

**“COMPENSATION TO VICTIMS OF CRIME”**

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**(ASSISTANT PROFESSOR)**

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## LIST OF ABBREVIATIONS

|                |   |   |
|----------------|---|---|
| <b>A.I.R.</b>  | : | All India Reporter                      |
| <b>ACJ</b>     | : | Accidents Claims Journal                |
| <b>AJR</b>     | : | Accident Judicial Report                |
| <b>AIDS</b>    | : | Acquired Immune Deficiency Syndrome     |
| <b>B.C.</b>    | : | Before Christ                           |
| <b>C.B.I</b>   | : | Central Bureau of Investigation         |
| <b>Cr.P.C</b>  | : | Criminal Procedure Code                 |
| <b>Cri.L.J</b> | : | Criminal Law Journal                    |
| <b>GA</b>      | : | General Assembly                        |
| <b>GLR</b>     | : | Gujarat Law Reporter                    |
| <b>HIV</b>     | : | Human Immunodeficiency Virus            |
| <b>Ibid</b>    | : | Ibidem                                  |
| <b>KSRTC</b>   | : | Kerala State Road Transport Corporation |
| <b>M.P</b>     | : | Madhya Pradesh                          |
| <b>NCT</b>     | : | National Capital Territory              |
| <b>NGO</b>     | : | Non Governmental Organisation           |
| <b>SC</b>      | : | Supreme Court                           |
| <b>SCC</b>     | : | Supreme Court Cases                     |
| <b>SCW</b>     | : | Supreme Court Weekly                    |
| <b>UN</b>      | : | United Nations                          |
| <b>UP</b>      | : | Uttar Pradesh                           |
| <b>WCWD</b>    | : | Women and Child Welfare Department      |

## LIST OF CASES

1. Apparel Export Promotion Council Vs A.K. Chopra AIR 1999 SC 625
2. Baldev Singh Vs State of Punjab AIR 1996 SC 372
3. Balraj Vs State of UP AIR 1995 SC 1935
4. CCT Vs Shukla and Brothers (2010) 4 SCC 785
5. Chairman, Railway Board Vs Chandrima Das AIR 2000 SC 988
6. Commandant, 20th Battallion, I.T.B. Police Vs Saniay Binjoa AIR 2001 SC 2058
7. D.K. Basu Vs State of West Bengal 1997 AIR SCW 233
8. Delhi Domestic Working Women's Forum Vs Union of India (1995) 1 SCC 14
9. Dilip S.Dahanukar Vs Kotak Mahindra Company Limited and Anothers (2007)6 SCC 528
10. Divisional Controller, KSRTC Vs Mahadeva Shetty AIR 2003 SC 4172
11. Girdhari Vs State of Punjab AIR 1982 SC 1229
12. Gudalure M. J. Cherian Vs Union of India (1995) SCC 925
13. Hari Kishan and State of Haryana Vs Sukhbir Singh AIR 1988 SC 2127
14. Harsha Sisodia Vs State of Andhra Pradesh and Anothers .2010 Cri.L.J. 3079 (SC)
15. Khatri (II) V. State of Bihar 1981 SCC (1) 627
16. Lucknow Development Authority Vs M.K. Gupta AIR 1994 SC 787
17. Mohammed Shahabuddin Vs State of Bihar (2010) 4 SCC 653
18. Musakhan and Others Vs State of Maharashtra AIR 1976 SC 2566
19. Nilabati Behera v. State of Orissa AIR 1993 SC 1960
20. Palaniappa Gounder Vs State of Tamil Nadu AIR 1977 SC 1323
21. Parasnath Tiwari Vs Central Reserve Police Force (2010) 3 SCC 111
22. Preeti Gupta Vs State of Jharkhand (2010) 7 SCC 667
23. Rachpal Singh Vs State of Punjab AIR 2002 SC 2710
24. Rajani Devi Vs Orissa, State Electricity Board 1996 (2) AJR 189
25. Rudul Shah v. State of Bihar AIR 1983 SC 1086
26. Rupan Deol Bajaj Vs Kanwar Pal Singh Gill (2005) 6 SCC 161
27. S.S. Ahluwalia Vs Union of India AIR 2001 SC 1309
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29. Sarwan Singh Vs State of Punjab AIR 1978 SC 1525
30. Shri Bodhisattwa Gautam Vs Miss Subhra Chakraborty AIR 1996 SC 922
31. Smt. Nilabati Behra V. State of Orissa, AIR 1993 SC 1960
32. Sindhi Education Society Vs Govt. (NCT of Delhi) (2010) 8 SCC 49
33. State of Gujarat Vs Hon'ble High Court of Gujarat AIR 1998 SC 3164
34. State of Gujarat Vs Shantilal Mangaldas AIR 1969 SC 634
35. State of M.P. Vs Shyamsunder Trivedi 1995 AIR SCW 2793
36. Sushil Ansal Vs State through CBI AIR 2015 SC
37. Union of India Vs Nilkanth Tulsidas Bhatia and Seven Others (2006) 2 GLR 952

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**CHAPTER-1**  
**INTRODUCTION**

## 1.1 Introduction

Crime and society are entwined and inseparable since times immemorial. In fact crime is eternal; it is a perpetual phenomenon. The human civilization has been facing the baffling problem of crime since dawn. It would be a myth to think of crimeless society. Crime is in fact the most infuriating and niggling problem of the society which pollutes the healthy climate of any civilized country. Crime is not a nascent phenomenon rather it has been a vexing problem of the society for centuries. There is however a tremendous surge in crime rate in many countries in recent times. By and large the mercurial spurt in crime rate has become a global phenomenon. The Kaleidoscopic spectrum of crime depicts the cultural conflicts, social melody; descend of ethical values, economic deprivation and erosion of moral values and exploitative outcry of the oppressed. A crime produces a large number of victims who suffer physical, financial, social or emotional injuries or harm which need to be promptly and adequately addressed. The focus of the Criminal Justice System has mainly and always been on crime and criminal and not on the victim. So, the forgotten man in the legal world and society happens to be the “victim”, to improve whose plight is the need of the legal system.<sup>1</sup> Crime influences both, the individual victims and their families. The effect of crime on the victims and their families ranges from genuine physical and mental wounds to gentle aggravations.

The victim is beyond doubt an inseparable part of crime. The phenomenon of crime cannot be expansively explained without incorporating the victim of a crime. Victim, despite being an integral part of crime and a key factor in the Criminal Justice System, has remained a forgotten entity as his status got reduced only to report crime and appear in the Court as a witness and he faces postponements, delays, rescheduling, and other frustrations in routine in the Law Courts. All this means loss of earnings, waste of time, payment of transportation and other expenses, discouragement, and the painful realization that the system does not live up to its ideals and does not serve its Constituency, but instead serves only itself. It can be said that the victim is the most overlooked participant in criminal justice proceedings.

Law regulates the social interests and arbitrates conflicting claims and demands. The security of person and property is an essential function of the State and the same can be done through the instrumentality of criminal Law. However administration of Criminal Justice System remains generally inadequate from the point of view of the victims of crime. The satisfaction, which the victim is only expected to get from Criminal Justice System, is the punishment inflicted upon the criminal. The tendency of modern criminology stresses upon legal aid, reform and rehabilitation of the accused. The injuries and sufferings of the victim gradually lost place as the main concern of Criminal Justice System. The State, while administering criminal justice does not fight against the abstract legal principles, but against the anti-social acts of living human, i.e. its citizens,

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<sup>1</sup> Bharti. D, The Constitution And The Criminal Justice Administration, A.P.H. Publishing Corporation, New Delhi, 2002, at p. 131

causing immense harm and pain to others. The object of the punishment should not be merely to shelter and reform the criminals but should also be directed towards enabling all citizens to participate in the restoration of law and order. There is need for conserving the interests of the victims. Therefore, it has to be seen in what manner the administration of criminal justice can be re-oriented so that it can also be of adequate benefit to the victim who has suffered at the hands of criminals.

Sheltering, reforming and punishing the criminal should not be the sole aim of the Criminal Justice System, but the attention should also be directed towards the need for enabling all citizens to participate in the restoration of law and order. Protecting and conserving the interests of the victims is direly needed. So, we should ensure that the administration of criminal justice should be re-oriented towards extending benefits to the victim who suffers at the hands of a criminal.<sup>2</sup> The purpose of the Criminal Justice System is to protect the rights of the individual and the State against the intentional invasion of the criminals who violate the basic norms of the society. The Criminal Justice System, however, today is concerned with crime. The very object of criminal justice is to punish the offender and to protect the society against crimes. Traditional criminal justice administration was bed rocked on the concept that the victims of crime get justice when the criminal gets convicted and he is sentenced to imprisonment. The traditional criminal sanctions “have been unsuccessful in furthering the aims of criminal justice.” The experiences of countries worldwide showed that the many requirements of the crime victims can be addressed effectively by setting up programmes that provide social, psychological, emotional and financial support, and effectively help victims within criminal justice and social institutions.

Criminals whether it is their conviction, reformation, treatment, or rehabilitation. Right from the initial stage of the case accused enjoys various benefits as he is presumed to be innocent and burden of proving his guilt beyond all reasonable doubts lies on the prosecution. These benefits give rise to various Constitutional and legal rights of the offender. The abundance of rights an accused has, includes the right not to be subjected to arbitrary arrest, detention, search or seizure, right to counsel, presumption of innocence, standard of proof, right to fair trial, trial to be held before an independent Court, right to cross the prosecution evidence, right to appeal, right to legal aid, right to give and call evidence, right to be heard on quantum of sentence, benefit of doubt, and so on.<sup>3</sup> The victims are generally considered as mere informants or witnesses in criminal trials, assisting the State in its endeavor to punish the offenders, however are now becoming the focal points of our Criminal Justice System, though the process is slow. The Criminal Justice System is basically meant to redress the victimization of these victims and to address the issues surrounding them. However getting justice in Indian Criminal Justice System is not a bed of roses for the victims of offence. The last few decades however witnessed groundbreaking reforms in the approach of legal systems internationally as well as nationally with reforms not only in statutory laws but also even in judicial approach towards the victim of crime.<sup>4</sup>

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<sup>2</sup> Ibid.

<sup>3</sup> Part III, The Constitution of India, 1950

<sup>4</sup> Ahmad, Siddique, & S.M.A. Qadri, Criminology, Penology & Victimology, Eastern Book Company, Lucknow, 7th Ed., 2016 Reprint, at p.678

Attention towards the plight of victims of crime is in fact only a recent phenomenon. This is evidenced by the importance given to the victim by the media, which attempts to highlight the trauma that the victim suffers, sensationalizing the whole process of Criminal Justice System in India.<sup>5</sup> However, when one examines the role of the victim in the Criminal Justice System, especially in countries that follow the adversarial system, it appears that the society seeks to sympathize with the victim, but does not consider it important enough to give the victim a role in the prosecution of the crime committed against him or her, and neither are his grievances addressed adequately. The birth of the victims' movement led to marked improvement in the position of victims of crime. Whereas till the 1970's the victim of crime was the forgotten party of the Criminal Justice System, by the turn of the century the victim has returned. Laws recognizing that the injured parties too required government support and economic aid were passed centuries ago. However, "until the middle of the twentieth century the plight of crime victims was largely overlooked, by most Criminologists." This situation changed with the coming of Victimology as a separate branch of study.

The phenomenon of victims' rights in the recent years, have been in the forefront of policymaking on both domestic and international platforms. Although the Criminal Justice System was "conceptualized as a mechanism for the State to resolve its grievance against suspects, defendants and offenders, it is now broadly accepted that justice cannot be administered effectively without due recognition of the rights and interests of other parties, affected by the criminal action." At present the concept of victim compensation is rapidly developing. By way of compensatory jurisprudence the victim is no longer forgotten in the Criminal Justice System. Victim compensation means payments that are made by the government to the victims of crime. Compensation means making amends to the victim or perhaps better stated, it is compensation for the damage or injury caused by a crime against him. It is an indication of the responsibility of the society; it is a claim for compensating action by the society, it is civil in character and thus represents a non-criminal goal in a criminal case.

## **1.2 Victim**

Who is a victim? This single line question is of utmost importance. In a layman's language, the term victim can be understood as a person who suffers some harm or injury. According to the dictionary<sup>6</sup> meaning, the term victim has been given three connotations:

- (a) A person, an animal or a thing that is injured, killed or destroyed as the result of crime, bad luck, an accident etc.
- (b) A person who is tricked.
- (c) A living creature killed and offered as a religious sacrifice.

The etymological meaning of victim of crime suggests that it would mean and encompass<sup>7</sup> "Anyone suffering physical, emotional or financial harm as a direct result of crime

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<sup>5</sup> Ibid.

<sup>6</sup> Oxford Advanced Learner's Dictionary (1996) Vth Ed Oxford University Press at 1326

<sup>7</sup> Patil, G.B., 'Compensation to The Victims Of Crime: An Assessment Of Legislative Framework', Cri.L.J. Nov 2009, J. 302 at 304

- (a) Spouses and children of the person who has suffered.
- (b) Parents, foster parents, siblings, guardians or other custodians of minor victims, mentally or physically incapacitated victims or victims of homicide.”

Apart from the above, the term has also been defined at international level because of the importance of the subject matter.

**Principle 1 of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers**<sup>8</sup> defines victim of crime as:

“Victims mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of Power.”

**Principle 2** further elaborates the term victim as:

“A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim. The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.” “Victims of Abuse of Power mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.”<sup>9</sup>

**Principle 8 of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violation of International Humanitarian Law, 2005**<sup>10</sup> defines victim as:

“Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

**Principle 9** further elaborates by stating that: “A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familiar relationship between the perpetrator and the victim.”

Under Indian Law, the term victim has nowhere been defined except in **The Code of Criminal Procedure, 1973** under **Sec-2 (wa)** as:

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

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<sup>8</sup> G A Resolution 40/34 of 29<sup>th</sup> November 1985

<sup>9</sup> Ibid at 384

<sup>10</sup> G.A. Resolution 60/147 of 19<sup>th</sup> April 2005

In all the above meanings and definitions one thing is common and that is; 'suffering'. The degree and nature of suffering varies from case to case. This suffering is the result of somebody's act or omission. In other words when the act or omission of someone results in sufferings of the other, that other person becomes the victim.

### **1.3 Role of Victim in Crime**

Can there be any role of victim in the crime which is perpetrated against him? Crime in its totality not only includes crime and the criminal but also, all those factors which lead to the commission of that particular offence. One of the factors is the victim himself upon whom the offence is committed. The main contribution of the understanding of victim's role in crime is to lead the way towards the study of crime in its totality and particularly where victim-risks and victim-precipitation are concerned.<sup>11</sup> But to what extent he is responsible for the commission of offence upon him is a matter which varies from case to case. Though it is the victim who suffers because of the offence committed upon him but there may be circumstances when victim plays a contributory role in the commission of the crime. When the crime is studied in totality taking into account the contributory role of victim in causation of crime, will also assist the court in deciding the compensation to the victim. Victim is not just a passive object but an active component of his/her own victimization.<sup>12</sup> For example: Killing of wife by the husband may involve a number of reasons such as low income, infidelity, marital maladjustment, domestic quarrel, wealth, drug addiction, gambling, drinking habit, stressful family situations etc. But the focus is shifted to the offender and the crime committed by him. The doer-sufferer distinction does not mean the exclusive doing of one party and the exclusive suffering of the other.<sup>13</sup> The role of victim in crime may be of varying nature. According to Schafer, victims are essential for crime.<sup>14</sup> So directly or indirectly all victims are somewhat responsible for victimization. According to Silverman, 'it is not logical to think that we are all somewhat responsible for our own victimization simply because we exist.'<sup>15</sup> Crimes committed against a willing victim are likely to provoke less resistance than crimes against an unwilling victim. The willingness of the victim to commit an offence upon him/her makes the offender legally stronger. According to Hentig,<sup>16</sup> "the relationship between the victimizer and the victim are very intricate. The victim, one who suffers and the victimizer, one who harms, appear in victimization in a close interpersonal relationship and the victim plays a determinant role with the victimizer." According to Cho,<sup>17</sup> "the victim and victimizer should be understood in terms of victimization incidence and relationship. Both 'affinity' and 'propinquity' factors should be considered for differentials in participation, commitment and involvement in victimization though not intended for creating an impression that the victim and victimizer are guilty by association. Interaction and relationship should be explored rather than assumed and the guilt should be understood objectively rather than assumed to be a hallmark of the victimizer." The degree of stimulation

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<sup>11</sup> Devasia, V.V., 'Criminology, Victimology And Correction', (1992) Ashish Publishing House, New Delhi, at 84

<sup>12</sup> Ibid at 81

<sup>13</sup> Shafer, Stephen, 'Introduction To Criminology', (1976) A Prentice-Hall Company, Reston Virginia, at 147

<sup>14</sup> Devasia, V.V., 'Criminology Victimology And Correction', (1992) Ashish Publishing House, New Delhi, at 95

<sup>15</sup> Ibid at 95

<sup>16</sup> Ibid at 93

<sup>17</sup> Ibid at 93

varies depending upon various factors such as type of crime, personality of criminal and victim, their socio-economic situation, their relationship to each other etc. The victim's activity is not necessarily precipitative in nature. It can either be more forceful and decisive in determining the offender's crime...., therefore only facilitating, shaping or increasing or fortifying the offender's motivation.<sup>18</sup> Thus while giving compensation to the victim; all these factors have to be considered in the legal system. Higher the degree of innocence of the victim, greater the amount of compensation should be given. A crime is a crime because it inflicts harm on another individual and therefore justice is incomplete until the criminal is made to pay for his act by way of punishment and compensation to the victim. Justice not only means justice to accused and society only but it also means justice to the victim. So degree of innocence of the victim will help the legislature and the judiciary in deciding a balanced quantum of compensation for him.

#### **1.4 Victimology**

Victimology is the study of criminal-victim relationship. Doer and sufferer often appear in crime in a close interpersonal relationship. After the crime, there is a minimal relationship wherein the doer stands far apart from the suffering of his victim.<sup>19</sup> Victimology can be understood in two senses:

- (a) Narrower sense
- (b) Broader sense

In a narrower sense, victimology is the empirical, factual study of victims of crime and as such is closely related to criminology and thus may be regarded as a part of the general problem of the crime. In a broader sense victimology is the entire body of knowledge regarding victims, victimization and the efforts of society to preserve the rights of the victim. Hence it is composed of knowledge drawn from such fields as criminology, law, medicine, psychology, psychiatry, social work, politics, education and public administration.<sup>20</sup> In other words since victimology focuses both on victim's condition and his relationship to the criminal, there can be two major areas of victimology:

- (a) Scientific study of criminal behaviour and the nature of the relationships which exist between the offender and victim.
- (b) Administration of justice and the role of systems of compensation to the victim.

Victimology as an academic term contains two elements:

- (a) One is the Latin word "victima" which translates into "victim".
- (b) The other is the Greek word "logos" which means a system of knowledge, the direction of something abstract, the direction of teaching, science and a discipline.

Although writings about the victim appeared in many early works of criminologists such as Beccaria (1764), Lombroso (1876), Ferri (1892), Garofalo (1885), Sutherland (1924), Hentig (1948), Nagel (1949), Ellenberger (1955), Wolfgang (1958) and Schafer (1968), the concept of a science to study victims and the word "victimology" had its origin in the early writings of Benjamin Mendelsohn (1937;1940), leading to his seminal work where he actually proposed the

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<sup>18</sup> Shafer, Stephen, 'Introduction To Criminology', (1976) A Prentice-Hall Company, Reston Virginia, at 147

<sup>19</sup> Ibid at 144

<sup>20</sup> Devasia, V.V., 'Criminology, Victimology And Correction ' (1992) Ashish Publishing House at 82



term “victimology” in his article “*A New Branch of Bio-Psycho-Social Science, Victimology*” (1956). It was in this article that he suggested the establishment of an International Society of Victimology which has come to fruition with the creation of the World Society of Victimology, the establishment of a number of victimological institutes and international journals. Mendelsohn provided his victimology vision and blueprint. He is also referred to as “the father of victimology”. The pioneers of victimological studies are mainly three scholars from different parts of Europe:

- (a) Hans Von Hentig
- (b) Benjamin Mendelsohn
- (c) Stephen Schafer

Born in Berlin, **Hans Von Hentig** considers victimology as a part of criminology. There is a mutual connection between victim and victimizer. He defines victim as ‘the doer-sufferer.’ The main contribution of the understanding of the victim’s role in crime is to lead the way towards the study of crime in its totality. He treated victimology as a part of criminology since it relates to causation and prevention of crime.

Born in Romania **Benjamin Mendelsohn** considers victimology as a social science. The victim can be anyone, physical or moral person who suffers either as a result of ruthless design or accident. According to him ‘the destructive of harmful factors which produce victims cannot be limited to one element (the criminal) but are instead numerous (the environment, sometimes even the personality of the victim, the level of technology, social trends), victimology must then investigate all the factors that cause victims.’ Mendelsohn treated victimology as a separate discipline having regard to its aim and structure.<sup>21</sup>

Born in Hungary, **Stephen Schafer** considers that victim’s importance reflects the offender’s and victims’ joint existence in victimization. The victim-offender relationship stresses the necessity to acknowledge the role and responsibility of the victim. The victim is not simply the reason for victimization but has an important part to play in search for an objective criminal justice and a solution to the victimization problem.<sup>22</sup> The victim is a part of crime, often playing an esoteric and not an exoteric role.<sup>23</sup> Crime should be seen in its functional dynamics. An all-dimensional view of crime cannot accept the criminal’s behaviour and the victim’s behaviour as two distinct and separate forms of conduct.

### **1.5 Categories of Victim**

A victim is a victim irrespective of the degree of his sufferings. Nevertheless, attempts have been made to categorise victims depending upon their degree of guilt, psychological, social or

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<sup>21</sup> Siddique, Ahmed, ‘Criminology: Problems And Perspectives’, (2001) Eastern Book Company, 34, Lalbagh Lucknow, 226001, at 505

<sup>22</sup> Devasia, V.V., ‘Criminology, Victimology And Correction ’ (1992) Ashish Publishing House at 84

<sup>23</sup> Schafer Stephen, ‘Introduction To Criminology’ (1976) Reston Publishing Co., Inc., Reston Virginia at 146

biological factors etc. According to Benjamin Mendelsohn, a Romanian Barrister, victims can be grouped in the following categories:<sup>24</sup>

- (a) '**Completely innocent victim**' such as children or those who suffer a crime while they are unconscious.
- (b) '**Victim with minor guilt**' and '**ignorant victim**' such as the woman who provokes a miscarriage and as a result pays with her life.
- (c) '**Voluntary victim**' and '**victim as guilty as the offender**' such as in certain cases of suicide and euthanasia.
- (d) '**Victim guiltier than the offender**' such as those who provoke or induce someone to commit a crime.
- (e) '**The most guilty victim**' and the '**victim who is guilty alone**', such as aggressive victim who kills the attacker in self-defence.
- (f) '**The simulating or imaginary victim**' such as paranoids, hysterics or senile persons.

Hans Von Hentig, a German criminologist has given a sociological classification of victims thereby giving psychological, social and biological factors. He has given thirteen classes of victims:<sup>25</sup>

- (a) The Young victim
- (b) The Female victim
- (c) The Old victim
- (d) The mentally defective and other mentally deranged
- (e) Immigrants
- (f) Minorities
- (g) Dull normals
- (h) Depressed
- (i) Acquisitive
- (j) Wanton
- (k) The lonesome and the heart broken
- (l) The tormentor
- (m) The blocked, exempted and fighting.

According to Hentig

- Since **young** are weak, inexperienced and mentally immature, they are easy victims of kidnappings and sexual assault.
- In case of **female** victims, males have advantage of greater physical strength in crimes against women, mainly in sexual offences.
- **Old** are physically and mentally weak mainly in crimes against property.
- **Mentally defective** and **mentally deranged** persons include insane, drug addict, alcoholic, psychopath and others suffering from mental deficiency and are therefore handicapped in any struggle against crime.
- **Immigrants** also face difficulties while adjusting to new culture. This may evoke hostility of certain groups in the new country.
- The **minorities** face racial prejudice which may lead to violent crimes against them.

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<sup>24</sup> Schafer, Stephen, 'Introduction to Criminology', (1976) Reston Publishing Co., Inc. A Prentice-Hall Company, at 154

<sup>25</sup> Ibid

- **Dull normals** are born victims. Here crime is committed by the criminal not by way of his skill but due to the folly of the victim.
- The **depressed** lack in fighting qualities and are psychological victim type. His attitude is characterized by feelings of inadequacy and hopelessness, apathy and submission and lack of fighting qualities.
- **Acquisitive** is an excellent victim and his desires motivate crime as well as lead him to being victimized.
- The **Wanton** are obscured by rough generalization of laws and social conventions.
- **Lonesome** victims offer advantage to criminals by their desire for companionship and happiness.
- The **tormentor** tortures others to the extent that ultimately he himself becomes the victim of tormented.
- **Blocked** victims try to save themselves.

