC which was registered on 03.05.2013 relating to the death of deceased Javed s/o Mohd. Aziz pending in the court of Ld. ASK Sh. Rakesh Siddharth. Hence, inquest proceedings of the deceased Javed @ Bhura s/o Mohd. Aziz thus stands concluded."

15. After registration of the FIRs (No. 194 & 195 of 2013) and submitting charge sheets, the learned Trial Court has acquitted all the accused in the case.

16. As is evident, an enquiry has already been conducted. The Ld. Trial Court has also acquitted the accused. Even if this Court had felt the need for a further inquiry into the matter, the same would not be practically possible, twelve years after the incident.



17. Accordingly, this Court does not consider it appropriate to grant the first relief.

GRANT OF APPROPRIATE COMPENSATION:

18. The second prayer before this Court is for appropriate compensation to the substituted Petitioners.

19. As is the stated case of the Respondents, compensation will be determined on the basis of the DVCS and its provisions.

20. The Mother was the beneficiary of an amount of Rs. 1,00,000/-, which was directed to be paid to her by the NHRC. Unfortunately, during the pendency of the Petition, in the year 2016, she passed away.

21. Admittedly, the Mother of the deceased was eligible for compensation, being enumerated in the definition of “Dependent”.

22. The Respondents argue that the substituted Petitioners herein fall outside the ambit of the definition of “Dependent” being Siblings and their children as also, *qua* the sisters, that they are “married daughters”.

23. The mainstay of the Respondents’ argument is that the term “Dependent” would only encompass the persons enumerated in the definition, i.e. to the “*wife, husband, father, mother, grandparents, unmarried daughter and minor children*” and not to the “the siblings of the deceased as well as the children of the siblings of the deceased” of the deceased - Javed @Bhura.

24. The Questions that thus, stands posited for the consideration of this Court are:



- 1) Whether siblings, not being expressly mentioned in the list of Dependents in the Scheme, are entitled to the benefits of the scheme or not?
- 2) Whether the fact of a female sibling being married would lead to a conclusion that they can't be "Dependent"?
- 3) Whether the children of siblings would be excluded from the benefits of the scheme?

25. As a prefatory measure, this Court notes that the DVCS, 2018 and its earlier versions (2011 & 2015) trace their existence to Section 357A of the **Code of Criminal Procedure, 1972**⁸, now Section 396 in the **Bharatiya Nagrik Suraksha Sanhita, 2023**⁹. This Section provides for a 'Victim Compensation Scheme' to be drawn up for every state and reads as follows:

"396. Victim compensation scheme. - (1) 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.

(2) 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).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 395 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

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

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services

⁸CrPC

⁹BNSS



Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) 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 in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

(7) The compensation payable by the State Government under this section shall be in addition to the payment of fine to the victim under section 65, section 70 and sub-section (1) of section 124 of the Bharatiya Nyaya Sanhita, 2023.”

26. The legislative history of Section 357A of CrPC would show that the Section came to be introduced on 31-12-2009 by way of an amendment, based on the recommendations of the 154th Law Commission Reports. The Commission, in the said Report, and in particular, in Chapter XV of the same, dwelt in-depth on the concept of “Victimology” and the same formed the foundational basis and the philosophy behind the amendment. It would be apposite to refer to, albeit briefly, some parts of the said report as follows:

“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 realised. The State should accept the principle of providing assistance to victims out of its own funds. (i) in cases of acquittals, or (ii) or where the offender is not traceable but the victim is identified, or (iii) also in cases when the offence is proved.

xxxx xxxx xxxxx

13. In view of the weakness of the existing provisions for compensation to crime victims in the criminal law, we are of the view that it is necessary to incorporate a new Section 357-A in the Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts. Heads of the compensation are for (i) for injury, (ii) for any loss or damage to the property of the claimant which occurred in the course of his/her sustaining the injury and (iii) in case of death from injury resulting in loss of support to dependents.”

(Emphasis supplied)



27. The thrust of the same was to ensure that the State would provide compensatory measures to the Victims as well as the Dependents.

28. It is in light of this salutary decision of the Government of India, in accepting the recommendation and appropriately amending the CrPC that this Court would have to view the matter at hand. In this endeavour, this Court is also guided by the Judgment of the Hon'ble Supreme Court in *Suresh Vs. State of Haryana*¹⁰, and more particularly, paras 13 & 14, which read as follows:

13. It would now be appropriate to deal with the issue. The provision has been incorporated in CrPC vide Act 5 of 2009 and the amendment duly came into force in view of the Notification dated 31-12-2009. 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 the 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 [(2013) 6 SCC 770; (2014) 1 SCC (Cri) 285], Gang-Rape Ordered by Village Kangaroo Court in W.B., In re [(2014) 4 SCC 786; (2014) 2 SCC (Cri) 437], Mohd. Haroon v. Union of India [(2014) 5 SCC 252; (2014) 2 SCC (Cri) 510] and Laxmi v. Union of India [(2014) 4 SCC 427; (2014) 4 SCC (Cri) 802]

