

**JUSTICE TO VICTIM OF CRIME - A CRITICAL
APPRAISAL**

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

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ABBREVIATIONS

1. ACP- Address Confidentiality Program.
2. AIR- All India Reporter.
3. CAT- Convention Against Torture.
4. CPS- Crown Prosecution Services.
5. Cr LJ- Criminal Law Journal.
6. CrPC- Code of Criminal Procedure.
7. CVRA- Crime Victims' Rights Act.
8. DLSA- District Legal Services Authority.
9. EU- European Union.
10. HC- High Court.
11. IPC- Indian Penal Code.
12. NGO- Non- Governmental Organization.
13. PIN- Personal Identification Number.
14. SC- Supreme Court.
15. SCC- Supreme Court Cases.
16. SLSA- State Legal Services Authority.
17. U.K- United Kingdom.
18. US- United States.
19. VINE- Victim Information and Notification Everyday.
20. VIS- Victim Impact Statement.
21. VPS- Victim Personal Statement.
22. VOCA- Victims' of Crime Act

CHAPTER-I

INTRODUCTION

1.1 Introductory

A major concern that the legal system has espoused in recent times is promoting the role of justice to the victims. This goal is the other side of the criminal justice system's spectrum because every crime has simultaneously the offender's and victim's. It is required to be noted that the balance of justice can ill-afford to ignore any of the sides. The very genesis of criminal law is traceable to a set of principles that primarily aimed at compensating the victim. Ancient Indian law gives prescribed a duty upon the wrongdoers to compensate the victims of offences against property in addition to undergoing a process of purification, and in the alternative duty of the king to compensate if the stolen property could not be recovered.¹

The Muslim Law's recognition of victim's right to participate in criminal trial and exercise his option of punishment or compensation is another historical factor that evinces the significant role of the victim.² In the course of time, the state's assumption of responsibility to control crimes for the reason that crime is a wrong against the society as a whole; and the increased focus of modernization on the reformation of prisons and prisoners and comforts to the accused, relegated the position of victim into insignificance and vanishing point of criminal law. Hon'ble Mr. Justice V.R. Krishna Iyer, in *Rattan Singh v. State of Punjab*³ viewed that

“it is a weakness of our jurisprudence that the victims of crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed victim reparation is still the vanishing point of our criminal law”.

¹ P. Ishwara Bhat, *Law & Social Transformation*, Eastern Book Company, Lucknow, 2009, p.845.

² *ibid.*

³ (1979)4 SCC 719: 1980 SCC(Cri) 17.

D.P. Vadwa, J. in *State of Gujarat v. Hon'ble High Court of Gujarat*⁴ observed,

” in our effort to look after and protect the human rights of the convict we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of 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 crime. Subject of victimology is gaining ground while we are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a forgotten man in the criminal justice system. It is he who has suffered the most. His family is ruined the most particularly in case of death and other bodily injury. This is apart from factors like loss of reputation, humiliation, etc. An honor which is lost or the life which is snuffed out cannot be recompensed but the monetary compensation will at least provide some solace”.

With such observations by the learned judges not only the victim's right to claim compensation became precarious but also that his effective participation with concern for proper outcome in the criminal trial became uncertain. As against these developments and impact of modernity, two integrated factors that try to help in restoring the right balance by focusing on justice to victims are human rights approach and post-modernist search for traditionalist solution. International human rights instruments, legislative and judicial contributions and reports of Law Commissions and Committees have been guiding the growth of the law. But it is imperative to note that the extent of the development of this sphere falls short of the social expectations, thus disappointing the justice demanding minds.