The list may include other forms of victims too such as reporting and non-reporting victims. According to the **First International Symposium on Victimology** held in 1973 in Jerusalem, there are no 'born' victims, there are indeed biological types of victims who, compared with temporary 'situational' victims, seem to be continuously and excessively prone to becoming victims of crime. To be young, to be old or to be mentally defective, are not 'situations' but biological quality that indicate some degree of vulnerability to crime.<sup>26</sup>

## 1.6 Grievances of Victim

".... Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself."<sup>27</sup> Remedies can be suggested only when we know what the problem is. Victim is the core of the whole criminal justice system. If victims refuse to co-operate, the criminal justice system would collapse and ignorance of this fact may have a dangerous outcome. The best example can be rape cases where few women are willing to co-operate. When the crime is committed upon the victim, the victim goes behind the scene and state comes in the limelight for the protection of the victim and fights on her behalf for providing justice to her. In this whole process, from the commission of crime till the conviction of the offender there are lot many stages through which victim has to willy-nilly pass. Though the offence is committed upon her once but the grievances and the pains which she undergoes during the whole process of litigation, make her undergo the torture again and again and it is a pity that most of the grievances are the outcome of the tardy, cumbersome and time-consuming justice delivery system. This system is sometimes seen as a second victimization which is more unpleasant than the original crime. The basic object of the criminal justice is to protect the society against crime and to punish the offender. However, criminal justice system does not show equal concern to the victims of crime, who have suffered loss or injury. The list is not exhaustive but a victim faces following basic grievances which need to be redressed as soon as possible:

### (a) Marginal Role in Criminal Justice Process:

In criminal justice system, the legislature provides the law which has to be in consonance with the basic law i.e. the Constitution and which has to be obeyed by everyone. Then comes the law

<sup>26</sup> Ibid at 156

<sup>27</sup> D.K. Basu Vs State of West Bengal 1997 AIR SCW 233

enforcers i.e. police-the primary law enforcement machinery entrusted with the responsibility of maintaining peace in society. If it fails in its duty, the society may suffer and when an individual suffers, he becomes a victim. Then comes the judiciary, which aims at determining whether law has been violated on the basis of the evidence produced before the court or not. The basic objective of criminal justice system is to protect the society against crime and to punish the offender. At the time of reporting of crime, the offender is searched for. The focus is shifted to conviction of the accused. In this system the accused is given various rights and all possible help is provided by following the adversarial system in which an accused is presumed to be innocent until he is proved guilty. Even after conviction the stress is on reforming the offender. The state through police carries out most of the prosecution functions. In the whole process victim's role is shrunked to that of a person reporting the offence and giving evidence if it is requested for. His role has been limited to ascertain the guilt or innocence of an accused. The role of the victim of a crime is restricted to that of a witness for the prosecution even though he or she has suffered harm- physical, mental, emotional, economical or impairment of fundamental rights. "The Code of Criminal Procedure (Amendment) Act, 2008 is aimed at helping the litigants and victims... the prosecution won't be able to grill the victims like before. Questioning of the victim in the presence of her parents or a social worker of the locality or at the location of their choice will help reduce the psychological pressure on the victim. The Bill also empowers the victims to appeal against acquittals." Though the Act provides probable solace to the victim but lot more is still left to be done in this regard. The victims are not informed about the procedure of criminal justice system and if informed on the request of victim, the legal language is difficult to understand. Whether it is the progress of the investigation or arrest of offenders or case status in the court or legal advice and assistance etc, hardly any proper information is provided to the victim. Victims feel ignored. It appears that rights of the offender are unaffected by the plight of victims. Lack of understanding of the criminal process is a big grievance of the victims. At all stages, information is hardly provided:

- a. At police level- regarding the possibility of material or legal assistance, outcome of police investigation.
- b. At prosecution level- regarding decisions concerning prosecution of offender.
- c. At trial level- regarding the date and place of hearings concerning the offence, the opportunities of obtaining compensation and the outcome of the case.

**(b) Inadequate Compensation:**

Justice should not only be done but must be seen to have been done. Punishing the offender qualifies the former part but the latter part that justice must be seen to have been done requires something more to be done. The full stop should not be put after punishing the offender. Steps are taken for reformation of accused after his conviction but no relief or restoration is provided to victim after the conviction of the offender. Is justice complete after convicting the offender? Victim is also a human who deserves to be redressed but usually fails to get it. Where the victim spends almost his whole life in the endless wait for justice, that justice will remain incomplete without adequately compensating him. An award of fair compensation to the victim will act as a balm on his wound. But the victim reparation is perhaps like a magic which in certain cases appears and in certain cases disappears because there is no comprehensive legislation providing for compensation by state or offender to the victim of crime. Neither it is mandatory for the court to compensate the victim nor has victim been conferred with any legal right to be compensated. It is entirely the discretion of the court to compensate or not to compensate the victim and also as

to the quantum of compensation. Section 357 of Criminal Procedure Code of 1973<sup>28</sup> provides discretionary power to a criminal court to award compensation out of the fine imposed by the court:

- To a person for meeting expenses properly incurred in prosecution.
- To a person who has suffered loss or injury by the offender, when he can recover compensation in civil court.
- To a person entitled to recover the damages under the Fatal Accident Act when there is a conviction for causing death or abetment thereof.
- To a bona-fide purchaser of property which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating or receiving or disposing stolen property and which is ordered to be restored to its rightful owner.

Here compensation can be ordered only out of fine realized and not otherwise. Compensation is allowed if it is recoverable in a civil court. Moreover, quantum of compensation is limited to the fine levied and not in addition to it or exceed the fine imposed. Further, under Section- 358 of Cr.P.C<sup>29</sup> the limit of compensation 'not exceeding one thousand rupees' even after amendment is unjustified and need to be further amended. Section- 482 of Cr.P.C<sup>30</sup> gives inherent power to High Courts to make necessary orders to secure ends of justice. But hardly any compensation to the victim has been provided under this section. Compensation under Section-357, Criminal Procedure Code cannot exceed the fine imposed on the offender. The procedure under Section-421 and 422 of the Criminal Procedure Code for realization of fine is lengthy and cumbersome. Due to this courts feel reluctance in awarding compensation. In the 154th Report, the Law Commission recommended for Section 357-A in Criminal Procedure Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts which was later incorporated in the code.

**(c) Inconvenience During Interrogation And Investigation:**

The victim's role is just that of a witness who has no role to play except when required by the law. Due to the faulty criminal justice system, victims face hardships and inconvenience during interrogation by police and further investigation and lengthy court proceedings. Victim has to undergo lot of trauma and sufferings during the pendency of the proceedings.

**(d) No Provision for Restitution and Rehabilitation:**

The concept of compensation is itself discretionary in nature and is not followed in all the cases. There is no provision for rehabilitation of victims. This leads to existence of one very basic problem of survival of the victim in the lack of his rehabilitation. On one side accused is treated as a privileged person and is provided with all possible help. Even after conviction, emphasis is laid on reformation of offenders but it is not so for victims on the other side.

**(e) No Immediate Relief:**

There is no mechanism for award of immediate relief and compensation to the victims. Statutory provision relating to compensation can only be invoked after the matter is decided finally under Section-357 or 357-A of Criminal Procedure Code, 1973. Interim compensation of rupees 1000 per month was in fact awarded by Supreme Court in the case of **Shri Bodhisattwa Gautam Vs**

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<sup>28</sup> Section-357: Order to pay Compensation

<sup>29</sup> Section-358: Compensation to persons groundlessly arrested

<sup>30</sup> Section-482: Saving of inherent powers of High Court

**Shubra Chakraborty**<sup>31</sup> considering the violation of fundamental right to life and personal liberty under the Constitution. Immediate relief is of more value which is required by victim to prevent him/her from further torture and sufferings. Delay in providing relief may not be of much help as it will only be a mockery of justice. Immediate relief acts as first aid when the victim is more in need of the monetary and other aids. Moreover, if the compensation is awarded in the end, there is lack of comprehensive machinery to realize the amounts/costs ordered in favour of the victim if the offender refuses to pay the fine.

**(f) Lack of Legal and Medical Assistance:**

Legal assistance is hardly provided at police station especially to the victims of sexual assault who might be in a distressed state upon arrival at the police station. Medical assistance, guidance and counselling services are also avoided except from getting done the medical examination of the victim. The police do not take it as their responsibility or duty to inform the victims of their right to representation.

**(g) No Provision for Protecting Privacy:**

There is no provision to minimize the inconvenience to victims or protecting their privacy and ensure their safety as well as that of their families and witnesses from intimidation and retaliation. The poor victims may fall an easy prey for the dominant accused who may threaten the victims and force them to change their stand. Such kind of criminal justice system will result in travesty of justice.

**(h) Slow Judicial Process:**

Another factor which contributes to the grievance of victim is the seeking of never ending adjournments by the lawyers of both sides. There is no time bound mechanism for hearing, arguing and deciding the cases including appeals. No reason is assigned in writing for deciding the matters lately. Efforts are hardly made to avoid unnecessary delays in the disposal of cases. This is mainly due the adversarial system in India in which accused is presumed to be innocent until proved guilty. Moreover crime has to be proved beyond reasonable doubt. Due to flaws in the criminal justice system, there is unnecessary delay in the litigation resulting in endless adjournments.

**(i) Hostile Witnesses:**

Witnesses take oath to speak the truth for any of the two reasons that they either:

- Love God or
- Fear punishment

When both these break for any reason; the result is perjury and distortion of facts resulting in a perverse judgment. The unfortunate victim therefore suffers finally, as the conviction or acquittal of the accused depends upon the statement of the witnesses. The witnesses turn hostile due to fear of the accused or due to inducements of different types. Whatever be the reason, the ultimate sufferer is the victim, for no fault of his own.

**(j) Post-Humous Grievances:**

It is the victim who suffers the most. His family is ruined particularly in case of death or disability. This is apart from factors like loss of reputation, humiliation etc. The problem is even

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<sup>31</sup> AIR 1996 SC 922

more when the victim was the sole bread winner of his/her family. It is double victimization. First the victim suffers and then his family after his death. It augments the economic strain of the family. Sometimes frustration and helplessness lead to suicide also due to the social stigma or lack of monetary assistance during the pendency of the case. The family may be looked down upon by the society. This stigma disturbs the peace of the victim's family.

**(k) Lack of Technology:**

Criminal justice system can better support the victims of crime if victims receive timely and accurate information regarding offenders and relevant criminal proceedings through modern information and communication technology. But due to lack of such facilities victims have to suffer as the main agencies within the criminal justice system namely-police, courts and prosecution services. All have poor information and communication technology system. Due to lack of effective information exchange victims have to wait endlessly to obtain justice. Justice includes removal of grievances because unless the cause is removed, the ailment cannot be cured. Preventive and curative steps are required to be taken to improve the criminal justice system with focus on victims of crime because if the disease is not cured in time, it may prove fatal.

**(l) Secondary Victimization:**

Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim. It may amount to a complete denial of human rights to victims from particular class or a particular gender. It may result from inappropriate conduct by police or other personnel. The whole process of criminal investigation and trial may cause secondary victimization, starting from investigation, passing through decisions on whether or not to prosecute, the trial itself and the final conviction or acquittal of the accused. Other agencies coming into contact with the victim may also cause secondary victimization. For example; hospital policies and procedures may restrict the relatives to have an access to the body of a loved one. The hurried schedule of the emergency room may intrude on the privacy of a sexual assault victim or offend his or her sense of dignity. Inappropriate investigation and filming, photography and reporting by the media may also lead to secondary victimization. Even agencies which may be set up to help the victims of crime may have some policies and procedures that lead to secondary victimization. People with whom the victim has contact for example; family, friends and colleagues may wish to distance themselves from the victim or may blame the victim for what has occurred.

**1.7 Compensation to Victim**

The Rule of law requires that whenever there is a wrong, remedy must be provided. In other words, the wrongs should not remain unredressed. Every injury must have a remedy. A person who has suffered, including the dependants, must be compensated. Though it is the accused who should compensate the victim but it might be that the accused is too poor to pay. In such circumstances, the state whose duty was to protect the life and liberty of its subjects and which failed in performing this duty must compensate the victim for his loss and sufferings. The concept of victimology deals with the study of the problems of victims of crime and their right to claim compensation which includes rehabilitation and restitution from the offender or the state. The traditional criminal justice includes legislating laws, enforcement of laws, detection of

crime, trial of offender, execution of sentence but unfortunately does not talk about the duty of the state to mitigate the sufferings of the victims and their families for loss of life, liberty, property, reputation, bodily or mental injury as a result of crime. Compensation cannot undo the wrong but can mitigate the injury. Punishing the offender without asking him to compensate the victim will only make him aware of the wrong he has done to the state. “Restorative justice aims for healing and restoration of all concerned.”<sup>32</sup> Restorative justice is a new term for an old concept. Throughout the history of humankind restorative justice approaches have been used in order to solve conflicts between parties and to restore peace in communities. Retributive and rehabilitative approaches to crime are comparatively new approaches. In recent years, however, dissatisfaction with the retributive and rehabilitative approaches has given rise to a renewed interest in restorative justice. Restorative justice represents a paradigm shift in the way justice is dispensed in criminal justice systems. The framework for restorative justice involves the offender, the victim and the entire community in efforts to create a balanced approach that is offender-directed and at the same time, victim-centered. Victim compensation has become a key feature of restorative justice in many developed and developing countries. The framework of restorative justice can best be described as a combined emphasis on the following:<sup>33</sup>

**Restoration:** Concern for providing services and support to victims, whether or not an arrest takes place, is central to restorative justice. Restoration of community and social bonds are essential to victim support as well as to prevention of future victimization. Restoration of offenders to community life is a goal predicated on offenders’ acknowledgment of the harm done and their willingness to be accountable for their actions and their victims;

**Accountability:** Restitution, community service and victim-offender mediation create an awareness in offenders of the harmful consequences of their actions for victims, require offenders to take action to make amends to victims and to the community and, whenever possible, involve victims directly;

**Community protection:** Intermediate, community-based surveillance and sanctioning systems channel the offender’s time and energy into productive activities. A continuum of surveillance and sanctions provides a progression of consequences for non-compliance with supervision requirements, together with incentives that reinforce the offender’s progress in meeting the objectives of competency development and accountability;

**Competency development:** Work experience, active learning and service provide opportunities for offenders to develop skills, interact positively in conventional society and demonstrate publicly that they are capable of productive competent behaviour.

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<sup>32</sup> Report on Truth and Reconciliation Commission of South Africa, 109 (2003)

<sup>33</sup> Ibid



Article 75 of the Statute of International Criminal Court<sup>34</sup> provides three forms of reparation:

- (a) Restitution
- (b) Compensation
- (c) Rehabilitation

**(a) Restitution**

Restitution in kind is the obvious method of performing the reparation, since it aims to re-establish the situation which existed before the wrongful act was committed. Restitution may include:<sup>35</sup>

- The return of property
- Payment for the harm or loss suffered
- Reimbursement of expenses incurred as a result of victimization
- The provision of services
- Restoration of rights

The idea of restitution is to restore the victim to the original situation prior to the violation of his rights occurred. Restitution is the victim's restoration of his place in the society and rights that were injured or extinguished in the process of victimization. It is meant to restore the victim to pre-violation status as far as possible. Restitution in criminal-victim relationship concerns reparation of the victim's loss or better restoration of his position and rights that were damaged due to the crime. It is an indication of the responsibility of the offender. It can be said that it is a claim for restitutive action on the part of the offender. Restitution should be used to provide a way of offsetting some of the harm done to the victim and to provide a socially constructive way for the offender to be held accountable, while offering the greatest possible scope for rehabilitation. The idea of restitution is also to provide a sense of personal accountability to the victim. Restitution can be implemented in a number of ways throughout the criminal justice process: as a condition of probation, as a sanction in itself or as an additional penalty. Although restitution is often imposed in a mandatory fashion, it may be entered into voluntarily by the offender as well.

**(b) Compensation:**

There may be circumstances where it becomes quite difficult to provide restitution to the victim. Even where restitution is made, it may be insufficient to ensure full reparation. In such circumstances, the role of compensation is to fill in gaps to ensure full reparation for damage suffered. Compensation is usually assessed on the basis of the fair market value of the property lost. Compensation is the counter balancing of victims suffering and loss that result from the victimization.<sup>36</sup>

Compensation means anything given to make things equivalent, a thing given or to make amends for loss, recognition, remuneration or pay. The expression compensation is not ordinarily used as an equivalent to damages although compensation may often have to be measured by the same

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<sup>34</sup> www.UN.DOC./A/CONF. 183/9 adopted on 17th July 1998

<sup>35</sup> Article 8 of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Resolution 40/34 of 29<sup>th</sup> November 1985

<sup>36</sup> Devasia, V.V., 'Criminology Victimology And Correction', (1992) Ashish Publishing House, New Delhi, at 97

rule as damages in an action for a breach. Compensation is a return for a loss or damages sustained. Compensation, in criminal-victim relationship, concerns the counter balancing of the victim's loss that results from the criminal attack. It means making amends to him. It is compensation for the damage or injury caused by a crime against him and is an indication of the responsibility of the society. It is a claim for compensating action by the society.

### **(c) Rehabilitation:**

It is also one of the important forms of reparation. In circumstances where restitution is not possible the victim needs to be rehabilitated. Rehabilitation may be required in addition to compensation. It may also include medical and psychological care as well as legal and social services. It focuses on the steps needed to improve the lives of individual victims, their families and communities. It is closely linked to the holistic goals of repair and restoration.

Man lives in the short run, but litigation lives in the long run. In this long run of litigation, it is very difficult to express in words, the sufferings and pains of the victim unless they are themselves suffered. A victim remains a victim all through even after the conviction of the offender. First, he does not have much stamina left to start his life afresh. Second, even if he somehow gathers sufficient stamina to restart his life, he may or may not be having adequate monetary sources, which are very essential to survive. Third, along with all these difficulties he/she also needs to face the societal stigma which is affixed on him/her forever as a reward of that crime of which he was a victim and not criminal. Fourth, he needs to overcome his past trauma which he underwent and suffered when crime was committed upon him. Lastly, he needs to strive continuously all through his life to get back his former position. It is now the duty of the legislature and judiciary to further develop the jurisprudence of compensation for the benefit of society.

## **1.8 Objectives of the Research**

This research consists of the following objectives:

1. To examine the status of victim compensation in the administration of criminal justice.
2. To trace the historical roots and evolution of victim compensation.
3. To analyze the problem of victim compensation.
4. To examine the prevailing international trends and the recent developments.
5. To examine different statutes for awarding the compensation to the victims of crime in India.
6. To suggest some measures for better victim compensation in order to make the system respond effectively to the need of victims of crime.

## **1.9 Hypothesis**

The researcher has formulated the following hypotheses to be verified through the study:

1. Criminal justice system in India is offender-centred and not victim-centred
2. Victims of crime suffer physical injury, emotional trauma and also financial stress that amount to deprivation of their human rights.
3. The existing criminal laws in India are not adequate in providing compensation to the victims of crime.
4. Compensation scheme to victims of crime in India are not adequate according to the International Human Rights Standards.

## 1.10 Research Methodology

This study is purely doctrinal in nature. The researcher has used secondary sources. These include text books of national as well as international authors, national and international journals, articles, magazines, newspapers, reports of certain committees and commissions, web sources and others. Besides the above mentioned sources various judicial pronouncements on the subject are thoroughly surveyed and critically analysed. To make the findings of the study to reach a meaningful conclusion, an attempt is made to discuss and critically evaluate different provisions of the Code of Criminal Procedure, 1973; The Fatal Accidents Act, 1855; The Motor Vehicles Act, 1988; The Probation of Offenders Act, 1958 etc. Thus, critical method of research is used along with descriptive and analytical method to find out lacunas in the present laws.

## 1.11 Literature Review

- ❖ **Stephen Schafer** considers that the victim-offender relationship stresses the necessity to acknowledge the role and responsibility of the victim. The victim is not simply the reason for victimization but has an important part to play in search for an objective criminal justice and a solution to the victimization problem.
- ❖ **Benjamin Mendelsohn** considers victimology as a social science. According to him ‘the destructive of harmful factors which produce victims cannot be limited to one element (the criminal) but are instead numerous (the environment, sometimes even the personality of the victim, the level of technology, social trends), victimology must then investigate all the factors that cause victims.’
- ❖ **V.V.Devasia** in his book states that crime in its totality not only includes crime and the criminal but also, all those factors which lead to the commission of that particular offence. One of the factors is the victim himself upon whom the offence is committed. The role of compensation is to fill in gaps to ensure full reparation for damage suffered. Compensation is the counter balancing of victims suffering and loss that result from the victimization.
- ❖ **Law Commission** in its 154<sup>th</sup> report says that the principles of compensation to crime victims need to be revised and expanded to cover all cases. The compensation should not only be limited to fines, penalties and forfeiture realised. The needs and rights of victims of crime should receive priority attention in the total response to crime.
- ❖ **Malimath Committee** in its report says that a victim-friendly Criminal Justice System needs to address on an urgent basis. An important object of the criminal justice system is to ensure justice to the victims. Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. The law should provide for the scale of compensation in different offences for the guidance of the Court.

**CHAPTER-2**  
**QUEST FOR JUSTICE TO VICTIMS OF CRIME**

## 2.1 Introduction

Human dignity is the core of civilized society. Human rights are rights that any person has as a human being. Man enjoys some rights which are considered inalienable, inherent, fundamental, basic and above all universal ones and the enjoyment of which is the foundation of freedom, justice and peace in the world. Every human being irrespective of his status has a right to live and that too with dignity. This is the basic fundamental principle underlying all laws relating to human rights. Human rights, which are claimable by a living person, are generally defined as those rights which every human being is entitled to enjoy and to have protected. Every human being enjoys these rights sheerly by virtue of being a member of human species irrespective of any other factor. Universal Declaration of Human Rights proclaims that all human beings are “born free and equal in the dignity and rights and everyone is entitled to all these rights and freedoms set forth in the Declaration without distinction of any kind such as race, colour, sex, language, religion, potential or other status.”<sup>37</sup> All human rights are derived from the dignity inherent in the human person who is the ‘central subject’ of human rights. These rights are inherent in our natures which help us to fully develop and use our human qualities, talents, conscience and satisfy our spiritual and other needs also. Without them we cannot live as human beings. Denial of human rights not only is a tragedy and travesty of justice but also gives birth to political and social unrest which sow the seeds of conflict and violence. Individual rights must always be respected irrespective of political system or circumstances. Human rights are a result of man’s long struggle for the realization of his human values and are deeply rooted in the history of human race. The main objective for their protection is to keep peace. It is but human nature rather human agony that an individual has to fight to claim his due share, to claim his right. The pain of torture whether physical or mental can well be understood by the one who himself has suffered. From the stage of commission of offence, starts the quest of victim for justice. According to Bentham, “victims of crime should not be abandoned, rather the society to which they had contributed and which ought to have protected them, owed them an indemnity. In other words, because the ‘social contract’ between victim and state has been breached, the victim has a legitimate claim against the state.” No dharma, no civilized state or society allows ‘might is right’ to avenge for the wrong done to a victim. Instead, state itself shoulders the responsibility for providing justice to the victim by following a lawful procedure. When finally justice is provided to the victim, his quest for justice comes to an end.