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14. In Abdul Rashid v. State of Odisha [2013 SCC OnLine Ori 493; ILR (2014) 1 Cut 202], to which one of us (Goel, J.) was party, it was observed: (SCC OnLine Ori paras 6-10)

“6. Question for consideration is whether the responsibility of the State ends merely by registering a 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

¹⁰ (2015) 2 SCC 227



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 the 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 : 1995 SCC (Cri) 556] (death of prisoner by co-prisoner), Supreme Court Legal Aid Committee v. State of Bihar [(1991) 3 SCC 482 : 1991 SCC (Cri) 639] (failure to provide timely medical aid by jail authorities, Railway Board v. Chandrima Das [(2000) 2 SCC 465] (rape of Bangladeshi national by Railway staff), Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527] (custodial death), Khatri (1) v. State of Bihar [(1981) 1 SCC 623 : 1981 SCC (Cri) 225] (prisoners' blinding by jail staff), Union Carbide Corpn. v. Union of India [(1989) 1 SCC 674: 1989 SCC (Cri) 243] (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 CrPC and a Scheme has



been framed by the State of Odisha called 'The Odisha Victim Compensation Scheme, 2012'. Compensation under the said section is payable to victim of a crime in all cases irrespective of conviction or acquittal. The amount of compensation may be worked out at an appropriate forum in accordance with the said Scheme, but pending such steps being taken, interim compensation ought to be given at the earliest in any proceedings.

8. In *Ankush Shivaji Gaikwad v. State of Maharashtra* [(2013) 6 SCC 770: (2014) 1 SCC (Cri) 285], the matter was reviewed by the Hon'ble Supreme Court with reference to development in law and it was observed: (SCC pp. 785-91 & 797, paras 33-48 & 66-67)

'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 lawmakers 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. Legislations have, therefore, been introduced in many countries including Canada, Australia, England, New Zealand, Northern Ireland and in certain States in the USA providing for restitution/reparation by the 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 Oxford Handbook of Criminology (1994 Edn., pp. 1237-38), which has been quoted with approval in Delhi Domestic Working Women's Forum v. Union of India [(1995) 1 SCC 14: 1995 SCC (Cri) 7] 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 penological 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, 1982 authorises 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.”

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 recognised the right of victims of crimes to receive compensation by passing a resolution titled “Declaration of Basic Principles of Justice for Victims of Crime 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 victimisation, 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 victimising 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 victimisation.

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 v. High Court of Gujarat* [(1998) 7 SCC 392: 1998 SCC (Cri) 1640] in the following words: (SCC pp. 432-33, para 94)

“94. In recent years the right to reparation for victims of violation of human rights is gaining ground. The 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 re-establish 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 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 utilising this provision. We propose to omit the word ‘substantial’ from the clause.”

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.”

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—themselves obscure—become all the more so in the absence of comprehensive information on which the correctional process is to operate. The public as well 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 cooperate in the process.”



(emphasis supplied)

45. *The Criminal Procedure Code of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its Statement of Objects and Reasons that Section 357 was “intended to provide relief to the poorer sections of the community” and that the amended CrPC 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 cases end 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 154th 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 victimisation and protection of victims of crimes. Crimes often entail substantive harm 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 recognised 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 principles of victimology has foundations in Indian constitutional jurisprudence. The provision on fundamental rights (Part III) and directive principles of State policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of 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 undeserved want'. So also Article 51-A 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 incorporates this concept to an extent and empowers the criminal courts to grant compensation to the victims.

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 realised. 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 and 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 less frequently punished by the courts. In other words, whether courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?

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 of the Code of Criminal Procedure 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 CrPC. 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 v. State of Haryana* [Criminal Appeal No. 250 of 1999, decided on 1-4-2008 (P&H)], 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 justice



to the victims depend only on the punishment of the guilty? 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 the 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 CrPC, 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 the need of victims.

In Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984], referring to provisions for compensation, the Hon'ble Supreme Court observed: (SCC p. 558, para 10)

“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 Victims' 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 Victims in Criminal Proceedings.

(5) Council of Europe Recommendations on Assistance to Crime Victims adopted on 14-6-2006.

(6) 152nd and 154th Reports of the Law Commission of India, 1994 and 1996 respectively, recommending introduction of Section 357-A in the 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 cooperation 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 victimisation, 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.

** * **

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 sections 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 marginalised 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 recognised by the law though it is recognised 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 CrPC). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.