Rendering justice to the victims consists in the recognition and protection of several rights of the victim. The victims are entitled to the mechanisms of justice and prompt redress for the harm suffered; right to information about such mechanisms; right to treatment and assistance; right to fair restitution by the offender; and in the alternative right to be compensated by the State.⁵

In the domestic law, by extending the procedure that the procedure established by law under Article 21 should be just, fair and reasonable, and should result in the protection of the dignified life and personal liberty not only of the accused persons but also of the victims of offences and wrongful acts, the Constitution's support to victim oriented reforms got crystallized. The justifications for the orientation of victims are several and they are as follows

⁴ (1998) 7 SCC 392: AIR 1998 SC 3164.

⁵ UN Resolution Number 40/34 November 1985. Principles 4 to 8.

- (i) Victim is the unfortunate recipient of the harm, loss or injury, especially when crime arises from deep-seated economic dissatisfaction and social maladjustment.
- (ii) State has the responsibility of protecting the life, liberty and property of the subjects, and its failure should be obviated by a compensatory system.
- (iii) Victim needs protection against retaliation by the accused and
- (iv) The role of victim in helping in the investigation as well as in prosecution is imperative, and to be used with adequate opportunity for participation, and should not be an object of harassment and privacy encroachment.⁶

There has been only a belated realization about the need to equip the legal system with sufficient victim-orientation. Courts began to award compensation to the victims of rape and atrocities of the police. Right to constitutional remedy was also used to carve out restitutive or compensatory remedy. But this remedy remains an ad-hoc measure rather than a consistent practice. The relevant legislative provisions, human right principle, Law Commission report and Justice V.S Malimath Committee report have oriented towards rendering justice to the victims of crime.

1.2. Object and Purpose of the Study

The present dissertation is basically dealing with the administering of the justice to the victims of crime through compensation and other measures, as well as the role of the courts in administering the same and also to critically analyze the aforementioned system and then to administer some personal suggestions in order to improve the current system in India used to administer justice to the victims. The research work aims at analyzing the interaction of the victims with the constituent elements of the criminal justice system i.e. the police, lawyers and courts and the role played by him at each stage of the criminal process. Objectives of this research work include looking at victim's special needs and his role and also analyzing the concept of compensation to victims. The research work suggests remedial measures to enhance the role of victims during criminal proceedings and to sensitize the criminal justice system to the needs and expectations of the victims. Such criticism will be done after taking into account

⁶ *Supra* note 1.p.846.

the criminal justice systems of various countries such as US, U.K, etc, which are very well known in the whole of the world with regard to their administering of the justice to the victims and to provide extended participatory rights to the victims.

1.3. Scope of the Study

The scope of study basically deals with the horizon of the justice system in India for the victims, their rights and duties as well as the duties of the Courts and the Government towards them. After taking into account all the present aspects of this present system in India, focus will be laid down in finding the loopholes or grey areas in the same and then some suggestions will be given in order to obviate the same. Such suggestions will be administered after taking into account various participatory and statutory rights of the victims, such as right to notice, right to be heard, right to restitution, right to protection, right to employment protection, right to speedy trial, which are emerging in the criminal justice system of countries like U.S, U.K as well as some of the countries of European Union.

1.4. Database and Research Methodology

The research methodology used in this project is doctrinal in nature. All the data sources used in this project are secondary in nature. A host of leading books on Criminal procedure and victimology have also been referred to case reporters like All India Reporter, Supreme Court Cases and Criminal Law Journal have also been referred as well as Bare Acts, Magazines, Law Commission and Committees Reports and Web Sources.

1.5. Research Questions

The research gives answers to the following questions

- i) Why is the study of the victim and his role during criminal proceedings important in criminal law?
- ii) What is the plight of the victims of crime in India?
- iii) What are the emerging trends with regard to the victim compensation?
- iv) What is the scheme in India with regard to the protection and relief to the victims of crime?

- v) Why the criminal justice system of India is lagging behind in granting relief to the victims of crime in comparison with the criminal justice system of US, UK and EU?