## 2.2 Historical Development of Criminal Law

The history of criminal law is not only of fascinating interest but an imperative necessity for modern societies where rule of law prevails.<sup>38</sup> Criminal law is conventionally defined as a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the classes to which the rules refer and which are enforced by punishment administered by the state. Criminal law may be regarded as an instrument of formal social control whereby an organized effort is made to regulate certain areas of behaviour. The law of crime is as old as our civilization. In every organized society certain acts or omissions are prohibited on pain of punishment. Criminal law is the mirror or reflection of the public opinion of the particular time because an act or omission which is a crime in one country may not be a crime in another country. The history of primitive criminal law may be said

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<sup>37</sup> Articles-1 and 2 of the Universal Declaration of Human Rights, 1948

<sup>38</sup> Nigam, R.C., ‘*Laws Of Crime In India*’ (1965) Asia Publishing House, Bombay, at 4

to have passed through four stages. In the first stage it involved the idea of injury to the State or collective injury, but the State allowed the wronged to avenge himself on the wrongdoer. In the second stage when crimes are multiplied the State is compelled to delegate its powers to particular Commissions and not individual persons wronged, not only to investigate the crime committed but also to punish the particular offender if he is proved to be guilty. In third stage, the legislature did not wait for the commission of crime in order to appoint a Commission to investigate and punish the criminal. It appointed a Permanent Commission to try certain classes of crimes in the expectation that they would be perpetrated. The fourth stage is reached when these Commissions instead of being periodical or occasional, are constituted into permanent benches, their judges being appointed according to definite rules and their jurisdiction defined and the specific offences and the penalties imposed also definitely laid down.<sup>39</sup>

In the ancient society, the evolution was from individual to family and from family to State. The only interest of the individual was self- preservation and in the latter stage, the only interest of the family was to protect it against foreign attacks. After these two stages, law became more organized. The concept of criminal law emerged when the custom of private vengeance was replaced by the principle that the community as a whole is injured when one of its members is harmed. Thus, the right to act against a wrong doing was taken out of the hands of the immediate victim and his family and was instead granted to the State as the representative of the people.

### **2.2.1 Roman Criminal Law**

Roman law, specially its criminal law, 'has exercised greater or less influence on the corresponding part of the law of every nation of Europe, though in all it was far more deeply and widely modified by legislation than any other part of Roman jurisprudence.'<sup>40</sup> The oldest part of Roman criminal law was contained in the 'Twelve Tables' (420 B.C.), out of which eight tables deal with crime. Laws were executed according to these tables. The next stage was the development of Roman criminal law during the period of Emperor Justin. His lawyers divided crimes into the following classes:

➤ **Publica Judicia**

These were the specifically forbidden crimes by particular laws having predefined penalties like death or exile.

➤ **Extra-Ordinaria Crimina**

For these offences more specific punishment was provided as it was according to the discretion of the judge.

➤ **Privata Delicta**

For such offences a special action was set apart involving a definite result for the injured party. These were the private wrongs.

### **2.2.2 English Criminal Law**

The development of the English criminal law can be traced back to the law of succession of kings. It had begun with the king Ethelbert and ended during the reign of Henry I with the compilations made, known as Leges Henrici Primi. The earliest English criminal law provisions relating to number of offences such as adultery, perjury, homicide, rape etc. there was a specific

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<sup>39</sup> Ibid

<sup>40</sup> Ibid

procedure for trials which was tried by the jury and trial by battle i.e. appeal. Many reforms were introduced in the system of criminal trials from eighteenth century onwards.

### **2.2.3 The Mohammedan Criminal Law**

The Mohammedan criminal law had its origin in the holy Quran, which makes no distinction between crime and civil obligation and social duties. The concept of sin, crime, moral and social obligations, religion, has been blended in the concept of duty. Kazis had the power to administer criminal justice. The punishment was four folded, namely:<sup>41</sup>

- Kisa or retaliation
- Diyut or blood money
- Hadd or fixed punishment
- Tazir and Syasa or discretionary or exemplary punishment

During the Muslim rule, there was no uniformity in the administration of criminal justice and was a complex affair.

### **2.2.4 Criminal Law in Ancient India**

Arthshastra, Manusmriti and Yajnavalkya Smriti are the three leading law codes of ancient India. The seeds of criminal jurisprudence can be found in the works of Manu, an ancient philosopher. The principal offences according to Manu were:

- Assault
- Battery
- Defamation
- Theft
- Robbery
- False Evidence
- Slander
- Libel
- Criminal Breach of Trust
- Adultery
- Gambling
- Homicide etc.

Punishment prescribed for the offences was based on scientific principles. They were: Censure, Rebuke, Fine, Forfeiture of property and Corporal punishment which included Imprisonment, Banishment, Mutilation and Death.

The measure of punishment was determined according to following considerations:<sup>42</sup>

- The nature of offence
- Time and place of offence
- Strength, age, avocation and wealth of the accused

### **2.2.5 Criminal Law in British India Regime**

In India, Mohammedan criminal law prevailed when the Britishers took over the reign of the country. At that time there were many defects in the Mohammedan criminal law, which resulted

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<sup>41</sup> Gaur, K.D., 'Criminal Law, Criminology- And Criminal Administration' (1992) Deep and Deep Publications, F-159, Rajouri Garden, New Delhi, at 23

<sup>42</sup> Nigam, R.C., 'Laws Of Crime In India' (1965) Asia Publishing House, Bombay, at 17

in a chaos. Passing of Regulating Act, 1773 and setting up of a Court in each district were the first few attempts to reform criminal justice. In 1834, a Commission was appointed in order to bring about a uniformity in criminal law which submitted its two reports in 1845 and 1846. After some modifications the Draft Penal Code came into force on 1st January 1862. The object of the Indian Penal Code was to provide a law which defines various offences and prescribes punishment for them. Earlier, there was no uniform law of criminal procedure for whole of India. There were separate Acts, basic in their character to guide the procedure of the courts. It was the Criminal Procedure Code of 1882 which gave for the first time a uniform law of procedure for whole of India both in Presidency towns and in the mofussil. It was replaced by Criminal Procedure Code, 1898 which was amended many times. After various amendments and reports of the Law Commission, a Draft Bill no. XLI of 1970 was introduced in Rajya Sabha on December 10, 1970. The Bill was referred to a Joint Select Committee of both the Houses of Parliament and finally emerged in its present form as the Criminal Procedure Code, which came into force on 25th January, 1974. The object of the Code is to provide a machinery for the punishment of offenders against the substantive criminal law such as Indian Penal Code. Criminal Procedure Code has been enacted to supplement the Penal Code by providing rules of procedure to prevent the offences and bringing offenders to justice. It explains the procedure to be followed at various stages of investigation, inquiry, trial, conviction etc. Hence, criminal law provides the ultimate means to society for the protection of its individuals. In fact, criminal law can be said to be the achievement of criminal justice. A victim cannot be ignored in a criminal justice system. He cannot be a forgotten person.

### **2.3 Historical Background of Compensation to Victims of Crime**

Every present has a past. To understand the present, it is very essential to co-relate it with the past. The concept of compensation too, is a witness to its zig-zag but a firm past. In the initial year of human civilization when the humans started living together especially after stone age because of absence of rule of law and authoritative political institution, right to punish was with the individual and the concept of compensation existed at that time also. Then came the era in which the offence against an individual lost its individualistic character and the offence used to be considered as the offence against the tribe to which the individual belonged. From this era collective responsibility clan started replacing the victims' rights. The next stage started with the advent of strong monarch after medieval period in which the criminal law changed in all its disciplines. The position of victims' right to compensation remained unheard because of the notion that State is the parent of its subjects and crime is breach of peace of State. So it was the State which had the right to punish and get monetary compensation. There is no clear information as to when the concept of compensation actually began but there are scattered references which throw light on its ancient origin. The ancient practice of reparation can be founded in the Manusmriti, Code of Hammurabi, the Laws of Moses and Law of Roman Empire.

#### **2.3.1 Vedic Period**

In the Vedic period, justice was based on *dharma*. Detailed rules were laid down for the guidance of the king. It was his duty to uphold the law. One of his chief duties was administration of justice according to local customs and usages and the written codes. It was obligatory on him to enforce not only the sacred law of the texts but also the customary law of the subjects. The king was the fountain head of justice. Main crimes were theft, burglary, robbery and cheating. Cattle-lifting was the most common of all. Monetary compensation was



given to the relatives of the man killed. To prove their innocence the criminals were subjected to fire and water ordeals. In the time of Manu, compensation was regarded as a penance; hence it could be given to the priests. Manu clearly says that:<sup>43</sup> “If limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expenses of the cure or the whole.” He further says that: “He who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage.” The quotes regarding the same can be found even in the works of Brihaspati.

Narada points out that the judicial proceeding has four feet, four bases and four means. It benefits four, reaches four and produces four results. Virtue, Judicial Proceedings, Documentary Evidence and Royal Edicts are the four feet of a law-suit, and each following one is superior to the one previously named. Here virtue is based on truth, judicial proceedings rest on the statements of the witnesses, documentary evidence consists of declarations reduced to writing and an edict depends on the pleasures of the King. Similarly there are four parts of a trial:

- The connection must be examined
- The title must be ascertained
- The case and
- A decision is to be given

The four results of judicial proceedings are:

- Justice
- Gain
- Renown
- Esteem

Since the judicial procedure affects criminals, witnesses, the assessors of the court, and the King to the amount of one quarter each it is said to reach four.

Sutra period also recognized the concept of compensation. ‘Nyay’ one of the systems of this period recognized compensation as a royal right: for murder, the offender was obliged by the king to compensate the relatives of the deceased or the king or both.<sup>44</sup>

### **2.3.2 Law of Moses**

The Law of Moses, given by Moses, a thirteen century B.C. biblical Hebrew religious leader, a law giver, a prophet and a military leader, provides three Codes namely;

- a) Commandments [Laws of divine institution]
- b) Ordinances [Spiritual Code]
- c) Judgments [Social Code]

**Code I**, The Commandments, contained the laws of divine institution and establishment, including the moral law. This is the Magna Carta or Bill of Rights of human freedom. The Commandments provide laws of human freedom and provide a divine standard to which the sinner can compare himself and his actions and recognize that he is a sinner and needs a saviour.

**Code II**, The Ordinances, or the spiritual code, included a complete doctrine of Christ and was designed to present Christ as the only Saviour. A ‘shadow’ Christology and a ‘shadow’ Soteriology (doctrine of salvation) is also included in the Ordinances. The Ordinances are designed to communicate God’s grace in both salvation and restoration to fellowship.

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<sup>43</sup> Laws of Manu Chapter-VIII, Verse-287 and 288

<sup>44</sup> Schafer, Stephen, ‘Restitution To Victims Of Crime’, (1960) Stevens and Sons Ltd., 11 New Fetter Lane London, at 3

**Code III, The Judgments**, was the social code, the divine laws of establishment applied to social living. Questions of diet, sanitation, quarantine, soil conservation, taxation, military service, how to spend a honeymoon, what to do about divorce, slavery, inheritances, etc., were all covered. It was a complete set of laws. The Social Code is designed to provide a true concept of a national function and freedom under the laws of divine establishment. Apart from the above, The Torah (Five books of Moses)<sup>45</sup> distinguishes between offences against God and offences against man.

Offences against man require, in addition to confession and sacrifice, restitution in full of whatever has been wrongfully obtained or withheld from one's fellowman, with one fifth of its value added thereto. If the wronged man has died, restitution must be made to his heir, if he has no heir, it must be given to the priest who officiates at the sacrifice made for the remission of the sin. The Law of Moses laid down rules for the regulation and adjustment of temporal dealings. It defined a policy of what is called civil law.

### **2.3.3 The Law of Twelve Tables**

The Law of Twelve Tables (*Lex Duodecim Tabularum*) is an ancient law code that covers both civil and criminal matters. It is commonly believed that these laws served to codify existing custom. The actual codes do not survive nor do they exist in their entirety. The existing codes have been compiled from fragments and references to them by authors such as Cicero. The plebeians demanded written laws in order to protect them from the caprices of patrician magistrates, and again in 494, protested by seceding from Rome. Some modern scholars dispute this occurrence as an actual historical event. The tables provide not only a valuable insight into Roman law, but into Roman culture as well. The earliest attempt by the Romans to create a code of law was the Laws of the Twelve Tables. A commission of ten men (*Decemviri*) was appointed (455 B.C.) to draw up a code of law binding on both patrician and plebeian and which consuls would have to enforce. The commission produced enough statutes to fill ten bronze tablets. The plebeians were dissatisfied and so a second commission of ten was therefore appointed (450 B.C.) and two additional tablets were added. The Law of Twelve Tables also deals with the concept of compensation.

The historical origin of restitution, in a proper sense, the so called system of 'composition' lies in the middle ages, and can mainly be found in the Germanic common laws.<sup>46</sup> The concept of restitution was provisionally merged with penal law towards the end of the middle ages. Retaliation was transformed into the system of composition according to which even murder could be compounded between the victim and the offender. The vengeful retaliation changed to composition. Gradually, with the setting of tribes, reaction to injury became less severe. Compensation helped in mitigating personal vendetta and blood feuds as it served as an alternative which satisfied the victim's instinct for revenge. This feature supports the view that penal laws of ancient communities in which crimes were met by restitution, was not a law of

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<sup>45</sup> Five books of Moses:

1. Genesis
2. Exodus
3. Leviticus
4. Numbers
5. Deutronomy

<sup>46</sup> Schafer, Stephen, 'Restitution To Victims Of Crime', (1960) Stevens and Sons Ltd., 11 New Fetter Lane London, at 3

crimes, but a law of torts. Compensation was provided as per the nature of crime, age, rank, sex and prestige of the victim. The king also had a share in the compensation as a commission for its trouble in reconciling the parties. As the state monopolized the institution of punishment, so the rights of the injured were slowly separated from the penal law. Composition, as the obligation to pay damages, became separated from the criminal law and became a special field in civil law.<sup>47</sup>

The demand for compensation to victims of crime was advocated during the Penal reforms movement of 19th century. At the International Prison Congress held in 1878 at Stockholm, the ancient practice of compensating the victim was suggested. Since 1878, the question of reparation to the victim had been discussed at length in further Prison Congress. The idea of a public compensation fund for victims of crime, funded from fines collected was mooted in 1885 at the International Prison Conference held in Paris. In the agenda of the 1890 General Assembly of the International Criminalistic Society, the three main topics of debates were:

- Should the criminal law, take into account the interest of the ‘injured party’? If so, how?
- Should the public prosecutor, who is not the injured party *per se*, seek a restitution order from a criminal court?
- Should prisoner’s earnings be used to restitute the injured party?

The recognition of human rights was declared in the Indian Constitution through the Fundamental Rights and Directive Principles of State Policy. Article 21 of the Indian Constitution lay down that “No person shall be deprived of his life or personal liberty except according to the procedure established by law.” Article 38 confers duty upon the State to promote welfare of the people. Thus, when an individual’s fundamental or legal rights are violated because of the callous attitude of the custodians of the law, then the State shall be held responsible and the courts should not hesitate in granting compensation in appropriate cases. In India, the provisions relating to compensation to the victims of crime are laid down in Sections 250, 357, 357A and 358 of the Criminal Procedure Code 1973, Section 5 of the Probation of Offenders Act, 1958, and Sections 140-144 of the Motor Vehicles Act, 1988. Nearly five decades after the United Nations adopted the Universal Declaration of Human Rights in 1948, Parliament enacted the Protection of Human Rights Act, 1993 with an aim to protect the human rights of its citizens guaranteed by the Constitution. The function of the National Human Rights Commission has been detailed in Section 12 of the Act, which, in addition to others, gives it the power to inquire into complaints of human rights violations or public servants’ negligence in the prevention of such abuse. The Commission has also been empowered to recommend measures for the effective implementation of constitutional and legal safeguards for the protection of human rights. Since the enactment of the Human Rights Act, 1993, NHRC has worked as a watchdog providing protection to a number of people who have been victimised and whose rights have been infringed on either by the commissions or omissions of the State. The concept of compensation has been prevalent since ages but its nature varied from time to time. In the modern era though it is recognised but the concept is yet to develop and nurture fully. Detailed laws need to be made and implemented for the protection of the victims and securing full and complete justice to them.

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<sup>47</sup> Ibid

**CHAPTER-3**  
**COMPENSATION AT INTERNATIONAL LEVEL**

### 3.1 Introduction

A common understanding regarding the necessity of restitution of victims of crime has developed. The states have developed the concept of *jus cogens*<sup>48</sup> in their efforts to achieve reforms in the existing law and international legal order<sup>49</sup>. The *jus cogens* have been and are being developed but they lack in implementation due to lack of political will on the part of Member States. Although international law is not a very strong law in comparison with the state law but if implemented with political zeal and enthusiasm while following the principles of international law, there will be certainty in fair treatment and justice to victims of crime in their respective states. One such basic principle is that of *pacta sunt servanda* which is based on good faith. At the international level, a lot has been done and a lot needs to be done for giving fair justice to the victims of crime in their domestic jurisdictions. The global awakening regarding compensating the victims can be studied under the following heads:

### 3.2 Universal Declaration of Human Rights, 1948

With the horrors and impact of two world wars offending the conscience of man, representatives of various nations assembled at San Francisco and adopted the UN Charter on 26th June, 1945. Soon thereafter on 24th October 1945 the world at large witnessed the establishment of United Nations Organization.<sup>50</sup> The Charter of the United Nations, which is a declaration of faith reads, “Fundamental rights in the dignity and worth of human person, in the equal rights of men and women and of nations, large and small.” It does not further define the contents of human rights. The framers of the Charter left this task to the Organization itself and it was decided for this purpose that an International Bill of Human Rights should be drawn up.<sup>51</sup> This Bill comprises:

- (a) Universal Declaration of Human Rights, 1948
- (b) International Covenant on Civil and Political Rights, 1966
- (c) International Covenant on Economic, Social and Cultural Rights, 1966
- (d) Optional Protocol to the International Covenant on Civil and Political Rights, 1966
- (e) Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of Death Penalty, 1989

The Universal Declaration of Human Rights was adopted by the General Assembly of United Nations in Paris on 10th December, 1948.<sup>52</sup> This document provides basic human rights and fundamental freedoms to which all the people in the world are entitled to and also ensures a life with dignity. The document clearly sets out the international standards of compensation for the victims of gross violations of human rights.

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<sup>48</sup> *Jus cogens* means ‘compelling law’. This ‘higher law’ must be followed by all countries. Accessed from [www.definitions.uslegal.com/jus-cogens/](http://www.definitions.uslegal.com/jus-cogens/)

<sup>49</sup> Under Article 53 of the Vienna Convention on the Law of Treaties 1969, any treaty that conflicts with a peremptory norm is void.

<sup>50</sup> Chitkara, M.G., ‘*Human Rights-Commitment And Betrayal* \ (1996) APH Publishing Corporation, New Delhi, at 69

<sup>51</sup> Sen, Shankar, ‘*Human Rights In A Developing Society* \ (1998) APH Publishing Corporation, New Delhi, at 25

<sup>52</sup> G.A. Resolution 217 A (III) of 10th December 1948

**Article 8**<sup>53</sup> talks about the effective remedy to those whose legal rights have been violated. Not only this, this effective remedy has been recognized as a matter of right. A victim, whose legal rights are violated, must be compensated. Provisions must be made to retribute him so as to mitigate his loss.

**Article 22**<sup>54</sup> throws light on duty of the State to ensure social security to the individual and if the State fails in its duty to protect its subject, it must make adequate compensation to the victim. It is the moral as well as the legal obligation of the State to facilitate the individual to realise his freedoms by lawful means. Hence, when the State undertakes the responsibility to protect the life of its citizens, it becomes the obligation of the State not only to prosecute and punish the offenders for violation of human rights but also to help and support victims of crime i.e. those whose human rights are violated. Punishment to offenders and help to victims should be a parallel obligation of the State to realise the provisions of the Declaration.

### **3.3 Declaration of Basic Principles of Justice for Victims of Crime And Abuse of Power, 1985**

The adoption of this Declaration<sup>55</sup> by the General Assembly of the United Nations recognises the need to set norms and minimum standards in the international law for the protection of victims of crime. Part-A<sup>56</sup> of the Declaration talks about victims of crime whereas Part-B<sup>57</sup> describes victims of abuse of power. Part-A recognises four major components of the rights of victims of crime.

- (a) Access to justice and fair treatment<sup>58</sup>
- (b) Restitution<sup>59</sup>
- (c) Compensation<sup>60</sup>
- (d) Assistance<sup>61</sup>

#### **(a) Access to justice and fair treatment**

Under this, the declaration provides for treatment of victims with compassion and respect for their dignity,<sup>62</sup> establishment of judicial and administrative mechanisms,<sup>63</sup> informing victims of the proceedings, allowing their views in the proceedings, providing assistance to them, minimising inconvenience to them, avoiding delays in disposition of cases,<sup>64</sup> resolving disputes through informal mechanisms such as mediation, arbitration and customary justice.<sup>65</sup>

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<sup>53</sup> Article 8: Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted to him by Constitution or by law.

<sup>54</sup> Article 22: Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

<sup>55</sup> G.A. Resolution 40/34 of 29 November, 1985

<sup>56</sup> Clause 1-17

<sup>57</sup> Clause 18-21

<sup>58</sup> Clause 4-7

<sup>59</sup> Clause 8-11

<sup>60</sup> Clause 12-13

<sup>61</sup> Clause 14-17

<sup>62</sup> Clause 4

<sup>63</sup> Clause 5

<sup>64</sup> Clause 6

<sup>65</sup> Clause 7

**(b) Restitution**

Under this, the Declaration provides for making fair restitution to victims, their families or dependants.<sup>66</sup> It also imposes an obligation on the governments to review their laws and practices to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.<sup>67</sup> It also provides for restitution in cases of substantial harm to the environment.<sup>68</sup> In case public officials violate the criminal laws, restitution is to be made by the State.<sup>69</sup>

**(c) Compensation**

Under this, the Declaration provides that in case compensation is not fully available from the offender or other sources, the State should provide financial compensation to the victim or his dependants.<sup>70</sup> For this matter, establishment, strengthening and expansion of national funds for compensation should be encouraged.<sup>71</sup>

**(d) Assistance**

Under this, the Declaration provides that victims should receive the necessary material and assistance through governmental, voluntary, community based and indigenous means.<sup>72</sup> Victims should also be informed of the availability of relevant assistance services<sup>73</sup> and while providing assistance to them, attention should be given to those who have special needs because of the nature of harm inflicted upon them.<sup>74</sup> Various agencies like police, justice, health, social service etc should be given training to ensure proper and prompt aid.<sup>75</sup>

The Declaration defines victims of crime as ‘victims’ mean persons who, individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal laws operative within Member states, including those laws proscribing criminal abuse of power.<sup>76</sup> The Declaration defines victims of abuse of power as ‘victims’ mean persons who, individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that do not yet constitute violation of national criminal laws but of internationally recognised relating to human rights.<sup>77</sup>

This Declaration has been described as a kind of ‘Magna Carta’ of the Rights of the Victims worldwide.

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<sup>66</sup> Clause 8

<sup>67</sup> Clause 9

<sup>68</sup> Clause 10

<sup>69</sup> Clause 11

<sup>70</sup> Clause 12

<sup>71</sup> Clause 13

<sup>72</sup> Clause 14

<sup>73</sup> Clause 15

<sup>74</sup> Clause 17

<sup>75</sup> Clause 16

<sup>76</sup> Clause 1

<sup>77</sup> Clause 18

### **3.4 Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, 1987**

This international instrument on human rights aims to prevent torture around the world. The Convention was adopted by United Nations General Assembly on 10<sup>th</sup> December, 1984<sup>78</sup> and came into force on 26th June 1987. In honour of the Convention, 26th June is recognised as the International Day in support of tortured victims. The structure of the Convention is divided into three parts<sup>79</sup> containing thirty three articles. The Convention requires States to take effective steps to prevent torture keeping in view the United Nations Charter and the Universal Declaration of Human Rights. The document also forbids States to return people to their home land if there are reasons to believe that they will be tortured. Part-I defines torture and requires parties to take effective measures to prevent acts of torture within their borders. Part- II establishes a Committee against Torture and empowers it to investigate the complaints of torture in impartial manner. This part governs the steps taken by the parties to implement it. Part-III deals with ratification, entry into force and amendment of the convention and also provides for arbitration mechanism at the option of the parties having disputes. By virtue of **Article-13** States must provide the right to the person to have his case impartially investigated and protection of the complainant and witnesses. **Article-14** deals with compensation and rehabilitation of victims of torture. Hence this instrument serves as a guide for the states to take the requisite steps for preventing torture and also to provide adequate compensation to the victim.

### **3.5 The Rome Statute of International Criminal Court, 1998**

The plight of victims of international crimes is really worse. The adoption of the Rome Statute of International Criminal Court also known as Rome Statute is a great step forward in international law in relation to conferring a right on the victims to file claims and secure reparation from the perpetrators of international crimes. The Rome Statute is the first instrument under international regime which allows victims to file claims against, and be awarded reparations by individual perpetrators of a crime. The establishment of the ICC entails some revolutionary aspects in terms of international criminal law, particularly for victims. Under this statute, reparation is seen as an essential part of the inalienable right to an effective remedy and as a relevant part of the process of justice. Under **Article 75** of the statute, such a framework has been provided within which reparation can be awarded to the victim enforceable in the national courts. Under **Article 79** Trust Fund for victims has been established. The aim of Trust Fund for Victims is to constructively achieve reparation by creating, managing and utilising fund for the victims. It provides for collection of amount not only from the accused but from other sources also such as states, voluntary contribution etc.