6.8.7. Sympathising with the plight of victims under criminal justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defence 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 terms 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 : 1993 SCC (Cri) 527] and in Railway Board v. Chandrima Das [(2000) 2 SCC 465] 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.” ’

29. This Court would now advert to the relevant clauses of the DVCS, being the adaptation of the principles for compensation as set out in the report and adopted by way of an amendment to the CrPC and retained in the BNSS, 2023.

30. The eligibility for compensation is determined by Clause 4 of the DVCS, which reads as follows:

“4. Eligibility for compensation- The victim or his/her dependent(s), as the case may be, shall be eligible for the grant of compensation after satisfying the criteria that he/she should not have been compensated for the loss or injury under any other scheme of the Central Government or the Government of the National Capital Territory of Delhi.



Provided also that the amount received under any other scheme shall be adjusted from the compensation payable hereunder and only the remainder shall be payable by the DSLSA.”

31. The term “Dependent” is defined in Clause 2(b) as follows:

*“2(b): “**Dependent**” includes wife, husband, father, mother, grandparents, unmarried daughter and minor children of the victim as determined by the Delhi State Legal Services Authority or District Legal Services Authority on the basis of report of Sub-Divisional Magistrate of the concerned area/Station House Officer/Investigating Officer or on the basis of material placed on record by the dependents by way of affidavit or on its own enquiry.”*

32. The definition of “Victim” as assigned in the Scheme is reproduced herein below:

*“2(k): **Victim**” means a person who has suffered loss or injury as a result of the offence and in the case of his death, the expression ‘victim’ shall mean to include his or her guardian or legal heir;”*

33. In *Ram Phal Vs. State*¹¹, this Court examined the definition of “Victim” in the context of filing of an appeal under Section 372 of the CrPC. While so doing, it had also, in para 38, referred to the provisions of Section 357A of the CrPC and the term “Victim” and held that the terms “Victims” and “Dependents” are disjunctive, with either of the two being entitled to compensation. At the same time, this Court also held that the term “Dependent”, in the context of Section 357A, is of wide import and capable of encompassing within it a large category of persons who depended financially or emotionally on the victim of the crime. While so doing, this Court also held that the definition of “injury” in Section 44 of the IPC [Now Section 2(14) of the BNS], by virtue of Section 2(y) of the CrPC [Now Section 2(2) of

¹¹(2015) SCC Online Del 9802



the BNSS] would apply to the provisions of the CrPC. Para 38 of the Judgment in *Ram Phal (supra)*, reads as follows:

“38. This Court is of the further opinion that the laws of intestacy merely dictate one's position in the set of lineal or other descendants, and the consequent priority to claim a share in the estate of the deceased. They bear no necessary relation to the kind of rights granted to the victim simpliciter (that can, consequently, be exercised by the 'legal heir'). The first set of rights granted are in the area of compensation under Sections 357A-357C and the second set of rights are in the area of the victim's participation in the prosecution of the trial and appeal under Sections 24(8) and 372. As far as the right to claim compensation goes, it is noteworthy that Section 357A reads:

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

(2) xxx.

(3) xxx.

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

(5) xxx.

(6) xxx.”

Section 357A thus envisages that the victim “or his dependents who have suffered loss or injury as a result of the crime” are entitled to compensation rights. This means that the entitlement rests in the victim simpliciter, or his/her dependents, where the victim does not advance a claim. One need not go far to seek the reason for interpreting this provision as restricted to the victim simpliciter; the use of “or” renders “victim” disjunctive from the clause “or his dependents who have suffered loss or injury”, thus compelling the inference that the dependents' right to advance compensation claims is alternative to that of that of the victim. See Fakir Mohd. (dead) by LRs. v. Sita Ram ((2002) 1 SCC 741, R.S. Naik v. A.R. Antuley (1984) 2 SCC 183, Kamta Prasad Aggarwal v. Executive Officer, Ballabgarh, AIR 1974 SC 685, Manmohan Das Shah v. Bishun Das AIR 1967 SC 643. Therefore, if the term “victim” were to be interpreted so expansively as to include all legal heirs, at least within the context of the claim to compensation, the list of lineal and other descendants that qualify as heirs would be far longer than the



list of “dependents who have suffered loss or injury as a result of the crime”. Necessarily then, “victim” in Section 357A has to refer to victim simpliciter, failing which (on account of his/her death), the dependants of the deceased victim may make claims. To this extent then, it is clear that the laws of intestacy are of limited utility in defining the scope of the term “legal heir” as far as compensation rights are concerned. The expression “dependent” is of wide import and encompasses a large category of persons such as foster children, parties in live-in relationships and others who depended financially or emotionally on the victim of the crime. Likewise, all legal heirs, by the laws of intestacy, do not necessarily undergo emotional harm or experience “injury”, from the acts or omissions of the accused, and may have neither any motivation nor compulsion to participate in the trial process. This Court is thus unable to affirm that the laws of inheritance/intestacy can be solely determinative of which heirs are entitled to exercise the rights of a victim in the criminal trial process.”