1.6. Chapterisation Plan

The research project consists of the following

- I. First Chapter deals with the introductory part. Further it deals with the Object and Purpose of the study, Scope of the study, Research questions, Research Gaps, Database Research Methodology and Chapterisation Plan.
- II. Second Chapter deals with the plight of the victims of crime.
- III. Third Chapter deals with the emerging trends relating to the victims of crime.
- IV. Fourth Chapter deals with the protection and relief to the victims of crime.
- V. Fifth Chapter deals with the position of victims of crime under various legal systems of the world. Last Chapter deals with the Conclusion and Suggestions.

CHAPTER-II

PLIGHT OF THE VICTIMS OF CRIME

2.1. Introductory

Victim of crime means a person against whom a crime has been committed or against whom a criminal activity has been done as well as a person who has suffered loss because of the commission of a criminal act. In Oxford English Dictionary the term victim has been defined as, “*Victims is a person who is put to death or subjected to misfortune by another, one who suffers severely in body or property through cruel or oppressive treatment : one who is destined to suffer under some oppressive or destructive agency : one who perishes or suffers in health etc. from some enterprise or pursuit voluntarily undertaken.*”⁷

According to New Webster’s Dictionary, victim means, “*a person destroyed, sacrificed or injured by another or by some condition or agency; one who is cheated or duped, a living being sacrificed to some deity, or in the performance of a religious rite*”.⁸

In India, the term “victim of crime” has been administered a definition under Section 2(wa) of the *Code of Criminal Procedure, 1973* and according to this section the term “*victim*” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “*victim*” includes his or her guardian or legal heir.⁹ Initially the criminal justice system in India was focused on punishment as part of the crime without much attention to the victims of crime. The rights of the accused are protected as well as the rights of the prisoners even after their conviction, whereas little concern is shown for the rights of the victims of crime.¹⁰

⁷ G.S. Bajpai, “*Criminal Justice System Reconsidered, Victim and Witness Perspectives*”, Serial Publications, New Delhi, 2012, p.90.

⁸ *ibid.*

⁹ S.N.Misra, *The Code of Criminal Procedure (Amendment Act 2008), 1973*, Central Law Publications, Allahabad, 2011, p.7.

¹⁰ N.V. Paranjape, *Criminology & Penology with Victimology*, Central Law Publications, Allahabad, 2011, p.679.

In India the Criminal justice system is actually based on British pattern as a result of which it mainly aims to punish the offender as well as rehabilitate him so that he can once again become a useful member of the society. In fact the accused persons in India are administered almost all those human rights which are granted to the citizens by the *Constitution of India, 1950*. The main reason behind this is that in India the criminal justice system is actually accusatorial, according to which an accused is presumed as innocent until proved guilty, whereas on the other hand the burden of proof always rests upon the prosecution and it is because of this presumption of innocence on part of the accused that various constitutional rights and legal remedies are administered to him. His rights go on and on such as his right not to be arrested except in accordance with the procedure established by the law, right to know about the grounds of the arrest, right to speedy trial, right to free legal aid in certain case, right against handcuffing, right to be produced before the nearest Judicial Magistrate within twenty four hours of arrest, right to be represented by the counsel, right against ex-post facto laws, right against double jeopardy, prohibition against self incrimination and so on. The criminal justice system in this country treats the victim with scant disregard and has relegated him to a status of mere prosecution witness. The culpable apathy toward the victim starts from the very moment he approaches the agencies of the State to report the crime.¹¹

In *Hussainara Khatoon v. Home Secretary State of Bihar*¹², a petition for the writ of *habeas corpus* was filed by number of under trial prisoners who were in jails in the State of Bihar for years awaiting their trial. The Supreme Court held that “*right to a speedy trial*” a fundamental right is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. Speedy trial is the essence of criminal justice. In *Hussainara Khatoon v. Home Secretary, Bihar*¹³, the Supreme Court has held that it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, economic backwardness, etc, has the right to have free legal services provided to him by the State and the State is under a constitutional duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not provided then the trial itself may be vitiated as contravening Article 21. In *Suk Das v. Union Territory of Arunachal Pradesh*¹⁴, it has been held by the Supreme

¹¹ *Supra* note 7, p. 75.