The International Criminal Court statute empowers the tribunal to grant reparation and implement its order effectively at domestic level through the instrumentality of co-operation and assistance. “The essential principle contained in the actual notion of an illegal act is that reparation must, as far as possible wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.” Hence reparation has been recognized under international law since long as an instrument of remedial justice. Neither the Statute nor the Rules provide a definition of the

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<sup>78</sup> G.A. Resolution 39/46 of 10th December 1984

<sup>79</sup> Part I (Articles 1-16)  
Part II (Articles 17-24)  
Part III (Articles 25-33)



damages or limits thereof to which direct or indirect victims might be entitled. It is for the International Criminal Court judges to determine the amount of such reparations based upon expert opinion and after having heard all the parties.

The Statute of International Criminal Court empowers the judges to develop principles relating to reparation.<sup>80</sup> The reparation under International Criminal Court should not remain an empty pledge. Rather it should prove to be an effective institution in serving the larger interests of victims.

### **3.6 Optional Protocol to the Convention on Elimination of All Forms Of Discrimination against Women, 1999**

The Convention on the Elimination of all Forms of Discrimination against Women was adopted on 18<sup>th</sup> December, 1979<sup>81</sup> and guaranteed the right of all women to be free from discrimination and sets out obligations for States to ensure legal as well as practical enjoyment of that right.<sup>82</sup> During the drafting of the Convention in 1976, a complaint procedure was suggested but some delegates argued that complaints procedures were needed for serious international crimes. In the World Conference on Human Rights in Vienna in June 1993, a need for new procedures to strengthen the implementation of women's rights was felt and a Commission on Status of Women was called on to quickly examine the possibility of introducing the right of petition through the preparation of an Optional Protocol to the Convention. The fourth World Conference on Women held at Beijing in September 1995 called on United Nations member States to support the elaboration of the Optional Protocol. Finally the General Assembly adopted the Optional Protocol to the Convention on 6 October 1999.<sup>83</sup> The Optional Protocol includes:

- The Communication Procedure; by way of which women have the right to complain to the committee about violations of the Convention.
- The Inquiry Procedure; which enables the Committee to conduct inquiries into abuses of women's human rights in those States which are party to the Optional Protocol.

The Preamble ensures full and equal enjoyment by women of all human rights and to take effective action to prevent violations of these rights and freedoms.

The basic aim of the Convention is to embody the principle of equality of men and women in all matters. Similarly in the matter of compensating the victim of offence no discrimination should be made and the victim should be adequately compensated without any discrimination. The Convention defines<sup>84</sup> 'discrimination against women' as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.' The compensation granted must be in consonance with the offence of the offender irrespective of the fact that the offender is a woman.

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<sup>80</sup> Article 75(1)

<sup>81</sup> G.A. Resolution 34/180 of 18th December 1979

<sup>82</sup> Article 2 (c): To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

<sup>83</sup> G.A. Resolution 54/4(A/RES/54/4)

<sup>84</sup> Article 1

### **3.7 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violation of International Humanitarian Law, 2005**

The Basic Principles and Guidelines<sup>85</sup> provide that remedies for gross violation of international human rights law and serious violations of international humanitarian law include the victim's right to:

- (a) Equal and effective access to justice
- (b) Adequate, effective and prompt reparation for harm suffered
- (c) Access to relevant information concerning violations and reparation mechanisms

This resolution was the culmination of several United Nations studies<sup>61</sup> that had tried to clarify the right to reparation and potential processes for achieving that right. According to the **Preamble** victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims.

**Principle 11** highlights the victims' right to remedies:

Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

Hence it is apparent that the mandate for reparation for violation for international human rights is well established under international human rights jurisprudence. Obligation exists under international human rights norms to provide reparation if human rights of individuals are violated. The idea is to convince the States to implement these provisions in their domestic laws. The most important concept which matters is the will and determination of the States to implement the international instruments in their States thereby giving respect and honour to the international law.

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<sup>85</sup> G.A. Resolution 60/147 of 19<sup>th</sup> April 2005

**CHAPTER-4**

**COMPENSATION TO VICTIMS OF CRIME IN INDIA**

## 4.1 Introduction

The 'rule of law' requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of civil law or for criminal punishment.<sup>86</sup> The term 'compensation' etymologically suggests the image of balancing one thing against another, its primary signification is equivalence, and its secondary and more common meaning is something given or obtained as an equivalent. Pecuniary damages are to be valued on the basis of full compensation.<sup>87</sup> According to **Black's Law Dictionary**<sup>88</sup> compensation is an act which a court orders to be done, or money which a court or other Tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person demnified may receive equal value for his loss, or be made whole in respect of his injury.

The term compensation has been explained in number of cases in India also.

In **Lucknow Development Authority Vs M.K. Gupta**<sup>89</sup> Supreme Court pointed out that "The word 'compensation' is again of very wide connotation. It has not been defined. As per dictionary, it means compensating or being compensated; thing given as recompense. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss."

In **State of Gujarat Vs Shantilal Mangaldas**<sup>90</sup> the Court described compensation as "anything given to make things equivalent, a thing given to or make amends for loss, recompense, remuneration or pay."

In **State of Gujarat Vs Hon'ble High Court of Gujarat**<sup>91</sup> the Court held that "the court cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguards of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime.... 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 like which is suffered out cannot be recompensed, but then monetary compensation will at least provide some solace."

In India there is neither a comprehensive legislation nor a statutory scheme providing for compensation by state or offender to victims of crime for any loss or injury whether physical or psychological. Though there are certain enactments which do talk about compensating the victims. Compensation to victims of crime in India has been discussed in this chapter under certain very important enactments like Fatal Accidents Act 1855, Motor Vehicles Act 1988, Probation of Offenders Act 1958, Criminal Procedure Code 1973, Scheduled Castes And Scheduled Tribes (Prevention of Atrocities) Act, 1989, Communal Violence (Prevention, Control And Rehabilitation of Victims) Bill, 2005, National Green Tribunal Bill, 2010, Civil Liability for Nuclear Damages Bill, 2010 and Protection of Women against Sexual Harassment at Workplace Bill, 2010.

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<sup>86</sup> Divisional Controller, KSRTC Vs Mahadeva Shetty AIR 2003 SC 4172

<sup>87</sup> Rajani Devi Vs Orissa, State Electricity Board, 1996 (2) AJR 189

<sup>88</sup> Seventh Edition 1999, at 227

<sup>89</sup> AIR 1994 SC 787

<sup>90</sup> AIR 1969 SC 634

<sup>91</sup> AIR 1998 SC 3164

## **4.2 Compensation under The Fatal Accidents Act, 1855**

Even before the enactment of the Indian Penal Code, 1860, the Fatal Accidents Act was enacted in 1855 to provide compensation to the families for the loss caused in an accident. The common law in England was based on the fundamental principle that whenever a man has a right the law should give a remedy. But this principle did not provide any relief to the dependants or heirs of those deceased persons whose death was caused by a tortious act of another person because the cause of action to sue died with the person whereas a person who was just injured could claim damages against the tortfeasor. India also followed the same principle. This resulted in a very ambiguous state of law because it appeared as if it was cheaper to kill than to cripple a person. To overcome such an unsatisfactory state of law Fatal Accidents Act 1846 was passed in England. In India also Fatal Accidents Act, 1855 was passed. These Acts rendered the maxim *actio personalis moritur cum persona* (i.e. personal right of action dies with the person) ineffective. After the enactment of this Act, the wife, husband, parent and the children could claim damages for tortious action notwithstanding the death of the injured. The Preamble states, 'whereas no action or suit is now maintainable in any court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him.' The Act contemplates two sorts of damages:

- (a) Pecuniary loss sustained by the members of the family of the deceased; and
- (b) Pecuniary loss to the estate of the deceased resulting from the accident.

Under the first sort of damages, compensation is assessed by taking into consideration the reasonable provision the deceased would have made for the members of his family had he been alive. The second head represents damages for mental agony, suffering, and loss of expectation of life. It is a very brief Act containing only four sections. Under Section 1 and 2 the liability is distinct and independent. Damages are recoverable under section-1 for the benefit of the persons mentioned therein as loss sustained by them. Under Section-2 damages are awarded for the recovery of pecuniary loss to the estate of the deceased as a result of the accident. Since the two claims are based upon different causes of action, the claimant is entitled to recover compensation separately under both the clauses.

## **4.3 Compensation under The Motor Vehicles Act, 1988**

The Motor Vehicles Act, 1988 consolidates various laws regulating the road transport. The Act has been amended several times to keep it up-to-date. To render the maxim *actio personalis moritur cum persona* (personal right of action dies with the person) ineffective, Fatal Accidents Act, 1855 was enacted under which the wife, husband, parents and the children could claim damages for tortious action notwithstanding the death of the injured. But the claim could be filed as a regular suit in the civil court. A regular suit was expensive and caused delay. It was therefore felt necessary to evolve an easier and less expensive procedure for enforcing the claim for compensation arising out of motor accidents. Hence Motor Vehicles Act 1939 was enacted to provide a speedy remedy to the injured or the legal heirs of the persons killed in motor accidents. After several amendments Motor Vehicles Act, 1988 came into existence. The Act consolidates and amends the law relating to motor vehicles. The Act contains provisions related to various matters such as:

- Constitution of Claims Tribunals.
- Strict procedure relating to grant of driving licences.
- Laying down standards for various components of motor vehicles.

- Issuing Fitness Certificates to vehicles by authorised testing stations.
- Updating the system of registration marks.
- Provision for enhanced compensation in case of no fault liability<sup>92</sup> and hit and run<sup>93</sup> motor accidents etc.

The claim for compensation can be made:<sup>94</sup>

- (a) By a person who has sustained injury or
- (b) By the owner of the property or
- (c) Where death has resulted from the accident, by all or any of the legal representatives of the deceased or
- (d) By any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

#### **4.4 Compensation under Criminal Procedure Code, 1973**

The right of a victim of crime to receive compensation is recognised under Section- 357, 357 A and 358 of the Code.

**Section 357** reads as: **Order to pay compensation:**

1. When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied:
  - (a) in defraying the expenses properly incurred in the prosecution;
  - (b) in the payment of any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
  - (c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855, entitled to recover damages from the person sentenced for the loss resulting to them from such death;
  - (d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.
2. If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.
3. When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.
4. An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.
5. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

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<sup>92</sup> Sections.140-144

<sup>93</sup> Sections.161-163

<sup>94</sup> Section-166

From the provision, it is clear that the court has the discretion to pay compensation to the victim from either out of the fine imposed as part of the sentence or even where no fine is imposed. In other words granting of compensation is a power and not duty of the court.

Section-357(1) provides for payment of compensation to the heirs of a murdered person for the loss caused to them by the death, in order to obviate the need to relieve them from worry and expense involved in resorting to a further claim before the Civil Court.<sup>95</sup> The Court further held the first question to be determined by the court under sub-section (1) is not whether compensation should be paid to the heirs, but whether a sentence of fine is to be imposed in addition to death or imprisonment for life. Although Section-302 of the Indian Penal Code authorises such sentence, courts act on the principle that death being an extreme penalty, where death or a substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional circumstances such as the magnitude of the offence, the pecuniary circumstance of the accused, motivation of the offence, the pecuniary gain likely to have been made by the offender by committing the offence.<sup>96</sup>

In **Girdhari Vs State of Punjab**<sup>97</sup> it was held that no order for compensation under sub-section (1) can be made unless there is a substantive sentence of fine. Sub-section (1) applies when fine is imposed as a part of the sentence, with or without some other punishment. Sub-section (3) applies where the sentence is for some punishment other than fine. This clause was added to fill the lacuna in the old sections.545-546, under which there was no provision to compensate an injured person unless fine was imposed as a substantive sentence and only to the extent of fine recovered. Sometimes compensation could not be provided even in deserving cases only because of the lacuna. Section-357(3) has filled this gap as the compensation that the court can award under this section is not limited to the amount of fine imposed or recovered.

In **Sarwan Singh Vs State of Punjab**<sup>98</sup> the court held, if there are more than one accused, quantum of compensation may be divided equally unless there is considerable variation in their paying capacity. The payment may also vary depending upon the acts of each accused. Section-357 (3) is a progressive provision as it recognises the philosophy of compensation to the victim even when no sentence of fine is imposed. But is not a mandatory provision to be followed by courts.

In **Hari Kishan and State of Haryana Vs Sukhbir Singh**<sup>99</sup> the Apex Court directed all the subordinate criminal courts to exercise power of awarding compensation to the victims of offences in such a liberal way, that the victims may not have to rush to the civil courts for compensation. The court also cautioned that compensation must be reasonable, fair and just depending upon the facts and circumstances of each case taking into consideration the nature of crime, veracity of claim and ability of the accused to pay.

There is no maximum limit to the amount of compensation. It is totally left to the discretion of the court to decide the compensation depending upon the facts and circumstances of each case.

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<sup>95</sup> Palaniappa Vs State of Tamil Nadu AIR 1977 SC 1323

<sup>96</sup> Ibid

<sup>97</sup> AIR 1982 SC 1229

<sup>98</sup> AIR 1978 SC 1525

<sup>99</sup> AIR 1988 SC 2127

**In Dilip S. Dahanukar Vs Kotak Mahindra Company Limited and Another**<sup>100</sup> the court differentiated between fine and compensation and stated that distinction between sub sections (1) and (3) of Section 357 is apparent. Section 357 provides for application of an amount of fine while imposing a sentence of which fine forms a part whereas Section 357(3) calls for a situation where court imposes a sentence of which fine does not form a part of sentence. The court further observed:

“Compensation is awarded towards sufferance of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which has been awarded as compensation is considered to be recourse of victim in the same manner which may be granted in a civil suit.” The court summed up observing that there exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a ‘fine’ but the legal fiction raised in relation to recovery of fine only, it is in the sense ‘fine’ stands on a higher footing than compensation awarded by the court.

Apart from Section-357, the victim may also approach the higher courts under Section-482<sup>101</sup> to claim compensation which empowers the High Court to exercise its inherent powers. But Supreme Court in **Palaniappa Gounder Vs State of Tamil Nadu**<sup>102</sup> held, “If there is an express provision in a statute governing a particular subject matter, there is no scope for invoking or exercising the inherent powers of the court because the court ought to apply the provisions of the statute. Hence the application made by the heirs of the deceased for compensation could not have been made under Section-482 since Section-357 expressly confers powers on the court to pass an order for payment of compensation.”

**Section-358** reads as: **Compensation to persons groundlessly arrested:**

- (a) Whenever a person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.
- (b) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one thousand rupees, as such Magistrate thinks fit.
- (c) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

In spite of compensatory provisions in Criminal Procedure Code, there are certain shortcomings which are to be reconsidered in the modern perspective:

- (a) Section-357 is not a complete provision as ‘every’ victim may not get compensation in Indian criminal justice system.

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<sup>100</sup> (2007) 6 SCC 528

<sup>101</sup> Section-482: Saving of inherent powers of High Court

<sup>102</sup> AIR 1977 SC 1323



- (b) Compensation to victims can be awarded only when substantive sentence is imposed and not when the accused is acquitted.
- (c) Under Section-357(1), quantum of compensation is limited to the fine imposed. Compensation cannot exceed the fine.
- (d) Compensation can be ordered only when fine is realised and if no fine is realized compensation cannot be directed to be realised.
- (e) In actual practice, the fines imposed are generally on the low side and the courts rarely award compensation to the complainant.
- (f) Chance of receiving compensation vanishes when the offender is indigent having no capacity to pay the fine.
- (g) Under Section- 357(1) (b) trial court can award compensation only when it is 'recoverable' by the victim in a civil court. 'Recoverable' indicates the paying capacity of the offender. After holding the accused guilty, the judge cannot proceed unless he has heard the accused on the question of sentence under Section-235(2)<sup>103</sup> unless he wants to proceed under Section-360 dealing with order to release on probation of good conduct or after admonition. It is at this stage that the judge may be required to entertain evidence regarding the assets and paying capacity of the accused, which may lead to cross-examination of certain witnesses, recording the statement of the accused etc leading to delay. Probably due to this reason, the magistrates are unwilling to enter into the question of compensation to victims.
- (h) It is not clear if the court has the power to award an in-default sentence of imprisonment if the offender fails to pay the compensation as ordered.
- (i) Prior to the 2005 amendment under Section-358, the maximum amount of compensation was only rupees hundred. The provision stating compensation not exceeding one hundred rupees being unjustified was enhanced to one thousand rupees but in today's scenario even this amount is very meager.
- (j) The grant of compensation by courts depends to a great extent on the prosecuting agencies insisting on costs and compensation. But generally the prosecuting agencies hardly focus on awarding of compensation. As a result, compensation remains generally unavailed of.

Our criminal justice system adopted to some extent, a compensatory criminal jurisprudence; but in practice the attitude of the lower judiciary is still haunted by the ghost of Macabre and much concerned with the accused. So, need is the change in attitude of the judiciary. But before that we should have a white paper our Criminal Justice Policy as a whole and then to remodel the legal framework according to that policy mainly by suitable amendment of Criminal Procedure Code.<sup>104</sup>

The **152nd Report of the Law Commission** had recommended the introduction of Section.357- A prescribing that compensation be awarded at the time of sentencing to the victims of the crime- rupees 25000 in case of bodily injury not resulting in death; rupees 100000 in case of death.<sup>105</sup> The **154th Report of the Law Commission** of India noticed that its earlier recommendation had not been given effect to by the government so it went one step further and

<sup>103</sup> Section-235: Judgment of acquittal or conviction:

- 1) After hearing arguments and points of law (if any), the judge shall give a judgment in the case.
- 2) If the accused is convicted, the judge shall, unless he proceeds in accordance with the provisions of Section-360, hear the accused on the question of sentence, and then pass sentence on him according to law.

<sup>104</sup> Chakrabarti, Dr. N.K., 4 'Victim Assistance And Compensation To Crime Victims Under Indian Criminal Justice System Legal News and Views', Vol. 14 No. 5, May 2000, 11 at 14

<sup>105</sup> Law Commission of India, 152nd Report on Custodial Crimes (1994)

recommended to incorporate Section.357A in Criminal Procedure Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts. The compensation is for:

(a) Injury

(b) Any loss or damage to the property of the claimant which occurred in the course of his/her sustaining the injury and

(c) In case of death from injury resulting in loss of support to dependants.<sup>106</sup>

According to the report, 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.<sup>107</sup> One recognized method of protection of victims is compensation to victims of crime. As per the recommendation made by the Law Commission amendment was made in Code of Criminal Procedure and a new section 357A<sup>108</sup> was inserted which is as follows:

### **357A- 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 dependants 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 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependants 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 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.

With this amendment the legislature has tried to benefit the victims of crime with compensation but the process is to be speeded up by the respective states in framing a comprehensive scheme on providing compensation to the victims.

### **Shortcomings to be reconsidered:**

(a) The provision talks about framing of the scheme in co-ordination with the central government which means there can be undue delay due to clash of interests between the central and the state governments.

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<sup>106</sup> Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996)

<sup>107</sup> Para 1

<sup>108</sup> The Code of Criminal Procedure (Amendment) Act 2008 (5 of 2009) Enactment Date: 7th January, 2009

- (b) No time limit has been set within which the scheme is to be framed by the states.
- (c) Compensation will be granted only when the court recommends i.e. it is the discretionary power of the court to award or not to award compensation. The quantum of compensation is to be decided by the State or the District Legal Services Authority.
- (d) No criteria has been laid down as to on what basis the court can recommend or not recommend the compensation. Moreover, court has not been made bound to give reason(s) if compensation is not recommended.
- (e) The provision talks about compensating the victim by the trial court at the time of conclusion of trial. But it is still discretionary in nature i.e. it does not impose any obligation to make recommendation for the award of compensation.
- (f) The provision also does not bind the court to provide reasons for not awarding compensation.
- (g) It does talk about providing first aid and medical facility but does not talk about any interim compensation.
- (h) Besides, the requirement of certificate by the Police Officer or the Magistrate for providing free of cost medical benefits to the victims may delay in the award of compensation as it will require a further enquiry as to victim's financial status. On what basis the certificate is to be provided or rejected is not clear.

There are still certain lacunas but something is better than nothing. It can be treated as a fair beginning giving a boost to the criminal justice system in at least compelling the states to form a scheme. A long distance is yet to be covered successfully.

#### **4.4.1 Compensation as a Mitigating Factor**

Courts have used compensation as a mitigating factor. The amount of compensation awarded has not been on the same footing. In some cases the compensation awarded is more whereas in some it is very less. Moreover, the court exercises discretion while providing any reason in awarding or not awarding any specific amount of compensation. This can be seen in the light of the following:

##### **4.4.1.1 Compensation for Murder**

In **Rachpal Singh Vs State of Punjab**<sup>109</sup> the Supreme Court held that compensation should be commensurate with the paying capacity of the accused to pay as also other facts and circumstances of the case like gravity of the offence, needs of the victim's family.

In most of the cases, whenever the court has enhanced the compensation, it has reduced the punishment. Criminal justice has many dimensions beyond conviction, sentence, acquittal and innocence. The victim is not to be forgotten but must be restored to the extent possible. In murder cases the courts are of the view that true justice will be rendered only when proper compensation is provided to the dependants of the deceased.

##### **4.4.1.2 Compensation for Sexual Assault**

Sexual assault, especially in case of women who have been the recipients of violence being a weaker sex, is the ultimate violation of the self. It is a 'deathless shame and the gravest crime against human dignity.'<sup>110</sup> Rape laws have undergone many changes all over the countries. In

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<sup>109</sup> AIR 2002 SC 2710

<sup>110</sup> Shri Bodhisattwa Gautam Vs Miss Subhra Chakraborty AIR 1996 SC 922

some places, the word 'rape' has been substituted with 'sexual assault'; in some places it has been made gender neutral. In India Section-375 and Section-376 of Indian Penal Code, 1860, deal with the offence of rape and punishment prescribed for it respectively. The Law Commission urged that, having regard to the widespread prevalence of child sexual abuse in the country, it would be appropriate to redefine 'rape' as 'sexual assault', so as to bring within its fold all forms of penetration, namely, penile/vaginal, penile/ oral, penile/ finger, finger/ vaginal, finger/ anal and object/ vaginal. The dynamic changes were drafted by the Law Commission in the 172nd Report on rape laws. In the first place, it suggested deletion of the term 'rape' and its substitution with 'sexual assault'. The reasoning forwarded by the Commission was that, "sexual assault has assumed alarming proportions in contemporary times. It causes severe trauma and psychological damage to both young boys and girls who are subjected to it. Hence, it is necessary to widen the scope of the offence and give it a gender neutral approach....." 'Penetration' has also been extended to mean 'to any extent what so ever', for the simple reason that, in case of young children, it is rarely complete. Taking into consideration the increasing incidents of child sexual abuse within the four walls of their houses, the Law Commission proposed the insertion of a proviso in Section-376(1) which provides for criminalisation of sexual assault committed by a person, being in a position of trust or authority, towards the person assaulted or a near relative. The proposed punishment for the offence is rigorous imprisonment for a ten upto ten years.

Sexual violence is not only a dehumanizing act giving a blow to one's supreme honour but it batters-shatters the entire personality of the victim stabbing her from each side, each angle and each direction every day, every hour, every minute, every second. No amount of compensation can bring back the former dignity of the victim but it does help her to lead life afresh with a new hope where money is the basic requirement. The courts have been holding that the victim of rape must be compensated though there can be no compensation for what she has suffered or lost. It cannot be translated into monetary terms. However, adequate compensation is necessary for the loss of reputation, agony, torture, misery and the deprivation of the prospect of marriage and settling down to a serene family life. In a case four domestic servants were subjected to indecent assault by seven army personnel in a train, the Delhi Domestic Women's forum filed a writ petition in the Supreme Court under Article 32 of the Constitution of India. The forum urged the Supreme Court to lay down parameters on conduct and the investigation of trial including compensation to victims of sexual assault.<sup>111</sup>

Judiciary realises that the victim is an integral part of the criminal justice system. It is the victim who suffers the most and her cry and hope for justice must be met not only by merely punishing the offender but by adequately compensating her to help her start life afresh.