(Emphasis supplied)

34. It is in the context of the Judgment of this Court in **Ram Phal** (*supra*), and for the sake of convenience, that Section 2(14) of the BNS is extracted as follows:

“2(14): “injury” means any harm whatever illegally caused to any person, in mind, reputation or body.”

35. For the record, it needs to be stated that the Judgment in **Ram Phal** (*supra*) was subject to a fair amount of discussion in the Judgment of the Hon’ble Supreme Court in the case of **Satyapal Singh Vs. State of Maharashtra**¹². By the said Judgment, while the Hon’ble Supreme Court would set aside the finding in respect of the existence of an independent right in the victim or their relatives, exercisable without the leave of the High Court, the Hon’ble Supreme Court did not disturb the other findings in the Judgment in **Ram Phal** (*supra*).

¹²(2015) 15 SCC 613



36. Reverting now to the DVCS and its salutary scheme - Both “Victims” and “Dependents” are eligible for compensation under the scheme, in the alternative. In light of the foundational Section in the BNSS, as effectuated in the eligibility clause of the Scheme, as well as the Judgment of this Court in *Ram Phal (supra)*, it is evident that it is either the Victim or the Dependent who are eligible for compensation. In the event of there being no claim by the Victim, the Dependent could make a claim.

37. A perusal of Clause 2(b) of the DVCS would make it apparent that the definition of “Dependent”, as articulated therein, is inclusive in nature. Principles of statutory interpretation commend us to look upon an inclusive definition to indicate an intention to enlarge the scope and not restrict it to only those that are enumerated in the inclusive definition.

38. The Apex Court in *S.K. Gupta v. K.P. Jain*¹³, while deliberating upon the principles of statutory interpretation and the wide scope and ambit of a definition when the word ‘include’ has been used, states as follows:

“24. The noticeable feature of this definition is that it is an inclusive definition and, where in a definition clause, the word “include” is used, it is so done in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (see Dilworth v. Commissioner of Stamps [(1899) AC 99, 105 : 79 LT 473]). Where in a definition section of a statute a word is defined to mean a certain thing, wherever that word is used in that statute, it shall mean what is stated in the definitions unless the context otherwise requires. But where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable

¹³(1979) 3 SCC 54



but it also bears its extended statutory meaning. At any rate, such expansive definition should be so construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having opposite effect (see Jobbins v. Middlesex County Council [(1949) 1 KB 142 : (1948) 2 All ER 610]). Where the definition of an expression in a definition clause is preceded by the words “unless the context otherwise requires”, normally the definition given in the section should be applied and given effect to but this normal rule may, however, be departed from if there be something in the context to show that the definition should not be applied (see Khanna, J., in Indira Nehru Gandhi v. Raj Narain [(1975) Supp SCC 1, 97]). It would thus appear that ordinarily one has to adhere to the definition and if it is an expansive definition the same should be adhered to. The frame of any definition more often than not is capable of being made flexible but the precision and certainty in law requires that it should not be made loose and kept tight as far as possible (see Kalya Singh v. Genda Lal [(1976) 1 SCC 304]).”

(Emphasis supplied)

39. This is all the more relevant in the case of interpreting statutes or provisions, or schemes that are beneficial in nature. The Hon’ble Supreme Court in ***Union of India v. Prabhakaran Vijaya Kumar***¹⁴, has held the following:

“12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. v. Workmen [AIR 1961 SC 647] (AIR para 7), Jeewanlal Ltd. v. Appellate Authority [(1984) 4 SCC 356 : 1984 SCC (L&S) 753 : AIR 1984 SC 1842] (AIR para 11), Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd. [(1981) 2 SCC 238 : 1981 SCC (L&S) 316 : AIR 1981 SC 852] (AIR para 13), S.M. Nilajkar v. Telecom District Manager [(2003) 4 SCC 27 : 2003 SCC (L&S) 380] (SCC para 12).

13. In Hindustan Lever Ltd. v. Ashok Vishnu Kate [(1995) 6 SCC 326: 1995 SCC (L&S) 1385] this Court observed: (SCC pp. 347-48, paras 41-42)

¹⁴(2008) 9 SCC 527



“41. In this connection, we may usefully turn to the decision of this Court in *Workmen v. American Express International Banking Corpn.* [(1985) 4 SCC 71: 1985 SCC (L&S) 940] wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations: (SCC p. 76)

‘4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights’ legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the “colour”, the “content” and the “context” of such statutes (we have borrowed the words from Lord Wilberforce’s opinion in *Prenn v. Simmonds* [(1971) 1 WLR 1381: (1971) 3 All ER 237 (HL)]). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court* [(1980) 4 SCC 443: 1981 SCC (L&S) 16] we had occasion to say: (SCC p. 447, para 6)

“6. ... Semantic luxuries are misplaced in the interpretation of ‘bread and butter’ statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions.” ’

42. Francis Bennion in his *Statutory Interpretation*, 2nd Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:



'A purposive construction of an enactment is one which gives effect to the legislative purpose by—

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).'