¹² AIR 1979 SC 1360.

¹³ *ibid.*

¹⁴ (1986) 2 SCC 401

Court that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial, entailing setting aside of the conviction and the sentence.

In *Sanjay Suri v. Delhi Administration*¹⁵, the Supreme Court held that the prison authorities should change their attitude towards prison inmates and protect their human rights for the sake of humanity. In *Prem Shanka Sharma v. Delhi Administration*¹⁶, the Supreme Court observed that handcuffing is *prima facie* inhuman and therefore, unreasonable and harsh at the first flush arbitrary... to inflict 'irons' is to resort to zoological strategies repugnant to Article 21. In *Talib Haji Hussain v. Madhukar Purshottam Mondkar*¹⁷, it was observed by the apex court that, our courts have recognized that the primary object of criminal procedure is to ensure a fair trial to the accused persons. In this case it was also observed by the court that every criminal trial begins with the presumption of innocence in favor of the accused and the provisions of the Code are so framed that a criminal trial should begin with and throughout be governed by this essential presumption. In *Babu Singh v. State of Punjab*¹⁸, it was observed by the apex court that the principle that the accused person is presumed to be innocent unless his guilt is proved beyond reasonable doubt, is of cardinal importance in the administration of criminal justice. In *Kali Ram v. State of H.P.*¹⁹, it was held that the burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot find a recording of the guilt of the accused.

These cases give us a perfect example that to what extents can the Indian Criminal Justice system go in order to protect the rights of the accused. But the main problem is that same importance is not given to the rights of the victims of crime. The last three cases give us a perfect example that how the adversarial system on which the criminal justice system of India is based has a bad effect on the rights of the victim as it gives primary importance in the form of precious protection to the rights of the accused, whereas on the other hand neglecting completely the rights of the victims of crime. In fact in India the rights of the victims of crime in comparison to the rights of the accused

¹⁵ (1988) Cri LJ 705 (SC).

¹⁶ AIR 1980 SC 1535.

¹⁷ AIR 1958 SC 376.

¹⁸ (1964) 1 Cri LJ 566, 572.

¹⁹ (1973) 2 SCC 808.

are so meager in number that it will not be wrong to say that the victims in India have almost no rights at all.

Expressing concern for the plight of victims of crime Justice V.R. Krishna Iyer commented that *the criminal law in India is not victim oriented and the suffering of victim, often immeasurably are entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-product of crime i.e. the victim.*²⁰

Even though with the passage of time the victims have been administered with certain rights, but still in India their rights are overlooked. Unlike the accused, victims in India have virtually no rights in criminal proceedings, supposedly conducted on their behalf by state agencies. When state agencies fail to successfully prosecute offenders, as is oftentimes the case, victims are left to either suffer injustice silently or seek personal retribution by taking the law into their own hands.²¹ Ironically, *the guilty man is lodged, fed, clothed, warmed, lighted and entertained in a model cell at the expense of the State, from the taxes that the victim pays to the treasury.*²² In *Rattan Singh v. State of Punjab*²³, it was stated that, *it is a weakness of our jurisprudence that victim of crime and distress of dependents of the victim do not attract the attention of law. In fact the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system which must be rectified by the Legislature.*

India has largely ignored the protection of victims' rights, irrespective of whether the perpetrator is the state or a private individual. Victims in India face significant, and sometimes insurmountable, hurdles during the investigation and prosecution of crimes. The filing of an initial complaint, in and of itself, is a challenging endeavour. From 2006 to 2008, People's Watch, a national human rights organization, undertook fact-finding missions on police torture across 47 districts in nine States in the country and came up with some startling revelations. Out of 6,063 cases they monitored, almost twenty percent of the cases resulted in police acquiescence, where

²⁰ V.R. Krishna Iyer : Access to justice-A case of Basic change (1991) p.14.