#### **4.5 Compensation under The Probation Of Offenders Act, 1958**

The Preamble of the Act states that "it is an Act to provide for the release of offenders on probation or after due admonition and for matters connected therewith." The term 'probation' is derived from the Latin word '*probare*' which means to prove or to test. This term is not defined under Indian statutes. According to *E.H. Sutherland* probation is a "status of convicted offender during a period of suspension of sentence in which he is given liberty conditioned on his good

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<sup>111</sup> Delhi Domestic Working Women's Forum Vs Union of India (1995) 1 SCC 14

behaviour and in which the State by supervision, attempts to assist to maintain good behaviour.”<sup>112</sup>

*Department of Social Affairs-1951* (Probation and Related Measures) has defined probation as a “process of treatment prescribed by the court for persons convicted of offence against the law during which the individual or probationer lives in a community and regulates his own life of conditions imposed by the court or other constituted authority and is subject to supervision of a probation officer.”<sup>113</sup> The object of the Act is to avoid imprisonment of the convicts to prevent them from becoming hardened criminals.

In **Commandant, 20th Battallion, I.T.B. Police Vs Sanjay Binjoa**<sup>114</sup> the Court held that the Act has been enacted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as useful and self-reliant members of society without subjecting them to deleterious effects of jail life. Hence even the Apex Court has attempted to incorporate the philosophy of correctional method of treatment of offenders. As per the modern criminal jurisprudence, no one is born criminal. Many crimes are the product of socio-economic milieu.<sup>114</sup> Hence the aim is to separate the young offenders from hardcore criminals. The object is to prevent the conversion of youthful offenders into obdurate criminals.<sup>115</sup> Under Section-3, the Court has the power to directly release the offender and under Section-4, the Court has the power to release offenders on probation of good conduct.

**Section-3** reads as: **Power of court to release certain offenders after admonition-**

When any person is found guilty of having committed an offence punishable under Section-379 or 380 or 381 or 404 or 420 of Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine or with both under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstance of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

Explanation-For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

**Section 4** reads as: **Power of court to release certain offenders on probation of good conduct:**

1. When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period,

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<sup>112</sup> Narayana, P.S. Justice, ‘The Probation Of Offenders Act, 1958’(2003) Gogia Law Agency, Hyderabad, at 3

<sup>113</sup> Ibid

<sup>114</sup> AIR 2001 SC 2058

<sup>115</sup> Musakhan and Others Vs State of Maharashtra AIR 1976 SC 2566

not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not directly such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

2. Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the Probation Officer concerned in relation to the case.

3. When an order under subsection (1) is made, the court may, if it is of the opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a Probation Officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

4. The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may have regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence, or a commission of the other offence by the offender.

5. The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the Probation Officer concerned.

Whether the convict is released under Section 3 or 4, the Act provides scope for giving compensation to the victims under section 5.

**Section-5** reads as: **Power of court to requirement released offenders to pay compensation and costs:**

1. The court directing the release of an offender under Section-3 or Section-4, may, if it thinks fit make at the same time a further order directing him to pay:

(a) Such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) Such cost of the proceedings as the court thinks reasonable.

2. The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Section-386 and 387 of the Code.

3. A civil court trying any suit arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

This provision of the Act deals with the power of the court to order for payment of compensation by the offender while releasing him.

The courts exercise their discretion while giving compensation under the Probation of Offenders Act, depending upon the facts and circumstance of each case. But from victim's point of view the Act has a lacuna that there is no prescribed criterion of calculating the compensation and moreover, it is up to the discretion of the court as far as quantum of compensation is concerned. Furthermore where the sentence is reduced, the quantum of compensation is increased.

#### **4.6 Compensation under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

Section 23(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989<sup>116</sup> empowers the central government to make rules by notification in the Official Gazette for carrying out the purpose of this Act. In exercise of powers conferred by the Section 23(1) of this Act, the Government of India framed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 which were notified on 31<sup>st</sup> March, 1995. Rule 12(4) of these notified rules provides scales for the monetary relief to the victims of crime in a Schedule appended to these rules. The prescribed Schedule indicates that the monetary relief proposed to be given to the victims of crime is in one or two instalments depending upon the nature of offence.

As regards to facilities provided to the victims every victim of atrocity or his/her dependant and witnesses is to be paid to and fro rail fare by second class in express/mail/passenger train or actual bus or taxi fare from his/her place of residence or place of stay to the place of investigation or hearing of trial of an offence under the Act.<sup>117</sup> Under Section- 11(2) the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate is required to make necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims of atrocity and witnesses for visiting the investigating officer, Superintendent of Police/Deputy Superintendent of Police, District Magistrate or any other Executive Magistrate. Moreover, under section 11(3) every woman witness, the victim of atrocity or her dependant being a woman or a minor, a person more than sixty years of age, and a person having 40 per cent or more disability is entitled to be accompanied by an attendant of her/his choice. The attendant will also be paid travelling and maintenance expenses as applicable to the witness or the victim of atrocity when called upon during hearing, investigation and trial of an offence under the Act. A provision has also been made to pay daily maintenance expenses at such rates as may be fixed by the State Government for the agricultural labourers but not less than the minimum wages. The maintenance will be paid for the days when the victim is away from the place of her residence or stay during investigation, hearing and trial of an offence.<sup>118</sup> In addition to daily maintenance expenses the victim are also entitled to diet expenses.<sup>119</sup> All the payments relating to travelling allowance, daily allowance, maintenance expenses and reimbursement of transport facilities are to be made immediately or not later than three days by the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate to the victims, their dependants/attendants and witnesses.<sup>120</sup>

#### **4.7 The Law Commission of India Report 1996**

The Law Commission Report<sup>121</sup> says, 'the principles of compensation to crime victims need to be revised and expanded to cover all cases. The compensation should not only be limited to fines, penalties and forfeiture realised. The state should accept the principle of providing assistance to victims out of its own funds:

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<sup>116</sup> Act No. 33 of 1989 dated 11th September 1989

<sup>117</sup> Section-11(1)

<sup>118</sup> Section-11(4)

<sup>119</sup> Section-11(5)

<sup>120</sup> Section-11(6)

<sup>121</sup> Law Commission of India Report (1996), 'Victimology' Chapter XV 154th Report on the Code of Criminal Procedure Code' 1973 (Act No. 2 of 1974)

- a. In cases of acquittals or
- b. Where the offender is not traceable but the victim is identified or/and
- c. When the offence is proved<sup>122</sup>

In Para-1 of its report the Commission observed that 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 justification of compensation lies in the following:

1. Compensation is another form of public assistance for the disadvantaged and
2. It is a medium of fulfillment of neglected State obligation to its citizens.

The State has a humanitarian responsibility to assist crime victims. The Commission also highlighted the system of compensation in other States like United States of America<sup>123</sup> where victim compensation programmes are administered by compensation boards. The Commission also took into consideration the provisions of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and accordingly gave its recommendations with regard to:<sup>124</sup>

- Police
- Prosecution
- Victims

Para 9.1.of the report highlights that the principles of victimology have 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. The principles of victimology have foundations in Indian Constitutional Jurisprudence. 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.

The Commission under Para 9.3 highlighted the flaws of Section 357 of the Criminal Procedure Code wherein compensation can be given in different ways and that too only when the offender is convicted and sentenced. It stated “under section 357 (l) (b) if the sentence is of fine, it can be applied in the payment of compensation, but limits the payment to cases when compensation is, in the opinion of the court, recoverable by the victim in a civil court. Similarly, compensation may be paid at the sentencing stage to persons who are under the Fatal Accidents Act, 1855 entitled to recover damages from the convict.<sup>125</sup> So also in cases of theft, misappropriation, cheating and the like, the bonafide purchaser of property from the convict may also be

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<sup>122</sup> Para-11

<sup>123</sup> Para-5.2

<sup>124</sup> Para- 6.4 and 6.5

<sup>125</sup> Section- 357 (l)(c)



compensated, the victim of the theft or cheating being also entitled to return of the property.<sup>126</sup> Under Section 357(3) if the sentence is not fine, the court may order the accused to pay specified amount of compensation to the victim.” The Commission further made it clear that the Code of Criminal Procedure, 1973 made an improvement over the old Code of 1898 in that under sub-section (3) of section-357, it recognised the principle of compensating the victims even when no sentence of fine is imposed. Under the old Code, no compensation could be awarded unless a substantive sentence of fine was imposed and the amount of compensation too was limited only to the extent of fine actually realised. But order of compensation under section 357(3), will be futile against an accused without property or other financial resources or if he dies.<sup>127</sup> The Commission also noticed a flaw under Section 5 of the Probation of Offenders Act, 1958 and suggested while releasing an accused on probation or with admonition, the court may order the offender to pay compensation as well as cost to the victim.<sup>128</sup> The Commission also laid stress to give effect to the recommendations made by it in its 152 report with regard to incorporation of Section 357 A in the Code.<sup>129</sup> Victim Assistance Fund created by the State of Tamil Nadu was also considered by the Commission in its report.

As a result Section 357 A was finally incorporated as follows:

**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 dependants 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 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
- (4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependants 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 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.

The recommendations under the 152nd report clearly specify the quantum of compensation to be paid whereas the amended provision under the Code is based upon the 154th report wherein it leaves it up to the discretion of the respective states to determine the amount of compensation awarded.

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<sup>126</sup> Section- 357 (1)(d)

<sup>127</sup> Para- 9.4

<sup>128</sup> Para- 9.5

<sup>129</sup> Para-12 Incorporation of Section.357 A- Victim Compensation Scheme

Under Para 6.4, the Commission recommended that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for the purpose, including those cases where the state, of which the victim is a national, is not in a position to compensate the victim for the harm. The Commission also recommended cover action at the police level and the state in the following words:<sup>130</sup>

1. Police officers should be trained to deal with victims in a sympathetic constructive and reassuring manner;
2. The police should inform the victim about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and state compensation;
3. The victim should be able to obtain information on the outcome of the police investigation;
4. In any report of the prosecuting authorities, the police should give as clear and complete a statement as possible on the injuries and losses suffered by the victim;

In respect of Prosecution:

5. A discretionary decision whether to prosecute the offender should not be taken without due consideration of the question of compensation of the victim, including any serious effort made to that end by the offender;
6. The victim should be informed of the final decision concerning prosecution, unless he indicates that he does not want this information;
7. The victim should have the right to ask for review by a competent authority of a decision not to prosecute, or the right to institute private proceedings.

Hence the report was a detailed analysis of the concept of victimology laying importance on payment of compensation to the victim. The recommendations made by the Law Commission must be seriously given effect to as soon as possible especially keeping in view the plight of the victims.

#### **4.8 Committee on Reforms of The Criminal Justice System, 2003 [Justice Malimath Committee]**

This Committee<sup>131</sup> observed that people, by and large have lost confidence in the criminal justice system. Victims at present do not get the legal rights and protection they deserve to play their just role in criminal proceedings. This tends to result in disinterest in the proceedings and consequent distortions in criminal justice administration.<sup>132</sup> Victims feel ignored and expect attention and justice. There is a need for developing a cohesive system in which all parts work in co-ordination to achieve common goal. Since victims do not get the legal rights and protection which they deserve to play their just role in criminal proceedings, it results in loss of victim's interest in the criminal justice administration. The Committee highlighted two types of rights in respect of victims of crime:<sup>133</sup>

1. Victim's right to participate in criminal proceedings.
2. Right to seek and receive compensation from the criminal court itself for injuries suffered as well as appropriate interim reliefs in the course of proceedings.

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<sup>130</sup> Para- 7

<sup>131</sup> Committee On Reforms Of Criminal Justice System, Government of India, Ministry of Home Affairs Report Vol-1 March 2003

<sup>132</sup> Para- 6.2

<sup>133</sup> Para- 6.3

The Committee gave example of France by stating; in France, all those who suffer damage on account of the commission of an offence are entitled to become parties to the proceedings from the investigation stage itself. He can assist investigation on proper lines and move the court for appropriate directions when the investigation gets delayed or distorted for whatever reasons. His active participation during trial will be of great help in the search for truth without inconveniencing the Prosecution.<sup>134</sup> It was further questioned by the Committee that what happens to the right of the victim to get justice to the harm suffered? He can be satisfied if the State successfully gets the criminal punished through the passing of death or 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 of such liability. Not only the victim's right to compensation has been ignored except a token provision under the Criminal Procedure Code but also the right to participate as the dominant stakeholder in criminal proceedings was taken away from him. He has no right to lead evidence, he cannot challenge the evidence through cross-examination of witnesses nor can he advance arguments to influence decision-making.<sup>135</sup>

The Committee recommended that a victim-friendly Criminal Justice System needs to address on an urgent basis. For example, victims of rape and domestic violence etc. require trauma counselling, psychiatric and rehabilitative services apart from legal aid. The object is to avoid secondary victimization and provide hope in the justice system. At the police station level, with or without the assistance of voluntary organisations, victim support services need to be organised systematically if the system were to redeem its credibility in society.<sup>136</sup> Recommendation was also made to allow the victim to challenge the prosecution decision at the trial stage itself.<sup>137</sup> Under Para 6.7.12 the Committee felt a need for an officer called Victim Support Service Co-ordinator equivalent to Probation Officer to take care of victim interests in investigation and trial. He may work closely with the police and courts to monitor, coordinate and ensure delivery of justice during the pendency of the case. The payment of compensation by the offender is not possible where there is acquittal or where the offender is not apprehended. Further, the payment remains suspended till the limitation period for the appeal expires or if an appeal is filed, till the appeal is disposed of.<sup>138</sup> The delay in the realisation of the amount often adds to the woes of the victim.<sup>139</sup> The Committee while giving the examples of United States focused on Victim Impact Statements during sentence hearing to be constitutionally made permissible which will enable the victims to describe the extent of any physical, emotional or psychological effects caused by the crime.<sup>140</sup> The Committee also laid stress on the practice of compensating victims in United Kingdom.<sup>141</sup> An important object of the criminal justice system is to ensure justice to the victims, yet he has not been given any substantial right, not even to participate in the criminal proceedings. Therefore, the Committee feels that the system must focus on justice to victims and

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<sup>134</sup> Para- 6.4

<sup>135</sup> Para- 6.7.2

<sup>136</sup> Para- 6.7.7

<sup>137</sup> Para- 6.7.9

<sup>138</sup> Section- 357 (2) Criminal Procedure Code, 1973

<sup>139</sup> Para- 6.8.4

<sup>140</sup> Para- 6.9.1

<sup>141</sup> Para- 6.9.6

has, thus, made the following recommendations which include the right of the victim to participate in cases involving serious crimes and to adequate compensation.

The Committee made following recommendations with regard to justice to victims:<sup>142</sup>

(a) The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with 7 years imprisonment or more.

(b) In select cases notified by the appropriate government, with the permission of the court an approved voluntary organisation shall also have the right to implead in court proceedings.

(c) The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer.

(d) The victim's right to participate in criminal trial shall, inter alia, include:

- i. To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence,
- ii. To ask questions to the witnesses or to suggest to the court questions that may be asked to the witnesses.
- iii. To know the status of investigation and to move the court to issue directions for further investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth.
- iv. To be heard in respect of the grant or cancellation of bail.
- v. To be heard whenever Prosecution seeks to withdraw and to offer to continue the prosecution.
- vi. To advance arguments after the Prosecutor has submitted arguments.
- vi. To participate in negotiations leading to settlement of compoundable offences.

(e) The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

(f) Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.

(g) Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration.

(h) The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn. It is the considered view of the Committee that criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognised by law and restitution for loss of life, limb and property are provided for in the system. The cost for providing it is not exorbitant as sometimes made out to be. With increase in quantum of fine recovered, diversion of funds generated by the justice system and soliciting public contribution, the proposed victim compensation fund can be mobilised at least to meet the cost of compensating victims of violent crimes. Even if part of the assets confiscated and

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<sup>142</sup> Para- 6.14

forfeited in organised crimes and financial frauds is made part in the Fund and if it is managed efficiently, there will be no paucity of resource for this well conceived reform. In any case, dispensing justice to victims of crime cannot any longer be ignored on grounds of scarcity of resources.

(i) The Law should provide for the scale of compensation in different offences for the guidance of the court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.

The Committee also finally suggested a vision for the future:<sup>143</sup>

1. The government may come out with a policy statement on criminal justice.
2. A provision should be incorporated in the Constitution to provide for a Presidential Commission for periodical review of the functioning of the criminal justice system.

#### **4.9 The National Commission to Review the Working of The Constitution, 2002**

This Commission advocated for a scheme of compensation particularly for victims of violent crimes. The Commission recommended to the union and state governments that under the Directive Principles of State Policy and under international human rights obligations, it should legislate on the subject with an effective scheme of compensation for victims of crime without further delay. All the Commissions, Committees and the Judiciary have unanimously suggested for compensation to victims.<sup>144</sup> The report itself assumes that merely punishing the accused is not sufficient as the concept of justice becomes doubtful because of the decreasing number of successful investigations and convictions.<sup>145</sup> Para-7.15.2 of the report advocates a victim-orientation criminal justice system that includes greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused and a scheme of compensation particularly for victims of violent crimes. The report argues for a viable, social justice-oriented and effective scheme for compensation victims and advises the government at the union and state level to legislate on the subject of an effective scheme of compensation for victims of crime without further delay under International Human Rights obligations and Directive Principles under the Constitution of India.<sup>146</sup>

There are certain rights which are necessary for the dignified existence of a human being. The dignity of a human being should be respected which is basic of all rights. In our country it is very necessary to frame suitable legislation under which the State must be made to pay compensation to the victims of crime. The legislative response to compensating the victims of crime is not very positive. The Tamil Nadu government already set up a Social Defence Fund for giving financial assistance to rescued victims. The Andhra Pradesh government has a scheme of financial help for all victims immediately after rescue. These could be considered as models for other states too.<sup>147</sup> In England there is a comprehensive compensation scheme meant for the convenience of

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<sup>143</sup> Para- 23 (157) and (158)

<sup>144</sup> The Report of The National Commission to Review the Working of the Constitution was submitted to Government of India on 31<sup>st</sup> March 2002

<sup>145</sup> Para- 7.15.1

<sup>146</sup> Para- 7.15.3

<sup>147</sup> Anand, A.S. Justice, *'Justice For Women'* (2008) Universal Law Publishing Company Private Limited, C-FF-1A, Dilkhush Industrial Estate, (Opposite Hans Cinema, Azadpur)GT Karnal Road,

the victims. Compensation to the victim by the State has become a well established principle in England.

In India the legislation does not mandate the courts to compensate nor is it a legal right of the victim to claim compensation. Moreover, compensation, if awarded, is most of the times inadequate. The redressal of grievances should be the topmost agenda in justice delivery system. The limited provisions related to compensation must now be expanded. The victim assistance programmes must be incorporated in law and in practice.

## **CHAPTER-5**

# **COMPENSATION TO VICTIMS A HUMAN RIGHTS APPROACH**

## **5.1 Introduction**

The Criminal justice system is to protect the basic rights of the individuals and the state against intentional invasion of criminals who violates the basic norms of society. Our Judicial system ensures that every citizen shall have an effective remedy for informing his basic rights. The legal maxim “ubi jus ibi remedium” is not an empty promise.

The universal declaration of Human Rights proclaims in Article 8.

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law”

In present scenario the Human Rights are the concern of the International community as a whole since they are the rights which every human being has apart from giving legal sanctity to the Human Rights, now there is trend even to pay compensation to the victims of Human Rights violation.

## **5.2 Evolution of Concept of Human Rights**

Human Rights have been described as inalienable rights in the sense that without them life left is not fully human life. Large Scale atrocities committed by the axis powers during the 2<sup>nd</sup> world war, the utter disregard exhibited by them for human dignity and decency which came to be recognized as crimes against humanity necessitated the victorious allied nations to incorporate in the Chapter of the United Nations, 1945 safeguards for human rights and fundamental freedoms.

The United Nations General Assembly, on December 10, 1948 unanimously passed a resolution approving the Universal Declaration of Human Rights as common standard of achievement for all peoples and of nations. The thirty articles of the universal declaration cover almost the entire gamut of human right. The follow up action in 1966 to give effect to the Universal Declaration was in form of two international covenants (i) on Economic, Social and Cultural rights; and (ii) on Civil and political rights. The basic philosophy that lay behind the international covenants is that realization of the rights incorporated in the Universal Declaration of Human Rights is possible only if every human being has civil and political rights as well as economic social and cultural rights. The evolution, growth and development of human right had been marked by gradual erosion of absolutism, rise of democratization of decision-making the common people at the social and political level.

These phenomenon changes at the national and international level have not only contributed to the development of Human Rights as a part of international legal system, but also that development of principles concerning payment of compensation to victims in course of time. In other words the issue of payment of compensation to victims of crime which was hitherto confined to municipal law system has now founds its way into international legal system.

We have long accepted human rights as one of the founding pillar of our Constitution. Part-III of our constitution incorporates many aspects and principles of the Universal Declaration of Human Rights, 1948 as well as the International covenant on civil and Political Rights, 1966 which is an optional protocol to the Universal Declaration. But we need to now focus on a new and developing strain of thought, that is, ‘rights of victims’. Are the victims of crime being adequately compensated and rehabilitated and is the criminal justice system adequately punishing the guilty. These are the questions that we need to ask ourselves and try to find an answer. Our Criminal justice delivery system bears a big question mark. Only 30 to 35 percent of



all criminal cases end in conviction, while 90 to 95 percent of matters involving heinous crimes end in acquittal. Under these circumstances, does the victim of a crime believe that he is ever going to get justice.<sup>148</sup>

### **5.3 DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS**

Perhaps realizing the gravity of the problem the United Nations General Assembly (UNGA) in 1985 adopted a Declaration of the Basic Principles of Justice for the victim of crime and abuse of Power'. The declaration envisages the basic norms to be adhered to for the recognition of victims' right to information treatment; restitution and compensation. The declaration also suggested certain measures to help victims and repose confidence in them. The prominent among them are; access to justice and fair treatment; restitution; assistance and the right based victims' movement.

The General Assembly in 1985, approved following rights of the victims without prejudice to the rights of offender.

- A. Right to protection from criminal activities through police and the law;
- B. Right to Information from agencies of criminal justice system at every stage.
- C. Right to assistance at every stage; such assistance will include medical, financial and legal aid.
- D. Right to courteous and human treatment
- E. Right to restitution from offenders
- F. Right to compensation from State
- G. Right to intervene at any stage of the proceedings through counsel, including the right to seek review or approval.

The realization of these rights is possible when appropriate legal, administrative and policy decisions are made to ensure justice to the victims of crime in their interface with criminal justice agencies.

### **5.4 HUMAN RIGHTS AND COMPENSATION TO VICTIMS**

The Supreme Court has forged new tools, devised new methods and adopted new strategies for the purpose of making Human Rights meaningful even to the victims of crime.

In M.J. Cheria's case the Supreme Court directed the State of U.P. to suspend and start disciplinary action<sup>149</sup> against two police officers and one medical officer for making perfunctory investigating of rape case and to pay compensation of Rs.2,50,000/- as compensation to each of the victims of rape. The Principal that a party cannot invoke the writ jurisdiction if the alternative efficacious remedy is available has undergone a drastic change by various decisions of the Apex Court which has awarded compensation to the victims of State atrocity, inspite of existence of alternative remedy of compensation under ordinary law.<sup>150</sup>

Law making being an inherent and inevitable part of the judicial process in a democracy, the Supreme Court has laid down that the doctrine of sovereign immunity cannot stand on the way of awarding compensation to the victim whose fundamental right is violated by the agency of the

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<sup>148</sup> Gudalure M.J. Cheria v. Union of India, 1995 SCC(Cri.)925

<sup>149</sup> Ibid

<sup>150</sup> Smt. Nilabati Behra V. State of Orissa, AIR 1993 SC 1960

State. By the Landmark judgment in Hari Kishan's case the Supreme Court not only awarded compensation of Rs.50,000/- to the victim, but also directed subordinate criminal courts to exercise this power of awarding compensation to the victim of offences in such a liberal way, that<sup>151</sup>, the victims may not have to rush to the civil courts for compensation. The General Assembly of United Nations has recommended payment of compensation to the victims of crime by the State, when compensation is not fully available from the offender or other sources. Since the State has a duty to protect life, liberty and security of its citizens, it is bound to pay compensation to the victims, irrespective of whether the accused is convicted or acquitted of the criminal charge.

## **5.5 ARTICLE 32 AND VIOLATION OF HUMAN RIGHTS**

Compensation to victims is a recognized principle of law being enforced through the ordinary civil courts. Under the law of torts the victims can claim compensation for the injury to the person or property suffered by them. It is taking decades for the victims to get a decree for damages or compensation through civil courts, which is resulting in so much hardship to them. The emergence of compensatory jurisprudence in the light of human rights philosophy is a positive signal indicating that judiciary has undertaken the task of protecting the rights of all people irrespective of the absence of any express constitutional provision and of judicial precedent.