At p. 661 of the same book, the author has considered the topic of 'Purposive Construction' in contrast with literal construction. The learned author has observed as under:

'Contrast with literal construction.—Although the term "purposive construction" is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975 : "If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions." The matter was summed up by Lord Diplock in this way—

... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.' "

(Emphasis supplied)

40. The Respondents' contention that the definition of "Dependent" would have to be limited to the persons listed therein, in the view of this Court, is against the salutary intent of the scheme. The inclusive



definition in the Scheme effectively negates the restrictive interpretation sought to be given to the Scheme.

41. In any event, the question as to who is a Dependent already stands settled by the Judgment of this Hon'ble Court in *Ram Phal (supra)* which holds that a Dependent would encompass persons who depended financially or emotionally upon the Victim.

42. Though the definition of "Dependent" does not include "siblings", given the inclusive terminology employed in the definition, non-inclusion of the term "sibling", cannot *ipso facto* exclude them from the benefits of the DVCS Scheme. The first Question therefore stands answered in the affirmative.

43. The next question relates to the disentitlement of a married female sibling being disentitled from the benefits of the DVCS. The argument canvassed was that the definition of Dependent only enumerates "Daughters" and not married daughters. Extending the same, it was contended that a married sibling, by virtue of such marriage would also be disentitled. This Court is unable to agree with the same.

44. Given the salutary nature of the scheme, this Court is of the view that Clause 2(b) of the DVCS, 2018, defining "Dependent", cannot be interpreted in a manner such as to exclude a married daughter from the scheme of things. In our view, the test for determining eligibility for a daughter, married or unmarried, is not the marital status, but that of whether she is "Dependent" on the victim. Since this Court has already held that a sibling is also entitled, there can be no distinction made between a married or an unmarried sibling either. A similar logic would be applicable in the case of the children of the sibling(s).



45. This Court is aware that an expansive definition, as propounded in *Ram Phal* (Supra) is fraught with an enormous amount of ambiguity, especially in the context of determining “emotional dependence”. There is also the further issue of quantifying the “emotional dependence” for the purpose of grant of compensation.

46. This Court, therefore, believes that the loss or injury that may have been suffered, for the purpose of evaluating the compensation to be provided, would have to undergo a process of evaluating the actual physical or monetary dependence that a person may have had on the Victim by way of a fact-finding exercise which can be conducted by the DSLSA to determine the extent, nature and manner of dependency of a person.

47. Turning next to the argument regarding the ineligibility of the substituted Petitioners to the benefits of the Scheme on the ground of the Mother having received a payment of Rs.1,00,000/-.

48. At this stage, it is important to note that, neither of the parties herein had thought it necessary to produce the order by which the NHRC had directed the payment of Rs.1,00,000/- to the Mother. This Court, after some effort was able to obtain a copy of the proceedings of 10.2.2015 and the contents of the same are extracted hereinbelow:

“

Diary No	154212	Case/File No	6291/30/9/2013-AD
Victim Name	JAVED S/O SALIM	Registration Date	24/10/2013
Action List			
Action No.	Action	Authority	Action Date
4	Concluded and No Further		10/02/2015



	Action Required		
3	Additional Information Called for		16/09/2014
2	Additional Information Called for		12/06/2014
1	Sent to DG(I), NHRC		31/10/2013

Action

Action: Concluded and No Further Action Required (Action No 4)

Action Date	10/02/2015
Authority	
Proceeding	<p>These proceedings shall be read in continuation of earlier proceedings of the Commission dated 16.09.2014.</p> <p>In response, the Superintendent, Prison Headquarters, Delhi vide his communication dated 9.1.2015 has submitted the compliance report. <u>Perusal of the same reveals that an amount of Rs. 1,00,000/- (Rupees one lakh only) has been paid to Smt. Sakila mother of deceased under trial prisoner Javed @ Bhura on 29.12.2014 Proof of payment has also been annexed. It has also been informed that conduct of Ramanand, Assistant Supdt. of Jail has been censured on 29.8.2013 while Departmental proceedings against other prison personnel is in progress.</u></p> <p><u>The Commission has considered the matter. The criminal case registered in the matter vide FIR No. 194/2013, Police Station Hari Nagar is now under consideration of the court. An amount of interim relief of Rs. 1,00,000/- (Rupees one lakh only) as recommended by the Commission has been paid to mother of the deceased. One of the delinquent prison personnel has already been dealt with and punished departmentally while the disciplinary proceedings are in progress in respect of other prison personnel.</u></p> <p><u>The Chief Secretary, Government of NCT of Delhi and the Director General (Prisons),</u></p>