²¹ N.R. Madhava Menon, "Victim's rights and criminal justice reforms", The Hindu, Mar. 27, 2006, retrieved from <<http://www.thehindu.com/2006/03/27/stories/2006032703131000.htm>> last visited on 21/11/2013, 22:57 IST.

²² K.D. Gaur, *Commentary on Indian Penal Code 1569*, Universal Law Publishing Co.2006.p.347.

²³ (1979) 4 SCC 719.

the police failed to act upon victim complaints against other private individuals. In some states like West Bengal, the rate was found to be as high as 49 percent.²⁴

2.2. Behavior of Police Officials in handling Victims

Police means *a branch of Government which is charged with the preservation of public order or tranquility, the promotion of public health, safety and morals, and the prevention, detection and punishment of crimes.*²⁵ But in India the police till now has not been able to show the aforementioned image to a great extent.

Two of the most important duties of the police service are to investigate and prevent crime. The crime victim plays an important role in this work. Without information from the victim, many crimes would never come the attention of the police, and without victim assistance, many perpetrators would get away with their crimes. Despite the victim key position in police work, however, the police service has generally not regarded the victim as an important factor.²⁶

The police are available 24 hours per day, seven days per week, and 52 weeks per year. They are often the first and only representatives of society that crime victims meet.²⁷ The police play a fundamental role in all victim support activity. The actual encounter between the police and the victim is thus important in several ways, since it affects the victim's recovery process, the police investigation of the crime, the victim's continued co-operation in the investigation, and the general public's attitudes towards the police. For many people, being the victim of a crime is their first "real" contact with the police. They may have previously met police officers in traffic education in school or were stopped in a traffic control, but these were merely fleeting meetings. This first real encounter with the police can be seen as a test of the victim's opinion of the police. Many people have high expectations and demands on the police service when they are subjected to crimes. They want the police to arrive quickly at the scene of the crime, carry out an efficient and effective crime scene investigation, solve the crime, arrest the perpetrator and retrieve all stolen

²⁴ Retrieved from < <http://www.pwtn.org/tortureandimpunitybook.htm>.> last visited on 21/11/2013, 18:00 IST.

²⁵ Black, H.C., *Black's Law Dictionary*, West Publishing Company, (1979).

²⁶ Magnus Lindgren and Vesna Nikoloc-ristanovic, "Crime Victims: International and Serbian Perspective", Organization for Security and Cooperation in Europe, Mission to Serbia, Law Enforcement Department, 2011, p.95.

²⁷ *ibid.*

goods. They also expect the police to accept their account of the events and behave according to their preconceptions. Unfortunately, the encounter with the police is not always what the victim had expected. The victim may be not only shocked and confused, but also highly sensitive to what he/she feels are the attitudes of those present at the scene. The meeting with the police can thus be a very critical factor in the victim's future handling of the situation.²⁸

2.2.1. Victim suffering during the lodging of FIR

The victim of a crime or any other person having knowledge about the commission of a crime may approach the police for registration of the First information Report (FIR) in term of Section 154(1)²⁹ of the *Code of Criminal Procedure, 1973*, in order to set the criminal law into motion. The principle object of the FIR is to set the criminal law into motion, so that the police can take suitable steps for the investigation of the case in order to bring the offender to book. It is imperative to note that in case of cognizable offences the police is duty bound to hold the investigation and there is no need for it to require the order of the Court. However, it is burdened upon the person to satisfy the police who always is reluctant to register the F.I.R. only to get genuineness about the incident or due to some other reason. But it creates some difficulties for a genuine person who is aggrieved with an illegal act of an offender.