### **Article 32 of the Constitution of India reads as follows:**

Remedies for enforcement of rights conferred by this part-

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Article 32(1) provides for the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights. The Supreme Court under Article 32(2) is free to devise any procedure for the enforcement of fundamental right and it has the power to issue any process necessary in a given case. In view of this constitutional provision, the Supreme Court may even give remedial assistance, which may include compensation in "appropriate cases".

A question regarding the awarding of monetary compensation through writ jurisdiction was first raised before the Supreme Court in **Khatri (II) V. State of Bihar**<sup>152</sup>, in this case, Bhagwati, J. observed:

"Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty".

Regarding the liability of the State to pay compensation for infringing Article 21, the Court answered in the affirmative saying that if it were not so, Article 21 will be denuded of its significant content. The Court further observed that where there are issues of the gravest

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<sup>151</sup> Hari Kishan and State of Haryana V. Sukhbir Singh, AIR 1988 SC 2127

<sup>152</sup> 1981 SCC (1) 627

constitutional importance involving as they do the exploration of a new dimension of the right to life and personal liberty, it has to lay down the correct implications of the constitutional right in Article 21 in the light of the dynamic constitutional jurisprudence, which the Court is evolving.

The seed of compensation for the infraction of the rights implicit in Article 21 was first sowed in Khatri's case which sprouted with such a vigorous growth that it finally enabled the Court to hold that the State is liable to pay compensation. This dynamic move of the Supreme Court resulted in the emergence of compensatory jurisprudence for the violation of right to personal liberty through Rudul Shah's case. The Supreme Court of India in **Rudal Shah v. State of Bihar**<sup>153</sup> brought about a revolutionary breakthrough in human rights jurisprudence by granting monetary compensation to an unfortunate victim of State lawlessness on the part of the Bihar Government for keeping him in illegal detention for over 14 years after his acquittal of a murder charge. Till the pronouncement made in the above case, the Supreme Court was hesitating to recognize the principle of monetary compensation for violation of fundamental rights while acknowledging the inadequacy of conventional judicial remedies in this type of cases.

In **Nilabati Behera v. State of Orissa**<sup>154</sup>, the Supreme Court awarded damages against the State to the mother of a young man beaten to death in police custody. The Court held that its powers of enforcement imposed a duty to "forge new tools", of which compensation was an appropriate one where that was the only mode of redress available. This was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity does not apply.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor 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. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.

In India, the judgment in **Rudal Shah v. State of Bihar** added a new dimension to judicial activism. The Supreme Court in the above case observed:

"It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right"

The compensatory Jurisprudence introduced by the Supreme Court of India by invoking powers under Art. 32 gained tremendous importance in recent times due to the increase of the incidents of State lawlessness, police lawlessness, custodial violence, violence in jails, unlawful detentions

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<sup>153</sup> AIR 1983 SC 1086

<sup>154</sup> AIR 1993 SC 1960

and other violations. This innovation made by the multiplicity of litigation but also helping the courts to render speedy justice to victims.

The Human Civilization during the long journey from the primitive society to organized welfare states of modern times, has witnessed several changes in the criminal justice system, particularly concerning the victim compensation and rehabilitation at different stages of history while retributive justice philosophy prevailed in the primitive societies, the concept of restitution and compensation are taking front seat in the administration of criminal justice system at the National and international level.

Further with the dawn of 20th century and emergence of the concept of Human Rights as most significant and inalienable rights of human beings, the philosophy of victim compensation assumed greater importance, while the nations are evolving principles governing victim compensation, the individual movements and the international organizations like United Nations Organization etc. are equally striving hard to develop and strengthen the law relating to victim compensation as an essential welfare and social programme.

## **CHAPTER-6**

# **JUDICIAL ATTITUDE TOWARDS COMPENSATION TO VICTIMS OF CRIME**

## 6.1 Introduction

'Justice' has been placed at the highest pedestal in the Preamble as compared to other principles i.e. liberty, equality and fraternity. The quality of justice determines the quality of society and of governance. Just as pollution poisons the physical atmosphere, poor justice system poisons the social atmosphere. Equal and fair justice is the hallmark of any civilized society. Rule of Law, which is so important, must run closely to the Rule of Life. Justice in India seems to be discretionary and a decision making process. Judges have been conferred with discretionary powers so that the remaining gaps can be filled by giving justice to the people, who turn to the judiciary with hope of justice in their eyes. But with the growing complexities of society, the desire and quest for justice has become stronger and deeper. The existing criminal justice system focuses its maximum attention on the offender. Efforts are made to either reform or rehabilitate him. In this effort little or no attention is paid to the victim of crime.

In India, as far as compensation is concerned, there is neither a comprehensive legislation nor a statutory scheme available for providing compensation by state or offender to victims of crime. The criminal justice system does not provide for a comprehensive payment of compensation to the victims of a crime for any physical, mental, psychological loss or injury. It provides for compensation out of the fine imposed. Interestingly, the Law Commission felt it 'unwise' to create a legal right in favour of the victim to join in the criminal proceedings as a third party to avoid mixing up of a civil and criminal proceedings, a confusion of issues and prolongation of the trial. Justice should not only be done to the accused and society but also to the victim which, as a whole justifies the justice delivery system. In spite of the loop holes in the legislature pertaining to compensation, the judiciary has been trying to fill the gaps not as a mere formality or duty but considering it as an essential need of the society. The courts are the guardians of the human rights. The common man looks upon judiciary as his protector. The courts have from time to time expanded the facets of human rights and upheld the rights of the individual. The courts have been working as a sentinel in protecting the human rights of the millions of justice hungry people while maintaining the balance amongst the three organs of States i.e. Legislature, Executive and Judiciary.

Judiciary is not only the custodian of the Constitution but is also a *sine qua non* for the efficient governance of the country. The golden thread of human rights runs through the entire courts of India. The judiciary through its various decisions has been giving compensation to the victims of crime depending upon the nature and circumstances of crime. Since there is no fixed evaluation criterion for calculating compensation, judiciary in serious cases has been very liberal in providing compensation to the victims.

The courts like other institutions also belong to the people. They are as much human institutions as any other. The other instruments and institutions of the State may survive by the power of the purse or might of the sword; but not the courts. The courts have no such means or power. The courts could survive only by the strength of public confidence. The public confidence can be fostered by exposing courts more and more to public gaze.<sup>155</sup> Undoubtedly, judiciary is an asset, which has always tried to set good traditions of independence and integrity trying to retain the dignity of the Constitution of India. But it is one of the principles of human justice that justice should not only be done but it should be seen to have been done. People have a great interest in knowing what occurs in a court of justice.

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<sup>155</sup> Mohammed Shahabuddin Vs State of Bihar (2010) 4 SCC 653

According to Martin Luther King, “*Injustice anywhere is a threat to Justice everywhere.*” Hence judiciary has been very careful in providing compensation to the crime victims so that law and order can be maintained. Society is the human home, law its discipline and justice its perennial pursuit. Since right without remedy is a mere mirage therefore judiciary has tried its best to provide the best remedy to the victims of crime by not only punishing the offender but also by compensating the victim of crime because justice requires that a person who has suffered must be compensated.

## **6.2 Case Laws**

“The only friend who follows men even after death is justice; for everything else is lost at the same time when the body perishes.”<sup>156</sup> Transparent justice should also clearly contain the reasons for any particular judgment as the reasons for judgment repose confidence of the people in judiciary especially victims. “Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions but they apply with equal force and in fact, with a greater degree of precision to judicial pronouncements.”<sup>157</sup> Reason is the very life of law. When the reason of law ceases, the law itself ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty.

### **6.2.1 Judicial Attitude in Cases of Sexual Assault**

In **Chairman, Railway Board Vs Chandrima Das**<sup>158</sup> rupees 10lakh was awarded as compensation to a foreign tourist from Bangladesh who was raped by Railway employees in the Yatri Niwas at Calcutta in 1988. The Court observed it as a violation of her fundamental right under Article-21 of the Constitution which is available to all the people irrespective of their nationality.

In **Rupan Deol Bajaj Vs Kanwar Pal Singh Gill**<sup>159</sup> the accused, a senior police officer was found guilty for gently slapping on the posterior of a lady at a dinner party. A fine of rupees two lakh was awarded as compensation to the victim.

The offences of sexual assault have a devastating effect on the survivors i.e. the victims. It can be considered as a beginning of a nightmare. The aftershocks may include depression, guilt feeling, suicidal tendency, fear etc. Sexual assault not only amounts to a beastly and brutal attack on the dignity of a woman but also disregards her legitimate control over her body. The victim becomes a living corpse. The trauma doesn't end here. Then begins the long, tiring and humiliating journey of the criminal justice system in which she is made to answer the questions and queries at length. The shame and the self-consciousness resulting from such questioning may leave an indelible scar on her peace of mind. In spite of all these hardships, if an offence of sexual assault is reported to the authorities, if no or inadequate compensation is provided to a victim, perhaps no one would dare to complain of such offences to the concerned authorities. Sexual offences

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<sup>156</sup> Laws of Manu, Verse-17, Chapter-VIII

<sup>157</sup> CCT Vs Shukla and Brothers (2010) 4 SCC 785

<sup>158</sup> AIR 2000 SC 988

<sup>159</sup> (2005) 6 SCC 161

have always been the crime least reported, most stigmatised and seldom punished. There is no end to such crimes. Crime against women has increased considerably for some time. It is not only rape and abduction which are reported routinely. Murders, burglaries, chain snatchings and many other kinds of crime have been keeping the people virtually terrorised. The fast rising crime graph shows that the fear of law has virtually disappeared. Without doubt, our criminal justice system is mainly to blame. Criminals rarely get exemplary punishment. Then there is a culture of the police spending much of its time and energy on the security of the VVIPs and VIPs, leaving the ordinary citizens to fend for themselves. In such a situation what does the victim get ultimately? The victim in the criminal justice system has to pass through various stages such as; medical-examination, framing of charges, cross-examination, statements of accused, victim, witnesses, trial, conviction or acquittal. The story does not end here. Then begin the stages of appeals till the final delivery of the judgment.

Hence keeping in view all these factors in mind the judiciary must try its best to help the victim through awarding adequate final as well as interim compensation to the victims of sexual assault.

## **6.2.2 Judicial Attitude in Cases of Murder**

### **Balraj Vs State UP<sup>160</sup>**

The court held that power to award compensation is not ancillary to other sentences but in addition thereto, and directed the accused to pay rupees 10000 by way of compensation to the widow of the deceased.

### **Baldev Singh Vs State of Punjab<sup>161</sup>**

The Supreme Court, after considering the nature of crime, that it is a property issue which ended in the killing of the victim, the fact that the accused are in a position to pay, ordered a compensation of rupees 35000 each to the victim's wife and children.

In **Parasnath Tiwari Vs Central Reserve Police Force<sup>162</sup>** compensation on account of mental agony suffered by the parents of the victim were awarded. The victim was a CRPF constable who was killed accidentally by a fellow constable due to mistaken identity as an intruder. The parents were not intimated of the cause of death and agony was also caused to them by sending the photograph of a wrong person. This agony continued for twenty years. Besides, they also suffered financial loss as deceased's earnings were source of sustenance to the family. Moreover, loss of the son created a void in the family. Compensation of 1lakh awarded by the High Court was enhanced to rupees 2lakh by the Supreme Court.

In **Santosh Kumar Singh Vs State through CBI<sup>163</sup>**, the famous Priyadarshini Mattoo case of rape and murder, no amount of compensation was awarded to the deceased victim's family. Moreover, the death sentence awarded by the High Court was commuted to life imprisonment by the Supreme Court.

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<sup>160</sup> AIR 1995 SC 1935

<sup>161</sup> AIR 1996 SC 372

<sup>162</sup> (2010) 3 SCC 111

<sup>163</sup> (2010) 9 SCC 747



Murder is terribly exhausting. Not only the victim suffers during his lifetime but even after his death the members of his family carry the burden of sufferings and pains all through their lives. Though a dead victim cannot be given a new life but the assistance of adequate compensation provided to the kin of the victim can definitely help in mitigating their hardships and hope for a better and a dignified life.

### **6.2.3 Judicial Attitude in Cases of Riots/Tragedies**

A number of incidents of riots and tragedies had been taking place in India. They are still happening. Both the government and the judiciary have been taking various steps to provide relief to the victims and their kin in the form of rehabilitation or compensation. Following riots and tragedies have been chosen for the study:

#### **6.2.3.1 Delhi Riots, 1984**

In 1984 anti-Sikh riots, in which thousands of persons {officially the number of killings was placed at 2733, almost all of them Sikhs} lost their lives a day after the Prime Minister Mrs. Indira Gandhi's assassination on 31st October. A compensation of rupees 7 lakh has been provided by the State but still most of the families are yet to get compensation. Out of about rupees 714 crore, the Prime Minister announced as relief on January 16, 2006, only about rupees 419 crore have so far been handed over to the victims. In spite of announcement of relief package for them, the victims are not getting the compensation due to the administrative dilly-dallying. As a result victims are knocking at the doors of the Court in order to obtain their due share from the government. The cases are still pending in the court for the release of compensation announced by the government.

In **S.S. Ahluwalia Vs Union of India**<sup>164</sup> the Supreme Court held that the state is liable to pay compensation to the family of the Sikhs killed during riots in the wake of the assassination of Mrs. Indira Gandhi on 31st October 1984, as their life has been extinguished in clear violation of Article 21 of the Constitution.

#### **6.2.3.2 Uphaar Cinema Tragedy, 1997**

On 13-6-1997, a devastating fire occurred at Uphaar Theatres New Delhi, owned by Ansal Brothers. 59 persons were killed and over a hundred were injured due to suffocation in the cinema hall when a fire in the faulty transformer turned the hall into a gas chamber with no safe exits.

In **Sushil Ansal Vs State through CBI**<sup>165</sup> the Supreme Court directed that a fine of Rs.30 crore on each appellant should be imposed and if the said fine is paid within a period of three months, the sentence of the appellants be reduced to sentence already undergone.

#### **6.2.3.3 Godhra Riots 2002**

The Gujrat violence which describes a series of communal riots between Hindu and Muslim communities that took place in Gujrat in 2002, presents a pathetic picture of victims of crime who were offered an initial compensation of rupees two lakh to the families of those who died in Godhra train fire and one lakh to families of those who died in subsequent riots. Subsequently the centre decided to give rupees seven lakh as compensation to nearly five thousand post-

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<sup>164</sup> AIR 2001 SC 1309

<sup>165</sup> AIR 2015 SC

Godhra riot victims in Gujrat. The communal riot in Gujrat broke out after the tragic incident of burning a boggy of the Sabarmati Express on February 27th, 2002 at Godhra Railway Station in Gujrat. In this incident over 70 Hindu sadhus were killed and its aftermath saw the horrific incident of communal violence in Gujrat. Shah-Nanavati Commission and U.C. Banerjee Commission and various committees were set up to investigate the Godhra train burning incident.

In **Union of India Vs Nilkanth Tulsidas Bhatia and Seven Others**<sup>166</sup> a compensation of rupees 20,000 was awarded to the victims who were travelling in the coach which was set on fire by a violent mob at Godhra resulting in death and injuries to many passengers.

### **6.3 Socio-Legal Implications**

Crime is a major social problem which disturbs peaceful living and diminishes the quality of life. Victimization results in physical, psychological and emotional harm to the victim which further results in a stressful life. Loss of near and dear ones or sexual assault cause indelible and permanent scars and trauma on the minds of the victims, besides leading to financial crises which are most of the times beyond recovery.

In every crime there are at least two victims:

- a) Society
- b) Actual victim

The 'society' is given justice when the offender is punished as he is responsible for disturbing the equilibrium of social order.

The 'actual victim' is the primarily affected person who suffers in life, limb or property.

The society is given the primary status whereas the victim is given a secondary status by reducing his role in the criminal justice system merely to that of a witness. Whereas punishment provides the public face, victims' compensation is the private face of the same coin. According to the theory of 'social contract' an individual is bound to society only by his consent and therefore made society responsible to him as well as the reverse. The main function of the state is to protect the life and limbs of its people. Punishment of the offender by state is justified on the ground that the offender has broken a contract which he had made with the society. Therefore it can be said that state is bound to compensate the victim on the ground that state has broken a contract by not protecting the life and limbs of its subjects. Today's violations are tomorrow's conflicts. In earlier times offenders were always asked to compensate the victims in proportion to the injury caused. With the development of formal criminal justice system, the state took the responsibility of protecting the people and preserving peace in the society. Due to this the focus of justice shifted on establishing the guilt of the accused and punishing him, sidelining the victim whose role was reduced to merely that of a witness during trial. The victim had to satisfy himself with the punishment of the offender. Not much significance was given to payment of compensation. Gradually the importance of compensation was realised keeping in view the hardships suffered by the victims. The Indian Judiciary, in spite of absence of any specific legislation on compensation, had been trying its best to protect the rights of the victims by not only punishing the wrong doer but also compensating the victim. The judiciary has also used its inherent powers to provide compensation to the victims as well as their rehabilitation.

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<sup>166</sup> (2006) 2 GLR 952

It can be concluded by saying that we are standing on the first step and we have to cover a long distance. Now is the time to utilise the quality of farsightedness. If not now then never. An internally strong and well fabricated system of giving compensation is the urgent demand of the day. Mere announcements and judgments are not enough. They must be implemented in a transparent manner. A well designed legislation on compensation can bring the agony of millions of victims to an end. Apart from this, in serious offences like murder and sexual assault special attention must be given. The victim must feel that he/she is cared for by the criminal justice system and has got adequate compensation for the crime committed upon him or her.

Whether the judgment is pronounced for violation of his fundamental rights under the Constitution or under any other law for the time being in force, the victim must feel that he/she will be adequately compensated because the sufferings remain the same irrespective of the statute. If the penal law for the accused is uniform, the compensatory law for the victims should also be on the similar pattern.

## **CHAPTER-7**

# **VICTIM COMPENSATION FUND: PROPOSED PARADIGM**

## 7.1 Introduction

Without a substantial fund there cannot be any meaningful programme for victim compensation. The experience of countries operating victim compensation scheme suggest that not even one third of a victims of crimes seek compensation for criminal injuries suffered.<sup>167</sup> The scheme may help in deciding how much of compensation should be allowed in what type of injuries to what type of victims etc. Victims' compensation seems to be a beggar weeping at the threshold of criminal justice. The criminal justice system is based upon the ideology that an offence is only against the society i.e. the State. An act of crime exposes the flaws and lacunas in the functioning of the State which fails to protect the life, liberty or property of the people. Why should an innocent suffer as a result of failure on the part of the State? It ought to be the duty of the State to restore the victim to his former position. Therefore punishment must not only meet the ends of the State but should evaluate the damage of the victim also. If punishment fulfils the public demand, victim's compensation fulfils the private demand, the two being sides of the same coin. Considering the present status of crime victims in India, there is need to have a comprehensive victim assistance policy recognising their basic rights and giving respect to them at the same time. The 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' adopted by UN General Assembly provides<sup>168</sup>:

(a) Offenders.... should 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.<sup>169</sup> It means restitution should be the part of sentencing in criminal cases.

(b) When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization<sup>170</sup> i.e. when compensation is not fully available from the offender or other sources, State should provide monetary compensation to victims.
- 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 offender is a national is not in a position to compensate the victim for the harm<sup>171</sup> i.e. a National Fund should be set up for victims who suffered serious physical or mental injury.

Section-250 of Criminal Procedure Code, 1973 authorises Magistrates to direct complainants or informants to pay compensation to people accused by them without reasonable cause.

Section-358 empowers the court to order a person to pay compensation to another person for causing a police officer to arrest such other person wrongfully. Section-357 enables the court to grant compensation to the victim and to order the payment of costs of the prosecution while

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<sup>167</sup> Patil, G.B., 'Compensation To The Victims Of Crime: An Assessment Of Legislative Framework' Cri. L. J November 2009 J.308

<sup>168</sup> UN Resolution No. 40/34 of 29th November, 1985

<sup>169</sup> Principle-8

<sup>170</sup> Principle-12

<sup>171</sup> Principle-13

imposing the sentence in a criminal proceeding. But this is at the discretion of the court and is to be paid out of fine recovered. Though Section-357 tries to follow the principles of the UN Basic Principles of Justice for Victims of Crime but lot more is to be done, as the scope of Section-357 is very limited. For example:

- (a) It applies only when the accused is convicted.
- (b) Compensation can be made out of the fine recovered from the accused when fine is part of the sentence.
- (c) When fine is not imposed as part of the sentence, the court may order any amount to be paid by way of compensation for any loss or injury by reason of the act for which the accused has been sentenced.
- (d) The Magistrate has to consider the capacity of the accused to pay while awarding compensation.

Not even one per cent of deserving victims get compensation through criminal courts today. Victim compensation law continues to be in an unsatisfactory condition. Without a substantial fund which will be constantly replenished, there cannot be any meaningful programme of victim compensation. For a country of India's size and population, given the role of violent crimes, particularly against women, children and dalits, the Compensation Fund must at least be rupees 500 crores to begin with. It must grow one hundred per cent every year to make available ready money for payment to victims. There can be many ways in which the fund for victim compensation can be generated by the government. For example:

- (a) Donations to the Fund and also their exemption from tax.
- (b) Wages earned by prisoners.
- (c) Grants by the State or Central governments.
- (d) Accumulation of unclaimed amounts.
- (e) Increased amount of fine if the accused is rich.

The compensation fund should be managed by the Compensation Board. The membership must include people from judiciary to ensure fairness and transparency in its administration. The Board should have a network with the police, prosecution, judicial departments and should also have support from social work, legal aid and medical agencies. Although all victims of crime should be entitled to compensation but to begin with, the task can be accomplished in a phased manner depending upon the resources of the State. More serious and heinous crimes can be included in the list for providing compensation. For example- Victims of death, sexual offences, child abuse etc.

## **7.2 The Compensation Board**

Mahatma Gandhi once said: "Recall the face of the poorest and most helpless person whom you may have seen and ask yourself if the step you contemplate is of going to be of any use to him. Will he be able to gain anything by it? Will it restore him to control over his own life and destiny?" The same applies to the state also. Whatever steps are to be taken by the state for providing compensation to the victims, must ensure that they will be helpful to them. "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."<sup>172</sup>

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<sup>172</sup> Article-14 Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment

## 7.2.1 Delhi Domestic Working Women's Forum Vs Union of India

In India, in **Delhi Domestic Working Women's Forum Vs Union of India**<sup>173</sup>, the Supreme Court laid down broad parameters in assisting the victims of rape. The Court inter alia observed:

(a) It is necessary, having regard to the Directive Principles contained under Article- 38 (1) of the Constitution to set up Criminal Injuries Compensation Board.

(b) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shocks as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape. The scheme was suggested on the lines of British Criminal Injuries Compensation Scheme. The Court held, "On this aspect of the matter we can usefully refer to the following passage from The Oxford Handbook of Criminology as to the position in England:

'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, 1988 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, impose a duty on the court to give reasons for not doing so. It also extended the range of injuries for compensation.....The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation."

The National Commission for Women proposed a Criminal Injuries Compensation Board for the payment of compensation to victims of Rape on the directives issued by the Supreme Court of India in the above case of **Delhi Domestic Working Women's Forum Vs Union of India and others** in which the court had directed the National Commission for Women to evolve a scheme so as to wipe out the tears of unfortunate victims of rape.

**Salient features of the Revised Scheme for Relief and Rehabilitation of Victims of Rape as revised on 15th April 2010 is as follows:**

This scheme provides for granting compensation by the District Board to victims of rape irrespective of the conviction of the offender. Various authorities have been appointed to look into the matters relating to award of compensation along with their respective functions. The scheme also provides for interim compensation with the maximum ceiling of rupees twenty thousand and rupees fifty thousand for their rehabilitation. The final relief cannot exceed one lakh thirty thousand. Enhanced relief can also be made in special cases. Moreover principles have been laid down for the Board to consider while determining quantum of compensation for the victims.

**District Board for Criminal Injuries Relief and Rehabilitation**

(a) There shall be established at every District, a Board called the District Board for criminal Injuries relief and rehabilitation;

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<sup>173</sup> (1995)1 SCC at 20

- (b) The Board shall have exclusive jurisdiction to deal with applications received under the scheme in that district;
- (c) The Board shall be headed by the Collector or the District Magistrate by whatever name he/she is called who shall be the President and comprise of following other members namely:
- i. Superintendent of Police or his/her nominee,
  - ii. A woman who has experience in the field of empowerment of women and children nominated by the State Government for a period of 1 year at a time ( provided that any nominated member may be nominated twice)
  - iii. District Health and Family Welfare Officer/District Medical and Health officer or his/her nominee;
  - iv. Deputy Director/Project Director/Gazetted District Officer of WCWD of the concerned district, who shall also act as Secretary of the Board, maintain records and act as drawing and disbursing officer
  - v. Representative of Child Welfare Committee; (in each district or group of districts)
- Provided that in cases where the State Governments have a relief and rehabilitation scheme in force, the constitution of the Board shall be as per those schemes and the benefits that would be granted to the applicant/victim in the present scheme shall be administered by those Boards.