	<p><u>Delhi shall however ensure that the Departmental proceedings pending against the remaining prison personnel are concluded and finalized expeditiously. With this direction, the reports received from the State Authorities are taken on record and the case is closed.</u></p> <p>Let a copy of these proceedings also be transmitted to the Information Officer, NHRC and to beneficiary for their information.</p> <p>LINKED WITH MAIN FILE NO. 2638/30/9/2013-JCD.</p>
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Complaint

Diary No	154212	Section	M-3
Language	HINDI	Mode	BY POST
Received Date	19/10/2013	Complaint Date	14/10/2013

Victim

Victim Name	JAVED S/O SALIM	Gender	Male
Religion	Muslim	Cast	Unknown
Address	TIHAR JAIL,		
District	WEST DELHI	State	DELHI

Complainant

Name	SHAKILA W/O SALIM		
Address	H.NO. E-16 K/254, BRAHAMPURI KA PULIA, SEELAMPUR,		
District	NORTH EAST DELHI	State	DELHI

Incident

Incident Place	TIHAR JAIL	Incident	03/05/2013
Incident Category	ALLEGEDCUSTODIAL DEATHS IN JUDICIAL CUSTODY		
Incident District	WEST DELHI	Incident State	DELHI
Incident			



Details			
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....”

49. This Court deems it appropriate to take judicial notice of the said order.

50. A reading of the NHRC order/proceedings makes it apparent that a sum of Rs.1,00,000/- was paid to the Mother in the nature of interim compensation. This amount does not seem to have been made under any Scheme of the Central Government, or the **Government of the National Capital Territory of Delhi**¹⁵. The Respondents have also not raised any such contention.

51. This Court is of the view that since the said amount paid is (a) an “interim compensation”, and (b) the amount so paid was not under any scheme of the Central Government as the GNCTD, the payment of Rs. 1,00,000/- is not a bar to the eligibility of the substituted Petitioners to receive compensation under the DVCS.

52. This Court notes, with some concern, the repeated submission by the Respondent regarding no fault on the part of the jail authorities. The contents of the NHRC proceedings extracted hereinbefore belie this claim.

53. This Court is guided by the judgment of the Hon’ble Supreme Court in *State of A.P. v. Challa Ramkrishna Reddy*¹⁶ wherein it has held that Prisoners are not shorn of their fundamental rights while in custody. The relevant extract of *Challa Ramkrishna Reddy (supra)* is reproduced herein below:

“22. Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. A prisoner, be he a convict or undertrial or a detenu, does not

¹⁵ GNCTD

¹⁶ (2000) 5 SCC 712



cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights.”

54. A 3-Judge Bench of the Hon’ble Supreme Court in *Sunil Batra (II) v. Delhi Admn.*¹⁷ recognizing the right of prisoners to their fundamental rights under Article 21 of the Indian Constitution held as follows:

“40. Prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is a walled-off world which is incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit in Article 21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure. The meaning of ‘life’ given by Field, J., approved in Kharak Singh [Kharak Singh v. State of U. P., (1964) 1 SCR 332, 357 : AIR 1963 SC 1295] and Maneka Gandhi [(1978) 1 SCC 248] bears excerption:

“Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.”

Therefore, inside prisons are persons and their personhood, if crippled by law-keepers turning law-breakers, shall be forbidden by the writ of this Court from such wrongdoing. Fair procedure, in dealing with prisoners, therefore, calls for another dimension of access to law-provision, within easy reach, of the law which limits liberty to persons who are prevented from moving out of prison gates.

.....

42. Rights jurisprudence is important but becomes an abstraction in the absence of remedial jurisprudence. Law is not an omnipotence in the sky but a loaded gun which, when triggered by trained men with ballistic skill, strikes the offending bull's

¹⁷ (1980) 3 SCC 488



eye. We have made it clear that no prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him — to read and write, to exercise and recreation, to meditation and chant, to creative comforts like protection from extreme cold and heat, to freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment.”

(emphasis supplied)

55. The Jail manual and Rules provide for the safety and security of prisoners. In fact, various High Courts and the Apex Court have time and again deliberated and reiterated that prisoners being entrusted to the care of the prison officials, have a right to protection, and it becomes the duty of those authorities to safeguard the life and well-being of every inmate, including those who have been convicted and are serving their sentence. The High Court of Andhra Pradesh in *State of Andhra Pradesh vs. Suramalla Ramulu and Ors*¹⁸ has observed that the mere fact that prisoners have been convicted by a court of law and are serving their sentence does not absolve the authorities of their responsibility. A prisoner does not forfeit his fundamental rights and cannot be deprived of the protections guaranteed under Article 21 of the Constitution of India, except insofar as such deprivation is permitted by law. Relevant extract of the *Suramalla Ramulu (supra)* judgement is reproduced herein below:

“10. There is therefore no room for doubt that even a prisoner convicted of a crime undergoing sentence is very much entitled to the fundamental rights guaranteed under the Constitution including that of right to life guaranteed by Article 21 of the Constitution that he shall not be deprived of his life except by procedures established by law.