There are many reasons on part of the police not to register the F.I.R.; firstly the police officers try to project an image before their seniors that their jurisdiction is crime free. Secondly, the offender may belong to politically motivated family and may exert pressure on the police not to register the F.I.R. Thirdly, in many parts of the country, the caste of the victim may also affect the decision of the police officer to register or not to register the complaint. Fourthly, a police officer may himself offer bribe from the victim before registering the FIR and the failure to comply with such an illegal requirement may also result in police officer's refusal to register the complaint. But the victims

²⁸ *id.*, p.96.

²⁹ Section 154(1) of The *Code of Criminal Procedure, 1973*-Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

also have rights given by law to deal with these situations like, if a victim or any informant provides FIR about a cognizable offence to the police after recording the statement, the police must supply a copy of the FIR to the informant. If the police refuses to record the information, the informant is allowed to send the statement by mail to the appropriate Superintendent of Police or to directly approach the appropriate magistrate.³⁰ If the police refuse to investigate the case for whatever reason, the police officer is required to notify the informant of that fact.³¹

In spite of such legal safeguards, blatant violations of these provisions result in inexplicable hardship, with large percentages of complaints receiving no response by police. This problem is particularly prevalent for women alleging sexual assault and lower caste individuals. Even if these groups are able to successfully file a complaint, the police often manipulate the facts stated by the informant. The dark side is that majority of these victims are actually from poor background, hence illiterate, as a result of which they do not know about the proper use of their rights and this weakness is exploited by the police officials. For instance under Section 154 it has been made mandatory that FIR must be recorded verbatim in the very language of the informant, as far as possible, to be read over and explained to him, and to be signed by the informant. The idea behind reading over the information reduced into writing and obtaining signatures of the first information thereon are intended to ensure that what has been reduced into writing is a faithful and true version of the information given to the officer in charge of the police station; same was held in *Tehal Singh v. State of Rajasthan*.³² But it is to be noted that as mentioned above the police officers tend to make a fool out of the victims especially the ones who are illiterate and do not know about their rights administered to them under the *Code of Criminal Procedure, 1973*. Many a times what happens is that the police officer while registering the FIR manipulates it and makes it an information relating to non-cognizable offence.

Therefore, a police officer can take advantage of the same and may tamper with the statement of such victim and victim due to his/her illiteracy may not know the same and may sign the FIR, which will later on if used as evidence will actually go against him instead of working in his favour.

³⁰ Section 154 and 190 of the *Code of Criminal Procedure, 1973*.

³¹ Section 157(2), of the *Code of Criminal Procedure, 1973*.

³² 1989 CRLJ 1350 (Raj).

So this shows that even though the registering of the FIR under Section 154 of the Code is mandatory, but the corrupt police officers, especially in case of illiterate crime victims, can work around this mandatory provision by not violating it. So due to such indifferent attitude on part of the police officials the victims of crime or his heirs after suffering at the hands of the offender are hesitant to go to the police. It is imperative to note that the process of a victim's redressal of the wrongs that he has been subjected to actually commences at the doorsteps of a Police Station with an FIR, which is supposed to be reduced into writing.³³ As mentioned above the victim is also supposed to be supplied with a copy of FIR, without charging him anything for it.³⁴ When we talk about crimes committed by people belonging to the high society or people backed by political power, there is an unusual departure from the usual process of registering an FIR. Often, the highly placed offender, anticipating a complaint against him, uses his money or power backed hand to manhandle the systematic operation of an investigative process.³⁵

Many a times there is a refusal on part of the police to file a complaint or they have blatantly declined to register an FIR being under pressure from the offender's political connections. This is the mere beginning of injustice towards the victim. For every criminal trial to initiate it is necessary that a charge sheet is prepared. The preparation of charge sheet involves the investigation by the police into complaint/FIR filed by the victim. Thus by influencing the police to the extent of effectuating the refusal to file an FIR, the criminal justice system is dealt with a severe blow at the very outset. This is also accompanied by rude, cheeky, authoritative and irresponsible behaviour of the police towards the victim of crime.³⁶

So also even if the victim of crime comes to know about such corruption on part of the police officer then he because of his poverty cannot even afford to register a complaint against such police official and even if he does then it is just like that he is cornered by the upcoming judicial process which is arduous from its very disposition.