### **Functions of The District Board**

Upon the constitution of the Board, it shall:

- (a) Consider the claims and award financial relief/rehabilitation as the case may be in all cases of rape in accordance with the procedure prescribed under this scheme.
- (b) Monitor the activities for rendering assistance to the rape victim in the form of any legal, medical, psychological or any other form of aid/assistance.
- (c) Make use of any other scheme(s) for rehabilitation of rape victims framed by the State or Central Government;
- (d) Arrange for psychological, medical and legal assistance to the victims;
- (e) Provide counselling support to the victims;
- (f) Initiate suitable measures to ensure the protection of the victim and witnesses till the conclusion of the trial.
- (g) Periodically review the progress of investigation;
- (h) Provide support to young victims for education, professional training or training for self-employment;
- (i) Provide any other assistance for appropriate rehabilitation of the victims;
- (j) Recommend change of investigating officers in appropriate cases on the request made by the victim;
- (k) Arrange shelter for the victim, for such period as the circumstances warrant.
- (l) Perform any other function as may be deemed expedient and necessary by the Board or as directed by the State/National Board, given the peculiar facts and circumstances of each case.

### **Interim Relief and Rehabilitation**

- (a) Upon receipt of the information from the police under clause 9 (a), the District Board, shall disburse a sum of rupees 20,000 in favour of the victim preferably within fifteen days and in any case not exceeding three weeks as interim relief;
- (b) In cases where the application is made under clause 9 (b) the Board shall, after obtaining police and medical report and having been prima facie satisfied that a case of rape has indeed



been made out, order a financial interim relief of rupees 20,000 as far as possible within fifteen days and in any case not exceeding three weeks to the victim/legal heir;

(c) On receipt of the complaint and examination of the victim the Board shall on merits of each case examine/determine the nature of rehabilitation measures required to be provided to the victim and initiate appropriate action towards such measures and may incur a maximum expenditure upto rupees 50,000 towards rehabilitation of the victim

(d) Before awarding the interim and other reliefs under clause (b) and (c), the Board shall satisfy itself about the claim, make a preliminary assessment about the nature of the claim as well as take into account the medical report and other evidences;

(e) The Board may issue appropriate directions for the purposes of the rehabilitation and/or any other special needs of the victim in addition to the financial relief.

### **Final Relief**

(a) Within a period of one month from the date on which the prosecutrix gives her evidence in the criminal trial or within one year from the date of receipt of the application in cases where the recording of evidence has been unduly delayed for reasons beyond the control of prosecutrix, whichever is earlier, the Board shall direct disbursal of the balance amount of relief upto rupees 1.30 lakhs as final instalment;

(b) In cases where the final relief is awarded before the recording of the evidence of the prosecutrix, the Board shall give reasons in writing for doing so along with reason for delay in recording of evidence.

(c) The Board shall be guided by the special needs of the victim in deciding the amount of financial relief to be granted in each case;

(d) The financial relief that is awarded by the Board is in addition to rehabilitation measures that the Board may suggest/administer in each case.

(e) In cases where the victim is a minor, the amount shall be released to her guardian or whoever has filed the application on behalf of the victim, after the Board is satisfied about the proper utilization of funds in the best interest of and for and the welfare of the child victim. Wherever practicable the written consent of the victim may be taken.

(f) The Board shall keep the best interests of the victim in mind at all times.

### **Principles Governing the Determination of the Relief and Rehabilitation To The Victim**

The Board shall while determining the compensation and other reliefs must be guided by the following parameters:

(a) Where death results as a consequence of rape:

i. If the victim happened to be a non-earning member of the family, the Board shall award upto rupees 1 lakh towards relief after the post mortem report establishes a prima facie case.

ii. In case the victim was an earning member of the family, the Board shall award an amount of rupees 2 lakh to the benefit of minor children after satisfying itself that the victim was an earning member after the post mortem report establishes a prima facie case for the benefit of minor children.

(b) The Board shall take into account rehabilitation and other expenses if any, subject to a maximum of rupees 50,000 which may include: i. Type and severity of the bodily injury suffered by the victim and expenditure incurred or likely to be incurred on medical treatment and psychological counselling to the victim.

- ii. Expenditure consequential on pregnancy, if resulting from rape including expenses connected with abortion, if it is resorted to, in consequence to rape.
  - iii. Expenses incurred or likely to be incurred in connection with any education or professional or vocational training or training for self employment to the victim.
  - iv. Loss caused to the victim by cessation or interruption of gainful activity or employment on the basis of an assessment made by the Board;
  - v. Non pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience.
  - vi. Expenses incurred in connection with provision of any alternate accommodation in cases where the victim belongs to any other place other than the place where the offence took place.
- (c) While determining the financial and other relief, the Board shall have due regard to the victim being a child or mentally challenged and may consider higher financial relief and special relief measures to be provided.
- (d) The Board shall as far as possible make use of the schemes, facilities provided by the State or Central Government and also the organizations funded fully or partly by the Government for relief and rehabilitation measures.

#### **Enhancement of Relief in Special Cases**

- (a) The State Board with prior consultation with the National Board shall have the power to provide for enhanced relief subject to a maximum of rupees three lakhs in cases where:
- i. Offences against children below 13 years of age, which may involve specialized treatment and care.
  - ii. Offences against mentally challenged, handicapped women and children which may involve specialized treatment and care.
  - iii. Victim becomes infected with Sexually Transmitted Diseases including affected by HIV/AIDS as a consequence of rape;
  - iv. Victim gets pregnant as a consequence of rape and due to circumstances beyond her control delivers the child;
  - v. Where severe medical problems is faced by the victim including both physical and mental.
  - vi. Any other ground as may be prescribed.

This scheme provides some solace to the victims and can be helpful to them if implemented sincerely.

#### **7.2.2 The Law Commission of India**

The Law Commission of India in its 152nd Report had recommended the introduction of Section-357-A prescribing inter alia, that compensation be awarded to the victims of crime at the time of sentencing. Again in its 154 Report, the Law Commission went one step further and recommended that it was necessary to incorporate a new Section 357-A to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the Courts.

The Law Commission in 156 Report exhibited its sincere concern for victims of crime and justifying the need to 'redesign and restructure' the victim-compensatory legislative paradigm in India, observed:

"Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directing to victimology, control of victimisation and protection of victims of

crime. 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 victim is compensation to victims of crime. The Commission further asserted that the principles of compensation to victims of crime need to be reviewed and expanded to cover all cases. Compensation should not be limited only to fines, penalties and forfeitures realised but the State should also render its assistance to victims of crimes out of its own funds in all cases regardless of the fact whether an accused is acquitted or the perpetrator is not traced but the victim is identified or when the offence is proved. The State’s responsibility to make reparation to crime victims can be justified on humanitarian, compassionate and legal grounds. The State is also under a sort of legal obligation to compensate victims of crime, who suffered because of failure on the part of the State to maintain law and order, ensure peace, harmony and tranquillity in society, protect people and their property and use its authority to suppress crime and punish offenders. Compensation from the State can also be justified on the ground that the state system, namely its political, economic and social institutions, generates crime by poverty, discrimination, unemployment and insecurity. A victim of such a system, therefore, deserves compensation from the State. A patchy approach is insufficient. The urgent need of the hour is to enact a suitable legislation to provide for compensation to the victims. It should provide for a detailed, specific and a convenient criterion to seek compensation from the offender or State along with mode of assessing compensation, composition, powers and duties of the compensatory authorities.

### **7.2.3 Draft National Policy on Criminal Justice 2007**

The Malimath Committee had recommended that government should come out with a clear and coherent policy statement on all major issues of criminal justice. The Ministry of Home Affairs, government of India, accordingly appointed a Committee in May, 2006 for drafting a Policy Paper on the subject under the chairmanship of Professor N.R. Madhava Menon, former Director of National Law University at Bangalore and Kolkata and Director of National Judicial Academy, Bhopal. The Committee was to draft a National Policy on Criminal Justice<sup>174</sup>, keeping in mind the prevalent criminal laws, orders and judgements of various courts, contemporary socio-cultural values. The Committee suggested key elements of a national policy on Criminal Justice which inter alia includes the relative neglect of victims in the criminal justice system.<sup>175</sup> The Committee is of the opinion that there is justifiable criticism that the present criminal justice system is totally centred around the accused, ignoring the victims for whom the system purportedly exists and is supposedly operating. The State should also ensure rehabilitation of helpless victims of crime and violence. The case, for a nation-wide victim-compensation scheme and compensation fund has been acknowledged for a long time. It is clearly an obligation of the State both under international and national laws....Much more is required to be done to compensate the victims of crime promptly and satisfactorily, particularly in respect of victims of rape, communal violence, terrorism and other heinous crimes. The policy needs to be pursued and expanded with the intervention and support of the Union Government.<sup>176</sup> The Committee suggested compensation to victims in a phased manner.

As per Para 5.2.3 of the Policy:

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<sup>174</sup> Para- 3.1(e) of Draft National Policy on Criminal Justice, 2007

<sup>175</sup> Para- 5.2.1 of Draft National Policy on Criminal Justice, 2007

<sup>176</sup> Para- 5.2.2 of Draft National Policy on Criminal Justice, 2007

“Given the increasing incidence of crime in contemporary times, it is difficult to estimate the financial costs involved to compensate victims of all types of crimes. As such, the National Policy should aim at a phased programme of victim compensation under which victims of violent crimes may be compensated to begin with. In the second phase, it may be extended to property offences and so forth. The principles for determining the quantum of compensation may be borrowed from the law of torts with suitable modifications. In appropriate cases, the compensation amount with interest can be realized from the offenders themselves and remitted to the State Compensation Fund. The fine amount realized may also be directed to be paid into the Compensation Fund. There is also scope for imposing a security cess on large industrial houses and high security establishments in order to mobilize resources for enriching the Victim Compensation Fund. A part of the legal aid budget can also be legitimately diverted to the Victim Compensation Fund as the nature of services is similar in both schemes.”

### **7.3 Computation of Compensation**

Compensation may be calculated on two broad heads:

- (a) Pecuniary loss i.e. the loss which can be calculated in terms of money. For example; expenses for medical treatment etc.
- (b) Non-Pecuniary loss i.e. the loss which cannot be calculated in terms of money in an objective manner. For example; pain, suffering and the trauma which the victim had undergone at the time of commission of offence.

Hence the scheme of compensation should be so formed so as to provide monetary assistance plus giving respect, honour and dignity to the victim so that he/she can start his/her life afresh with a positive outlook. A legislation is required to prescribe a standard amount for certain specific injuries. Minimum and maximum levels of compensation can be set depending upon the nature of injury. Motor Accident Tribunals adopt various methods for computing the loss of future earnings, loss of dependency. The method recommended under the Motor Vehicles Act, 1988 is simple multiplication of annual loss of earnings by the remaining years of the victim's work-life expectancy. In case of death, personal expenses of the deceased are deducted from the amount of annual loss of earnings before multiplication is done to determine the value for dependency loss. It is a matter for the State to decide as to how much compensation is to be paid and to what kind of victims. It can be said that victim's right to compensation is a qualified right and the State may decide on priority basis as to quantum of compensation to various types of victims.

Today, there is a dire need for victim compensation legislation. Eligibility criteria may be specified for victims. Compensation may be refused or reduced on the ground that victim himself aggravated the event or having a criminal record or financially sound. The object is to alleviate the financial burden of the victim and to enable him to maintain his dignity at a critical period. Collateral benefits to victims can be taken into account while awarding compensation so that double compensation is avoided.

For example; victim may get compensation under insurance, workmen's compensation etc. So, parallel benefits should be avoided.

A legislation on compensation dealing with comprehensive compensation scheme can better serve the course of justice to victims. It is the responsibility of the Welfare State to protect its subjects failing which the State shall compensate the victims to prevent individual retaliatory behaviour and to reinforce law abiding conduct. The compensation scheme is just the one step in recognizing the rights of victims. Taking into consideration the Directive Principles of State

Policy under the Constitution of India, human rights obligations under the international law, central and the state governments must legislate on the subject without any further delay. In the meantime, a detailed scheme can be formulated keeping in view the plight of women, abused children, exploited dalits, victims of terrorist violence etc.

#### **7.4 Formation of Victim Fund**

The goal of a victim fund should be to assist victims in dealing with emotional trauma, participating in the criminal justice process, obtaining reparation and coping with problems associated with the victimization. The objectives of the Fund should be:

- (a) To increase the commitment of government and organisations to do everything possible to assist the victims;
- (b) To increase the range and availability of services for victims from the time of the victimisation and throughout the aftermath;
- (c) To expand the victim's opportunity to participate at all critical stages of the criminal justice process and to ensure consideration of the impact of the victimisation upon the victim in the criminal justice system;
- (d) To increase co-ordination and networking of all appropriate agencies, organisations, groups and families, and kinship and community support systems providing services to victims in order to develop an integrated system of victim assistance;
- (e) To improve the quality of outreach to victims in need and their treatment;
- (f) Developing an annual programme;
- (g) To enhance the status of the victims;
- (h) Establishing a system for the management of cases;
- (i) Providing guidelines to the victims;
- (j) Hiring, recruiting and selecting staff;
- (k) Training the staff;
- (l) Establishing regular and long-distance telephone services or alternative communication systems where appropriate;
- (m) Identifying transportation methods or a plan to improve the physical access of victims to the services;
- (n) Providing or upgrading office equipment;
- (o) Identifying emergency and follow-up services;
- (p) To develop a strategy to alert the public to the availability of victim services, the nature of those services and how to contact them;
- (q) Developing a public relations policy.

The first step in accomplishing these goals and objectives is often for appropriate government and community agencies to establish victim funds dedicated to provide services to victims and helping them cope with the traumatic effects of the victimizing act and its aftermath. Funds should be well organised, having clearly defined goals and be appropriately staffed. It should have the capability of providing a comprehensive system of services to victims. While initiating a victim assistance fund an assessment should be made of the existing needs and available resources in the jurisdiction. This assessment should be updated as per the needs. The assessment should be made:

- (a) To determine the rate of victimization;
- (b) To determine the types of victimization;

- (c) To obtain a general understanding of the needs of victims;
- (d) To assess the existing resources available to meet these needs;
- (e) To determine what problems obstruct victim participation in the criminal justice system;
- (f) To determine what assistance is needed;
- (g) To identify what policies, procedures or laws need to be changed or introduced.

It is also important to include consideration of special aspects such as information about age, race, religion, marital status, economic circumstances, education and culture of the victim. Advisory groups can be very helpful to establish an informal or formal group of advisors to oversee the needs of victims. The advisory group may include representatives from police, prosecution, health professionals, academicians and volunteers. Such a broad base provides a better picture of the needs and resources and also facilitates information-gathering and data collection. The advisory group should include both males and females of varying ages and representatives of the different races, religions, cultures, geographical areas and economic groups. The broader the scope of the assessment, the more useful it will be in defining the needs and identifying available resources for all victims in need. The first requirement in assessing the shortfall in assisting victims is to establish the need by obtaining accurate data on prevalence of victimization.

Data for the assessment can be obtained from the following sources:

- (a) Police reports;
- (b) Community surveys of individual citizens or community groups;
- (c) Survey conducted by NGOs;
- (d) Survey by government departments;
- (e) Interviews with victims;
- (f) Media reports;
- (g) Witness reports;
- (h) Medical reports;

Due care should be taken to maintain the confidentiality of victim. Victimization surveys are the best way to determine incidence and prevalence of crime but they are unable to fully capture certain crimes such as spouse assault and child abuse which are the crimes that often go unreported. It is pertinent to conduct victimization surveys of these special groups so that the victim assistance response is appropriate. These surveys may also overlook the effect of mass violence, such as terrorist attacks, massacres or hijackings. After having obtained the estimates of victimization, the next step will be to determine accurately the financial, medical, psychological and other costs of victimization to the victims. Developed countries have various data systems that help in determining levels of victimization. However these data systems capture only a fraction of the full costs of crime to its victims. Therefore, any estimates of shortfall are likely to underestimate the level of victim needs in comparison to the assistance available, unless the costs to victims are fully taken into account.

The provision of assistance to individual victims will usually include formal victim services and compensation from both governmental and non-governmental sources. In the case of homicide and certain other crimes, assistance may be provided to the “co-victim”, such as the families of the victims themselves. Informal sources of assistance can be the family, neighbours, friends and others. Employers sometimes offer assistance. Certain private insurance plans may be made

available to assist with medical and psychiatric needs, as well as property losses and to provide counsel through legal procedures. Such plans should therefore be included if they meet the needs of victims. The completed assessment should be used to determine what services are lacking and what the service priorities are. Updated assessments should be carried out in connection with periodic evaluations of the quality of service delivery. Victim services should ideally be prepared to assist all victims. Needs of the victims should be on the priority in which a systematic approach should be used to take into account the severity of the victimizing event and its impact on the victim. Special programmes should be developed for victims who require increased attention. Support services should be daily available during working hours. Such services should be provided by telephone, home visits or walk-in services. Service providers must be conscious enough to serve all those in need irrespective of the inconvenience. The programme should encourage police personnel, medical professionals, teachers, political leaders and social service agencies to make victims realise that the programme exists. Whatever method is used, victims should be contacted as soon as possible to be informed of the availability of services.

The funding programme should ensure that the following are maintained:

- (a) The goals of information gathering are clearly established;
- (b) Only necessary questions are asked from victims;
- (c) Only necessary information is collected;
- (d) Professionals should know what information is necessary;
- (e) Victims are informed about how information will be used;
- (f) Confidentiality of information should be maintained;
- (g) The information should be used only for the purpose for which it was collected.

### **Types of Services**

The funding programme should at least ensure the provision of the following services:

- (a) Counselling;
- (b) Advocacy;
- (c) Support during investigation of crime;
- (d) Support during criminal prosecution and trial;
- (e) Support after disposition of the case;
- (f) Violence prevention and other prevention services;
- (g) Public education on victim issues

The goal of services to be provided is to promote standards for implementing programmes and for individuals who work with victims in order to better assist victims in dealing with emotional trauma, participating in the criminal justice process, obtaining reparation, and coping with associated problems caused by the impact of victimisation.

Victim support programmes should seek to provide at least the following services:

- (a) Emotional support in response to trauma, personal support through hearings, interviews and trial;
- (b) Counselling on physical and mental health services;
- (c) Direct assistance such as medical care, shelter, food, clothing, dependent care, property repair, minimising the number of appearances, providing or reimbursing transportation, safe places for victims separate from the accused and defence witnesses when they are attending hearings or interviews, arrangements for child care, enforcement of restitution orders;

(d) Information about emergency financial assistance, victim rights, progress of the prosecution and trial;

(e) Assistance in making applications for victim compensation or insurance, victim's housing or employment;

(f) Identify all other professional groups working directly with victims and to design and implement preparatory educational programmes on victim issues for students of those professions, as well as training and education for active professionals.

Such groups may include judges, representatives of the media, school and university teachers and counsellors, medical and hospital personnel, mental health providers, members of human rights commissions.

(g) Victim support programmes should seek to work with the media to promote widespread public awareness of victim issues. They should also develop a code of ethics to protect victims from sensationalism and publicity and should also try to prevent re-victimization. Data gathered from victims should be used to mitigate crime more appropriately.

Uniformity of standards is particularly important when providing services in international settings where persons and organisations from different countries come together as a single team co-operating within the same code of ethics.

With regard to funding sources and mechanisms, compensation schemes receive funding from a variety of sources. There are two primary sources:

(a) Funding from fees or charges that offenders pay and

(b) Funding from general-revenue appropriations from legislatures.

Hence it can be said that first there is a need to see the various needs of the victims of various kinds and then to formulate an effective scheme for providing compensation to them. Lot much is required to be done for the betterment of the victims by the so called welfare state. Not only the enactment of law but its implementation is also equally important as without implementation development and betterment of victims will remain on papers only. Hence law is to be enacted in true spirit with the genuine objective of providing adequate compensation to the victims of crime and not to further victimize them.



**CHAPTER – 8**

**CONCLUSIONS AND SUGGESTIONS**

There is an adage that prevention is better than cure. Although it is not an easy task but one should always strive to achieve aims and the goals which one sets. It is difficult to achieve perfection but one can always strive to excel and if one continues to walk on this path tirelessly, many, if not all problems could be overcome. “The courts are also required to have a change in their outlook and attitude, ....and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases.....so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the Majesty of Law has prevailed.”<sup>177</sup> It is now well accepted proposition that monetary compensation is indeed an effective and sometimes the only suitable remedy for redressal of offence. While assessing compensation the emphasis has to be laid on the compensatory element also along with the punitive element. Balm must be applied on the wounds. Taking into account the present scenario of victims of crime, in order to accept a comprehensive victim assistance policy, it should start with the recognition of certain basic rights of the victim, such as:

**(a) Right To Protection From Criminal Victimization**

The law enforcement agencies should educate the public about crime prevention measures which a person can take to avoid victimization.

**(b) Right To Compensation For Consequences Of Criminal Victimization**

This right ensures physical, psychological, social and financial well-being of the victims. If the State fails to protect its subject, the subject must be compensated for the injury caused to him.

**(c) Right To Be Informed**

The victim must be informed about the procedure of criminal justice system in simple language. For example; progress of investigation, arrest of offenders, case status in the court, right to privacy, dignity and respect, right to legal advice and assistance, right to fair trial and treatment, speedy disposal of the case etc.

There is lack of a comprehensive machinery for realization of compensation amount out of the fine imposed. The fragmented legal framework is inadequate for providing compensation by an offender to his victim. It is neither mandatory for the courts to compensate the victims nor there is any legal right in favour of victims. It is entirely the discretion and the sweet will of the courts to award compensation. Victims feel ignored and seem to be crying for attention and justice. “Criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognised by law and restitution for loss of life, limb and property are provided for in the system.”<sup>178</sup> There is need to take a fresh look at the position in which the victim of a crime is placed in our criminal justice system. Both the requirements in criminal justice system are to be accommodated simultaneously i.e. needs of a victim and rights of the accused. Limitation of the resources of the State in making provisions related to victim-assistance fund should not be taken as a plea. India must incorporate International Conventions and Declarations in true spirit in its domestic laws. “In cases involving human rights, the Courts must be alive to the International Conventions and Instruments and as far as possible to give effect to the principles contained in those international instruments.”<sup>179</sup> A mere lip service is not sufficient. Now is the time to act and implement. There is already delay in fine tuning of the

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<sup>177</sup> State of M.P. Vs Shyamsunder Trivedi 1995 AIR SCW 2793

<sup>178</sup> Ministry of Home Affairs: Report Of The Committee On Reforms Of Criminal Justice System (Government of India, 2003) at 271

<sup>179</sup> Apparel Export Promotion Council Vs A.K. Chopra AIR 1999 SC 625

penal laws to the prevailing human rights standards and any further delay will further dilute and weaken India's global standing as a champion of human rights.

Refusal of compensation is a gross violation of fundamental rights enshrined in the Constitution. Though the courts had been granting compensation but the major question which still remains relates to the quantum of compensation as it varies from case to case and court to court because of lack of a comprehensive scheme related to compensation to crime victims. Before looking into the suggestions certain basic flaws can be looked into in order to have a clear picture of the matter.

### **Basic Flaws In The Compensation Law In India:**

(a) The rules of criminal law are in favour of the accused as the onus of proof is on prosecution.

(b) Compensation to victim under Section-357 of Criminal Procedure Code is at the discretion of the court and not mandatory. The victim is awarded compensation on proof of loss or injury and the loss or injury must be of a magnitude to justify a civil action.

(c) Compensation under Section-357 of Criminal Procedure Code cannot exceed the fine imposed on the offender.

(d) Under Section 357 A compensation can be provided only if the court recommends i.e. even after the amendment the right to claim compensation is discretionary and not mandatory in nature. Courts are not bound to give reasons while recommending or rejecting compensation. Moreover, no criteria has been laid down for recommending compensation for the victim.

(e) Moreover, there is no central or uniform compensatory scheme. Power has been conferred upon the respective states under section 357 A to frame and implement compensatory schemes for the victims. This may lead to dissimilarity in the schemes as to quantum of compensation for the similar kind of offences committed upon the victim. For example: One state may set rupees 2 lakh as maximum compensation to the victim for the offence of sexual assault committed upon him/her whereas another state may fix rupees 3 lakh as compensation for the same offence. If penal laws are uniform, the compensatory laws should also be uniform as the failure of which may result in resentment amongst the victims.