¹⁸1996 SCC OnLine AP 185



11. Apart from the Constitutional safe-guards, the jail manuals and the rules framed enjoin the officials administering the jails to ensure safety of prisoners. The prisoner being entrusted to their care is entitled to protection and it is the responsibility of the prison officials to ensure the life and safety of every inmate of the jail including those who may have been convicted and serving sentence. These authorities are not absolved of this responsibility merely because the prisoners had been convicted by a Court of law and were serving sentence. A prisoner, as noticed above, is not denied of his fundamental rights and is not deprived of his constitutional right guaranteed under Article 21 of the Constitution of India except to the extent he has been deprived of it in accordance with law. Shankar, in the instant case died in prison. He was killed even according to the version as put forth by the appellants-respondents by a co-prisoner which took place in jail. It resulted in deprivation of his life contrary to law. The death of Shankar resulted, on account of the acts of omission in taking due care to protect the lives of prisoners and on account of negligence on the part of prison officials in doing their duty properly in ensuring safety of prisoners as they are enjoined to do.

12. Once it is held, as in the instant case, that the death of Shankar occurred on account of the negligence of the prison officials, negligence in discharge of their duties, the State has to be held vicariously liable for the loss resulting from such negligence. We are fortified in this view by a direct decision of a Division Bench Judgment of this Court in Challa Ramkonda Reddy v. State of A.P. by District Collector, Kurnool (6) AIR 1989 AP 235 and the more recent pronouncement of the Supreme Court in Kewal Pati (Smt.) v. State of U.P. (7) (1995) 3 SCC 600.”

56. This Court is of the firm opinion that it is the bounden duty of the State to ensure the safety of persons who are in its custody. While the deceased Victim may have been a person with criminal antecedents, the State is not absolved of its duty to ensure the safety and well-being of the prisoners in its custody. This Court believes that it is the duty of the State to ensure that every person who is in custody is kept safe and secure from themselves as well as other such inmates who are present therein. The fact that two “rival gangs”, as per the contention of the Respondents, chose to have an altercation and that



the victim participated in the same, would not absolve the authorities of their bounden responsibility to carry out their duty of ensuring the safety and security of prisoners. This Court is of the view that part of the duties of the State is to ensure that such “gangs” are not permitted to proliferate in jails and certainly to ensure that such gang rivalries are not permitted to come to the fore. The fact that, in the present case, such an altercation has transpired and that the two “rival gangs” have had access to weapons or tools by which they have been able to cause injuries to each other, leading to the death of the deceased, does not speak highly of the manner in which the jail authorities have dispensed their duties.

57. This Court also takes note of the fact that the Delhi Government had, sometime in late 2024, proposed an amendment to the Delhi Prison Rules, which had provided a compensation of Rs. 7.5 Lakhs to the next of kin or legal heirs of the Prisoners who suffered an unnatural death. The said scheme set out a “no fault liability” compensation scheme for persons who suffered unnatural deaths in custody, including for those who died as a result of a quarrel among prisoners.

58. Though the said scheme is not notified, it is apparent that the said scheme, following the theme of victimology, recognised the State’s responsibility for the provision of compensation to persons affected by the unnatural death of those in custody.

59. These aspects, coupled with the NHRC record, which seems to suggest that there was some delinquency on the part of the Jail personnel in the demise of the Petitioner’s son, would also lead this Court to conclude that the State is vicariously responsible for the



unfortunate death of the deceased and thereby too, liable to pay compensation.

CONCLUSION:

60. *Apropos* the discussion and analysis hereinbefore, this Court concludes as follows:

- A. The Petitioners, by virtue of their being the siblings, married or unmarried or the children of the siblings, are not, *ipso facto*, disentitled from the benefits of the DVCS Scheme.
- B. The receipt of Rs. 1,00,000/- by the Mother, prior to her demise, would not preclude the substituted Petitioners from being entitled to the benefit of the scheme since;
 - i. The same was in the nature of an interim payment, and
 - ii. The same was not in terms of a Scheme of the Central Govt. or of the GNCTD.
- C. The State, owing a duty to ensure the security of the general public, including persons who are incarcerated, has a responsibility to compensate in cases of unnatural deaths in custody. This is also in line with the proposed scheme of the Delhi Government. However, there may be certain exceptions to the general class of such deceased prisoners, e.g. those who suffer death due to natural causes or those who perish in an attempt to escape. It is clarified that these are merely illustrative and in no manner limited, and further, do not preclude the State from excluding such other persons who they believe should be exempt from the benefits of the Scheme.
- D. In the present case, no particulars of the loss or injury suffered by the Petitioners have been provided. Equally, though, is the



fact that, based on the restrictive interpretation canvassed by the Respondents, no determination on the “dependency” or of any loss or injury suffered by the Petitioners, been carried out.