³³ Section 154(2) of the *Code of Criminal Procedure*, 1973.

³⁴ *ibid.*

³⁵ *Supra* note 7, p.272.

³⁶ *Supra* note 7, p.262.

2.2.2. Defective Investigations by the Police

According to Section 2(h) investigation includes all the proceedings under the Code for the collection of evidence conducted by police officer or by any person (other than a magistrate) who authorised by a Magistrate.³⁷ The Supreme Court has viewed the investigation of an offence as generally consisting of-

- 1) Proceeding to the spot;
- 2) Ascertaining of the facts and circumstances of the case;
- 3) Discovery and arrest of the suspected offender;
- 4) Collection of evidence relating to the commission of the offence which may consist of-
 - (a) The examination of various persons (including the accused) and the reduction of their statements into writing, if the officers thinks fit,
 - (b) The search of places or seizure of the considered necessary for the investigation or to be produced at the trial; and
- 5) Formation of the opinion as to whether on the materials collected there is a case to place the accused before the Magistrate for trial, and if so, taking the necessary steps for the same by the filing of charge-sheet under Section 173. Similar view was given in *H.N. Rishbud v. State of Delhi*.³⁸

The principle agency for carrying out the investigations of offences is the police; and to make this agency an effective and efficient instrument for criminal investigations, wide powers have been given to the police officers. Apart from the duty of public to give information to the police in respect of certain serious offences, an investigating police officer can require the attendance of persons acquainted with the facts and circumstances of the case under investigation. It is important to note that the power to investigate is not conferred on every police officer. Only an officer in

³⁷ R.V.Kelkar, *Criminal Procedure*, Eastern Book Company, Lucknow,2011, p.120.

³⁸ AIR 1955 SC 196.

charge of a police station (or any other officer of a higher rank) has been empowered by the Court to investigate.³⁹

Sections 154 to 176 contained in Chapter XII of the Code deal with “*information to the police and their powers to investigate*”. These sections have made very elaborate provisions for securing that an investigation does take place into a reported offence and the investigation is carried out within the limits of the law without causing any harassment to the accused and is also completed without unnecessary or undue delay, same was held in *Abhinandan Jha v. Dinesh Mishra*.⁴⁰ Regarding the avoidance of delay, Section 173(1) expressly provides that every investigation under this chapter of the Code shall be completed without unnecessary delay.⁴¹

It would be pertinent to note that there is a relationship of the police with the judiciary during the investigation process. As observed by the Law Commission, a magistrate is kept in the picture at all stages of the police investigation, but he is not authorised to interfere with the actual investigation or to direct the police as to how such investigation is to be conducted.⁴² The Supreme Court in *State of W.B. v. S.N. Basak*⁴³, observed that the functions of the police and the judiciary are complimentary, not overlapping, and the combination of individual liberty with due observance of law and order is only to be obtained by leaving each to exercise its own function. In *State of Bihar v. J.A.C. Saldanha*⁴⁴, it was held that the legal position appears to be that if once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice and the court will not normally interfere with the investigation into the case and will permit the investigation into the offence alleged to be completed. In *Abhyananda Jha v. Dinesh Chandra*,⁴⁵ it was observed that the police is empowered to investigate into a cognizable offence without the order of a Magistrate or without a formal FIR. But in *S.N. Sharma v. Bipin Kumar Tiwari*,⁴⁶ it was observed by the Court that if the police do not investigate then the Magistrate can order the

³⁹ *Supra* note 37 p.122.

⁴⁰ AIR 1968 SC 117.

⁴¹ *Supra* note 37, p.123.

⁴² 41st Law Commission Report ,1969, Vol.1 , p.167 , para 14.2.

⁴³ AIR 1963 SC 447.