(f) No time has been fixed under Section 357A for the states to frame schemes for providing compensation to the victims.

(g) The procedure under Sections-421 and 422 of Criminal Procedure Code for realization of fine is lengthy and cumbersome. Due to this courts are reluctant to award compensation.

(h) If the extent of compensation has to bear a rational co-relation to the actual harm suffered, the trial judge will need to make a thorough inquiry into the nature and degree of such harm. While it may be relatively easy to ascertain external physical injuries, it will be far more difficult to ascertain harm suffered in the nature of mental trauma and psychological stress that emerge much after the commission of crime. Complications may also arise if the aim is to ensure compensation for loss of potential earnings, loss of livelihood on account of death of an earning member of a family and other kinds of indirect costs linked to the crime.

In short, it reveals that in criminal justice system of India, victims are neither compensated comprehensively nor allowed to participate effectively in investigatory, prosecutory and sentencing process. The whole legislative paradigm exposes numerous flaws of the present legal system related to compensation. Therefore, there is a need to re-consider, re-build and revamp the whole legal system.

## **8.1 Suggestions**

Following suggestions are recommended for an effective compensatory law relating to victims of crime:

### **1. Re-Examining the Criminal Law**

The foremost requirement is to re-examine the criminal law in a fresh light in context of compensation. In the absence of a clear legislative framework, judiciary cannot work up to the mark to get the desired result. Most of the remedies such as fines, penalties, imprisonment etc are not proportionate to the degree of harm suffered by the victim. Though the judiciary has been using its writ jurisdiction to provide compensation to the victims, there is a dire need of a clear and specific law on the basis of which relief can be provided to the sufferer. An aggrieved comes to the court with the hope of getting adequate justice. If this justice is not provided to him, neither the parliament nor the judiciary is of any value to him and the victim would rather choose wrong and illegal means to avenge himself. The parliament must work in this regard to frame a detailed legislation about compensating the victims of crime.

### **2. Victim Participation in The Criminal Justice Process**

All victims should have an access to the justice system. In order to respond to the interests of the victims more effectively, it is important to ensure that they play an active role all through. Whether it is trial, examination of witnesses, conviction or acquittal of the accused, the victim must have the access. The focus should be in ensuring that all victims have access to the justice system as well as support throughout the justice process. For example in the recent **Harsha Sisodia Vs State of Andhra Pradesh And Another**<sup>180</sup> the Supreme Court held that the victim and de facto complainant can be heard at the stage of considering bail application or cancellation of bail.

Victims should be supported in their efforts to participate in the justice system through direct and indirect means. For example; timely notification of critical events and decisions, information on the procedure involved etc can be provided to the victim. The justice system should take into account the obstacles which victims may encounter due to factors such as resources, education, culture or age etc. India faces an important challenge in reinforcing the rule of law in democracy. There is an urgent need to provide more effective remedies and protective mechanisms for victims to enable them to gain access to and participate effectively in the justice system.

### **3. Implementation of The Amendment in The Criminal Procedure Code**

The new section 357 A incorporated in the Code must be implemented as soon as possible. The schemes relating to compensation and rehabilitation of the victims must be framed by the states as soon as possible. The quantum of compensation set must be adequate in addition to taking care of the victims in legal as well as medical matters.

### **4. Treatment of Victims with Respect and Recognition**

When a victim reports an offence to the police or any other agency like Non Governmental Organisation etc, it is to be ascertained whether the report of the victim is valid or not and if it is valid, the accused should be identified and brought to justice. The process can be long and difficult and from the legal point of view the victim is only an alleged victim. This should not prevent all those who come into contact with victims from treating them with respect and recognition that all persons deserve. The police officer, prosecutor or judge should remember that what to them may be one case out of many is of central importance to the victim. Granting the victim basic human respect and dignity can yield many benefits. It reassures the victim that

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<sup>180</sup> 2010 Cri. L. J. SC 3079

the community condemns victimization and is interested in bringing justice to the victim. This is basic to the victim's recovery. Treating victims in a respectful manner will motivate the victims to willingly assist in the investigation and judicial process. In practice, decisions on such matters are often made in accordance with system priorities. Less attention is paid to the practical effect of such decisions on the victim.

Respect and recognition at all stages of criminal proceedings must be given to the victims by incorporating the following:

- (a) Compensation from the offender or the State;
- (b) Information and clarification about the progress of the case;
- (c) Legal advice, regardless of the financial means of the victims;
- (d) Protection of privacy and physical safety.

### **5. Protection From Harm**

In addition to respect for victims, there is further need for the protection of safety and privacy of the victim. The accused may intimidate the victim in order to prevent him or her from seeking justice or may harass the victim in retaliation for having reported the matter to the authorities. This is more dangerous when the victim and the offender are in a close personal relationship, for example, as members of the same family or working in the same place of employment. Special provision should be made to protect the victims, especially the vulnerable ones. At police stations and courts, the victim should be protected by providing separate waiting facilities so that he or she does not come into contact unnecessarily with the accused or with the members of his family. During the hearing, the risk of intimidation may be very high. Efforts should be made to minimise this risk.

### **6. Victim Impact Statements**

In the United States, the victim is allowed to provide information through a victim impact statement or victim statement of opinion. The information is generally provided to the judge prior to giving him sentence. The allowing of victim impact statements involves filling a form by the victim in which he or she indicates what impact the offence has had, what property was lost or damaged, what other financial losses resulted and how the event has disrupted his or her life. It thus provides the victim an opportunity to inform the court of how the offence has affected him or her physically, mentally or otherwise. In turn, victim's statement of opinion provides the victim, an opportunity not only to relate what impact the offence has had on the victim but also what, in the victim's view, should be done about the matter. Victim impact statements and victim statements of opinion offer an opportunity to the victims to participate directly and the information provided to the court can assist in achieving a more just solution. The same should be started in India also as it will give a sense of satisfaction to the victim that the law cares for him.

### **7. Compensation As A Matter Of Right**

Payment of compensation should be a matter of right. It should not be linked with the status of the offender. Whether he is convicted or acquitted, whether he is in a position to pay or not should be done away with i.e. payment of compensation should be independent of all such restrictions. The goal of victim compensation and restitution is to acknowledge and validate the losses of victims through a system of financial reparation by the State or by the offender. Changes must be made in the law making it mandatory to grant compensation to the victims.

### **8. State Compensation**

Victim compensation is one of the pillars of the victim assistance as it serves as the primary means of financial aid. If a victim's losses are covered by insurance schemes or other sources of

payment, compensation from the State may be reduced or denied. In serious offences emergency payments can also be made during the pendency of the case. In cases of violent crime, victims should receive compensation for their injuries, emotional distress, loss of earnings and loss of maintenance as soon as possible after the crime has occurred, irrespective of whether an offender has been identified or not. In addition, where death has occurred, compensation should be paid for bereavement, funeral expenses and loss of dependency for the kin of the victim in case of indigent victims.

### **9. Compensatory Scheme**

Under the present legal system in India, award of compensation is at the discretion of the judges as there is no separate compensation fund or scheme meant for the welfare of the victims. Due to this, victims either do not move the courts or prefer out of court settlements. A comprehensive scheme for payment of compensation by offender as well as by State based on sound legal premise has now been evolved. But this will take time to become fully active and a success as states have been asked to frame such schemes in consultation with the central governments which indicates that it will cause delay in their implementation. The hunger for victim justice demands for a separate Comprehensive Victim's Code dealing with different dimensions of victims. The variety of victims cannot be coped up with by a mere Section-357 or 357A of Criminal Procedure Code or its amendment. A full comprehensive code is required immediately to help the victims genuinely.

### **10. Establishment Of Independent Boards Or Tribunals**

Compensation to victims of crime should be a State responsibility and for implementing this welfare measure, an appropriate body should be set up. There is a need to establish independent tribunals with specified financial jurisdiction.

The tribunals may be conferred with the task of:

- (a) Investigating the aspects of crime and needs of victims soon after the crime is reported.
- (b) Awarding adequate compensation.
- (c) Administering funds for the purpose.
- (d) Maintaining records of fines imposed, compensation awarded and collected. This will help in periodical evaluation and monitoring of the scheme.
- (e) People from various fields like judges, advocates and social workers should be involved in the activities of the Tribunal as the needs of victims arise as soon as the incident occurs.

### **11. Mode Of Payment**

Compensation may be awarded:

- (a) In lump sum
- (b) Periodically
- (c) Non-monetary, for example; institutional care, rehabilitation, alternative employment etc.

The Courts or Tribunals should establish a close working relationship with government departments, hospitals, relevant bodies and organizations to make maximum utilization of all facilities and providing such facilities to victims where necessary.

### **12. Recording Of Reasons**

“Reasoning is considered as the soul of the judgment.”<sup>181</sup> The law must provide for recording of reasons for not providing compensation which should be subject to judicial review. The reasoned decisions will help in bringing out more transparency and accountability in the judicial process

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<sup>181</sup> Sindhi Education Society Vs Govt (NCT of Delhi) (2010) 8 SCC 49

and will also help the legislators in knowing the practical flaws in the implementation of the criminal justice system.

### **13. Relaxation In Rules**

Compensation should be awarded to the victim even without having made any specific prayer which would be an effective means to attain the ends of justice in a better way. Moreover, if a law is made to this effect, there should not be a fixed deadline for victims while submitting application for compensation as this may result in 'secondary victimization.'

### **14. Collection Of Funds**

While no amount of money can erase the trauma and grief suffered by victims of crime nevertheless financial assistance can be crucial in helping many through the recovery process. These funds can be helpful in preserving the stability and dignity of the lives of the victims. But there is a basic question about the sources of funds for granting compensation to the victims. Compensation amount can be collected from public revenues. In many instances the offender may be indigent and hence unable to raise the necessary resources for paying compensation. In some other cases he may never be identified, such as, terrorist attacks. Furthermore, if the offender is identified, he may not be convicted. Under such conditions, there need to be some reliable source of funds for granting compensation to the victims. For such matters funds can be collected from the sources within the legal system, such as, collection of fines, forfeiture of bail amounts, money raised from the sale of attached or forfeited properties.

Moreover, to mitigate the sufferings of victims of violence, accidents and natural calamities , funds should be constituted by the Centre as well as the State governments by levying nominal surcharge on every adult having certain income so that immediate relief or compensation be provided to the victims, without consuming much time in determining the merits of the case.

### **15. Simplified Procedure**

While dealing with the procedure under Sections- 421 and 422 of Criminal Procedure Code dealing with warrant for levy of fine, Section- 421 says:

When an officer has been sentenced to pay fine, the court passing the sentence may take the action for the recovery of fine in either or both of the following ways:

- (a) Issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;
- (b) Issue a warrant to the Collector of the district, authorizing him to realise the amount as arrears of land revenue from the movable or immovable property or both of the defaulters.

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section-357.

The procedure is time consuming and cumbersome and therefore should be simplified to enable the court to realise the money quickly.

### **16. Amendment In The Law**

The existing provision in Criminal Procedure Code i.e. Section- 357 concerning the compensation to victims and conferring discretionary power on the Court should be converted to a mandatory provision. In addition to it, legislature must enact a separate statute relating to the detailed and comprehensive compensation provisions meant for the victims so that there is

uniformity in the compensation law. A separate committee can be established exclusively dealing with the matter of compensation to the victims.

### **17. Interim Compensation**

Provisions for interim compensation can be made specially for victims of sexual abuse to successfully fight their case and meeting their medical and other expenses. When an accident is occurred, the foremost requirement of the doctor is to give him first aid so that the life of the injured can be saved. Similarly when a crime is reported, the foremost requirement of law should be to protect and safeguard the victim by providing him interim compensation apart from medical facility so that he can take the further and necessary action in his case against the offender.

### **18. The Role And Responsibility Of Professionals And Others To Victims**

The dignity and healing of victims depends on the respect and assistance extended to them by the professionals and others who come into contact with them. These include the police, prosecutors, legal aid providers, judges, medical staff, doctors, non-governmental organizations, politicians, the media and others. Guidelines and standards must be developed for each agency. Codes of ethics should be developed for each sector and sanctions should be applied for more serious human rights violations. Professionals, volunteers and others who come into contact with victims should be trained about victim issues, violence prevention and other victim related matters through training, seminars and conferences etc.

A victim-centred approach should be taken that looks after all the needs of the victim and recommends how various individuals or agencies could best provide the needed service in a better and co-ordinated fashion.

#### **(a) The Role Of Judiciary In Justice For Victims Of Crime:**

The role of judiciary is to promote judicial recognition and acknowledgment that victims have legitimate interests at all stages of the criminal justice proceedings. The judiciary must be an impartial entity and should weigh and protect the rights of all parties involved in criminal proceedings. Judges should provide essential protection to victims. In cases involving women and children, taking evidence through closed circuit television can also be ordered wherever possible. Judges should also expedite trials so as not to further victimise the victim through additional delays by way of adjournments. Judges have a leadership role in ensuring that victims are treated with courtesy, respect and fairness, in order that victims are provided with information regarding their rights and prerogatives, compensation funds and other available financial assistance. Victims may require both material as well as psychological services and support.

Judiciary should encourage arranging for the following in their jurisdiction:

- Separate waiting areas for the victims;
- The availability of special transportation and protection to and from the court when the life of the victim is in danger;
- Counselling and other support services for victims;
- Restitution should be ordered regardless of whether the offender is convicted or acquitted or placed on probation;
- Victims should be allowed to participate in all stages of judicial proceedings, including:
  - Pre-trial release or bail hearings;
  - The scheduling of court proceedings;
  - Sentencing.



Judges should use their judicial authority to protect victims and witnesses from harassment, threats, intimidation and harm by limiting access to the addresses of victims and witnesses. In order to protect the vulnerable victims, for example; minors, victims of sexual abuse, families of homicide victims, the elderly and persons with disabilities, judges should consider the following:

- Expediting of trials;
- Encouraging specially equipped courtrooms;

This is important in preventing harassment of all kinds by one party or another. Victims should be informed of their rights in seeking redress through such mechanisms.

**(b) The Role Of Police In Victim Assistance:**

Being a 24-hour help-agency, the police are most likely to have the first contact with victims of crime and abuse of power. Treating victims in a more sensitive and sympathetic manner can help the police to do their job better by ensuring that more information is provided and that the victim is more willing and better able to become involved as a witness within the judicial system. In many cases the only hope for victim assistance from the criminal justice system is at the police level. Attention should be given to the first contact of the victim with the police and the victim should be treated as a human being by the police and not merely as a possible source of evidence.

Essential services should include:

- Explaining police procedures and investigatory process;
- Informing victims about how to protect evidence;
- Accompanying victims to emergency medical services in cases involving injury;
- Providing information to victims about their rights, as well as the availability of compensation;
- Ensuring that the victim is personally contacted by telephone or in person 24 to 48 hours following the initial response in order to see whether assistance has been sought or not;
- Ensuring that the property of the victim is secured so that personal safety is not compromised as a result of crime;

Police agencies should also consider ways of involving non-governmental and victims' groups in developing guidelines and monitoring adherence to police procedures. Training of police personnel should also include comprehensive study of the basic international documents dealing with victims of crime such as Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power for a better result and achieving the international standards also. They should be trained in applying the main principles of the law and departmental policy to the treatment of victims of crime.

**(c) Specific Role And Responsibilities of Educational Institutions In Victim Assistance:**

Educational institutes can also help in integration and implementation of the philosophy of victim assistance for advanced learning in their policy and research. Schools and universities have a unique role to play in helping all students understand and appreciate the rights and needs of victims of crimes. School-based education about victim issues will produce citizens who are better informed and educated about the needs of crime victims in their communities. Furthermore, crime in schools is becoming a major problem due to incidents that occur on school grounds, such as shootings, kidnappings and sexual assault. Therefore a victim service programme can be established in schools which should include counselling and also a curriculum that includes courses on victim assistance, violence prevention etc. can be started at college and university level.

**(d) The Role Of Non Governmental Organizations:**

Non Governmental Organizations concerned with different victim groups like children and women, should further expand their reach to the rights and services for all victims of crime. The United Nations Crime Prevention and Criminal Justice Programme has a long-standing partnership with NGOs active in this field. Much of the progress achieved in the area of human rights and other major United Nations concerns is due to the initiative taken by international and national organizations. In India, although there are NGOs for the protection of various human rights like People's Union for Civil Liberties, People's Union for Democratic Rights etc but there is hardly any NGO exclusively working for aiding the victims of crime in getting compensation.

**(e) Role Of Media:**

The media should try to improve its sensitivity to victimisation and to address issues of victimisation among media professionals. Media reporting of crime and victimisation in both print and broadcast form can have far-reaching effects on victims of crime. The media can play a significant role in public safety by keeping citizens apprised of increases and decreases in crime, trends in violence and victimization, efforts to prevent crime, reduce violence and assist victims and measures that individuals and society can take in order to promote safety. Sensitive coverage of cases involving victims can be helpful and in some cases even healing.

**19. Participation Of Victims In The Proceedings And Decision Making**

Victim of an offence should be legally allowed to intervene in the criminal proceedings against the offender to claim compensation for loss or injury. According to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; "The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system." Therefore 'victim' should be understood in the wider sense used in the Declaration. Involving the victim in decision-making regarding the case may lead to the argument that if victims are allowed to present claims, only some victims would do so and that the accused may be subjected to harsher punishment, victim involvement may also complicate the proceedings, greater harassment by the accused and causing victim anxiety. But in a country like India where number of rights have been given to the accused, involvement of the victim in decision making process will help in maintaining a balance between the over rights given to the offenders and the marginalized rights given to the victims. So victim participation in the criminal justice system should be allowed.

**20. Informing The Victim Of Developments In The Case**

Victims should also be kept aware of developments in the case, in particular on decisions taken. Until there are clear provisions, police officers investigating the case should be encouraged to ask the victim if he or she wishes to be kept informed of the progress of the case. As long as the case is being dealt with by the police, the prosecution should be responsible for informing the victim of the progress of the case. In this way victims who are kept informed by authorities feel that they had an opportunity to express their wishes, their wishes were taken into consideration by the authorities and that they had some degree of influence over the outcome of the case.

**21. Victims Of Abuse Of Power**

Victims of abuse of power face added problems as it is sometimes difficult to persuade state agencies that an offence has occurred and that the action should be taken against the offender. The needs of victims of abuse of power- for reassurance, support and financial redress, are grave. The state authorities should pursue effective and impartial investigations. Victims of abuse of

power may need money, clothing, food and other material goods and may not have means of obtaining them. Effective action on behalf of victims of abuse of power will involve various organizations and groups. Local groups have immediate knowledge and access to support victims, whereas national and international associations may have greater resources and access to more senior figures. It is important for communication networks to be developed among these organizations.

## **22. Working Together At The International Level**

International co-operation is required to reduce victimization and assist victims. To have maximum effect, regional initiatives on behalf of victims need to be taken within a broader international context so as to have inter-regional benefit. It requires sharing expertise and exchanging experience at all levels, including the regional and the international. The Basic Principles of Justice for Victims of Crime and Abuse of Power transcend national and cultural specificities. The international norms developed by consensus in various areas represent basic standards against which jurisdictions can assess their own practices with a view to the changes that need to be introduced. The upgrading of victim-centred policies can be facilitated by collaboration among countries facing problems of mutual concern.

## **23. Victim Assistance Through Crime Prevention**

Preventing victimization can be a powerful way not only to reduce overall victimization but also to speed the victim's psychological recovery. To prevent victimization and re-victimization and to promote victim restoration the needs of the most vulnerable member should be met so that the quality of life in communities can be maintained and improved. The focus should be on:

- (a) Restoring the victim to his original position as much as possible;
- (b) Preventing him or her from being re-victimized.

## **24. Legislative Reform**

Legislative reforms can be promoted by:

- (a) Referring to existing international and national legislation and working for their enforcement;
- (b) Monitoring implementation and identifying loopholes in connection with newly arising problems;

In India the basic problem is with the implementation of laws. Laws should be made and amended to such an extent so that the implementation of laws become effective and it becomes difficult for the accused to escape punishment and penalty.

## **25. Ancillary Measures**

- (a) When the crime is reported, the list of NGOs and other social organizations including those who are willing to help should immediately be made available to the victims.
- (b) Victims or survivors of victims who are illiterate or less educated find it difficult to understand court proceedings and therefore require assistance. It indicates that if they are given monetary compensation, they would require assistance to ensure that the money is properly utilized or invested. Therefore organised effort by banks, insurance companies and welfare agencies would be essential to guide them properly.
- (c) Ministry of Law and Justice should provide considerate views for formulating a concrete view.
- (d) Public debate at various levels may also be held to fill the existing lacunas.
- (e) Victims' views should also be considered at appropriate stages to the proceedings.
- (f) In case of default in claiming compensation, court should deal with compensation as part of its duties.

(g) Provisions must be made to provide for interim compensation. Courts should also try to heal the wounds of the victims by ordering interim compensation in the interest of justice.

(h) Last but not the least; efforts should be made to make the society as far as possible, a crime free, peaceful, harmonious and happy.

## **8.2 Conclusion**

The history of crime and punishment in the whole civilized world reveals crime as steadily increasing. It has been seen that the administration of criminal justice remains generally unsatisfactory from the point of view of the victims of crime. The satisfaction, the victims get from justice, is the punishment inflicted upon the criminal. The injury and suffering of the victim are gradually losing importance. The State while administering criminal justice does not fight against abstract legal principles, but against the anti social acts of living human, i.e. its citizens causing immense harm and pain to others. The object of the punishment should not be merely to shelter and reform the criminals but should also be oriented to the need for enabling all citizens to participate in the restoration of law and order. There is need for safeguarding the interests of the victims. Therefore, it has to be seen in what manner the administration of criminal justice can be re-oriented so that it can also be of some benefit to the victim who has suffered at the hands of the criminal.

Various rationales underlie the case for state compensation programmes. While some suggest that the state has a moral responsibility to compensate victims of crime, others suggest that it is part of the state's welfare responsibility. Some argue that state victim compensation is an act of grace, whereas others proclaim state victim compensation is a rightful and practical expression on behalf of the community. Unless the state intervenes, a number of practical issues such as, most offenders are not apprehended, most offenders lack the capacity to recompense victims and the lack of viable alternatives available to victims to alleviate the effect crime, remain largely unresolved. State victim compensation acts as an incentive to voluntary participation in crime prevention and an aid in law enforcement. Victims who have confidence in the criminal justice system are more likely to report crime and help criminal justice system if they have a hope of gaining compensation. Critics may argue that criminals, in the knowledge that victims will receive compensation, might become more violent and the State will become the victim of fraudulent claims. Victims may register fake cases in order to receive compensation from the State or the offender. But in a developing country like India, more risk will have to be taken for the benefit of the society as a whole. Law cannot make the genuine victims suffer at the cost of few fake victims. Merely ordering reparation does not ensure that it will be paid. The existing legal framework relating to victims' rights in India reveals that except compensatory relief by the State, very little has been done to help victims. The plight of victims confirms the reality of 'failed' legal system in responding to victims' needs. Now it must be considered how law can better assist and support the victims of crime. Victims must receive timely and accurate information regarding offenders and relevant criminal proceedings through modern information and communication technology. Criminal justice reforms depend on effective communication and use of technology. The main agencies, i.e. police, court and prosecution, all have poor information and communication technology system which is the main weakness in the criminal justice system. The key requirement is the effective communication exchange and reducing the time spent by the victims in the court thereby improving the quality of service to them.

Perfect compensation is hardly possible. 'Justice requires that it should be equal in value, although not alike in kind....Object is to mitigate the hardship caused to the victims/legal representatives....Compensation awarded should not be inadequate and should neither be unreasonable, excessive nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation but the amount recoverable depends on broad facts and circumstances of the case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded.' Assessment of damages has never been an exact science, it is essentially practical. Now is the time that steps must be taken in the direction of welfare of victims with a special focus on the compensation awarded/not awarded to them. Well begun is half done i.e. if beginning is well, half of the work is easily done, only determination on the part of the legislature and judiciary is required. Rule of Law, which is so important, must run closely to the Rule of Life..... It has to deal with today's problems. And yet law, by the very fact that it represents something basic and fundamental, has a tendency to be static. This is the difficulty. It has to maintain that basic and fundamental character but it must not be static, as nothing can be static in a changing world. In the words of Justice Dalveer Bhandari; "*The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent.*"<sup>182</sup> Time has come when there is a need to look back and forward and to keep in mind the changing needs of the society. Law, if properly drafted and implemented can be a means of the ordering of the lives of the people.

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<sup>182</sup> Preeti Gupta Vs State of Jharkhand (2010) 7 SCC 667

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