E. The Schedule for payment of compensation in the event of the demise of a Victim is as follows:

“DELHI VICTIM COMPENSATION SCHEME, 2018

SCHEDULE

S. No.	Particulars of loss or injury	Minimum limit of compensation	Upper limit of compensation
1.	Loss of life	Rs. 3 Lakhs	Rs. 10 Lakhs

...”

F. The interim compensation of Rs. 1,00,000/-, is less than the minimum amount prescribed by the Schedule of the DVCS. The Schedule provides for a minimum and an upper limit, and the same are Rs.3 and Rs.10 Lakhs, respectively. The Mother, admittedly being a dependent, should have received at least 3 Lakhs, if not more. This Court, in its Judgment in *Mohini Vs State (Govt. of NCT, Delhi)*¹⁹ has held that the compensation as awarded should be just and adequate and at Para 20 of the said Judgment, states as follows:-

“20. In view of the above legal position, Clause 4 of the Scheme has to be interpreted so as not to defeat the object of the Scheme. The Scheme read with Section 357A of Cr.P.C. envisages that the victim or the dependent should receive just compensation. To knock out an applicant under the Scheme merely because some meagre or token compensation was received by the applicant under some other statutory provisions would be unfair and contrary to the very object of the Scheme. Clause 4 is added to ensure that no victim or dependent gets a bonanza or largesse. It is not intended to inflict injury. Clause 4 has to be read conjointly and would have to take its colour from Section 357A Cr.P.C. read with Clause 5 and Schedule to the

¹⁹ (2015) SCC OnLine Del 12019



Scheme. Reading Clause 4 of the Scheme in this manner would mean that the victim can be said to “have been compensated for the loss and injury” from some other scheme when he has received compensation equivalent to or more than what is the minimum stipulated in the Schedule to the Scheme. Such an applicant would not be entitled to receive any compensation under the present Scheme. However, where the amount received is less than the minimum stipulated under the Schedule, it cannot be said that he has been compensated for the loss and injury and the concerned authority shall grant appropriate compensation under the Scheme but taking into account the amount of compensation already received by the victim/dependent.”

- G. The Mother, during her lifetime, should have been paid, at the very least, the minimum amount of compensation. She was forced to come to this Court for “appropriate compensation”, but before the determination of the petition, unfortunately, passed away. The Petitioners, at the very least, would be entitled to the prescribed minimum under the scheme.
- H. This Court directs that a sum of Rs.2,00,000/- be paid immediately to the Petitioners, being the difference between the sum of the prescribed minimum of Rs.3,00,000/- Lakhs and the sum of Rs.1,00,000/- received by way of interim compensation.
- I. The Court directs the DSLSA to conduct a fact-finding exercise to evaluate the actual physical or monetary dependence that the substituted Petitioners may have had on the Victim, to determine the loss or injury that they may have suffered.
- J. The DSLSA would determine the further compensation payable as follows:



- i. The DSLSA will make a determination on whether or not “Loss” or “Injury” has been suffered by a person who claims to be a “Dependent”;
- ii. The determination of “loss” or “injury” would entail the DSLSA examining actual monetary or other loss occasioned or actuated by the physical absence of the Victim. This could include the loss of livelihood, security in terms of monetary support, etc. and in terms of the definition of “Injury”, “any harm whatever illegally caused to any person, in mind, reputation or body”, and include emotional, financial loss, etc. Though the term used to define “injury”, given the salutary nature of the scheme would have to be construed in the widest possible manner, without limiting the same, this Court believes that loss of reputation to the family, emotional loss in terms of security or otherwise due to the physical presence of the Victim could be some of the aspects that may be kept in mind while making a factual determination.

K. Based on the said determination, the DSLSA may take an appropriate decision for the grant of compensation of such further amount as is permissible under the scheme. This exercise may be carried out by the concerned Respondent authorities within the period as prescribed in the Scheme.

61. It is made clear that the DSLSA will undertake the exercise only for the purpose of determining further compensation, i.e. in addition to the Two Lakhs already directed to be paid to the Petitioners.



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62. With the aforesaid directions, while the present petition, along with pending application(s), if any, is disposed of, this Court directs that the matter be listed after twelve weeks to inform the Court of the progress in respect of the directions given hereinabove.

HARISH VAIDYANATHAN SHANKAR, J.

JUNE 12, 2025/ sm/va