⁴⁴ (1980) 1 SCC 554.

⁴⁵ A.I.R. 1968 S.C. 196.

⁴⁶ A.I.R 1970 S.C. 786.

investigation. In *Shivbhat v. Emperor*,⁴⁷ it was observed that the statutory right of the police to investigate cannot be controlled or interfered with by the Court. The Court may or may not take action when a charge-sheet is preferred by the police after investigation but its function does not begin until that stage.

These cases actually show the presence of adversarial system on which our criminal justice system is based, as there is no role being played by the Court in the investigation process, rather than being a mere spectator as a result of which it is also powerless to give any directions to the police during investigation and due to this there is a great chance that the police may do faulty investigations because of the discretion given to it under the Code with regard to the investigation into cognizable offence. Therefore, it will not be wrong to say that while the police is carrying out investigation in cognizable offence the Court is actually powerless throughout such process. Due to such kind of role being played by the police the plight of the victims of crime amplifies to a great extent.

Defective investigations are a serious problem throughout the country. For instance in *Jagdish Barhi v. State of Bihar*,⁴⁸ an informant filed a protest against the investigation officer for not recording a correct statement of the prosecution witness. It was therefore held that the investigation would become doubtful and the advantage of the same would go to the accused. In India victims throughout the investigation process therefore actually have no saying in the matter except under Section 161 as mentioned above, but is just a silent spectator.

So also a very familiar feature of the faulty investigations committed by the police is that a very vital element or fact is purposely left behind or is kept undisclosed by the Investigating Officer under the political pressure, the tentacles of greed and corruption truss the process of investigation in its entirety. The Police, being won over by the offender, deliberately makes the case weak by letting inconsistencies creep into the investigative process. For instance, creating *Panchnama* (Seizure memo) witnesses by themselves for their convenience and then ensuring that they do not turn up in the Court for questioning. The witness is automatically dropped by the Court in such

⁴⁷ A.I.R. 1928 Bom. 162.

⁴⁸ 1990 Cr. L.J. 1443 (Pat).

situations.⁴⁹ An attempt is often made by the Police to alter some of the vital facts of the case in the course of the investigation to weaken the prosecution case and save the skin of the offender. For instance, trying to prove a murder as suicidal hanging or else, trying to establish the presence of the accused at a different place to create sufficient doubts in the minds of the judges.⁵⁰

Another instance of defective investigation is alteration, concoction and destruction of evidence is something that has characterized the face of the corrupt Indian Policemen since decades. It is something that has been done with ease over years and also with a convincing success rate. The murder weapons in case of murders are either destroyed or are not included in the seizure memo. In some cases, the Police creates false evidence to implicate the innocent ones and make sure that the actual offenders escape scot free. Sometimes, the innocent ones are threatened and harassed by the police and are made to produce evidence in writing or confession which can be incriminating. Since in criminal cases, the charge has to be proved beyond reasonable doubt hence even if police manages to create iota of doubt by altering the evidence to their benefit, the entire judicial process gets vitiated.⁵¹

Oftentimes persons belonging to a higher caste or those with political patronage influence the police to carry out sloppy investigations so that a charge sheet is not filed within the statutory time limit. Police investigations raise considerable doubts, particularly in cases where the police themselves are perpetrators. Such failures have often led to a call to entrust such investigations to agencies like the Central Bureau of Investigation, however its own investigations are not above suspicion. As a result of faulty investigations, initiation of trials may be delayed for years because no charge sheet has been filed. Furthermore, once a trial has begun, the prosecution can seek withdrawal at any time without consulting the victim.⁵² While the victim may proceed to prosecute the case as a private individual, without the assistance of the state,⁵³ this is a Herculean, if not impossible, task.

⁴⁹ *Supra* note 7, p.262.

⁵⁰ *Supra* note 7, p.272.

⁵¹ *ibid*, p.263.

⁵² Section-321 of the *Code of Criminal Procedure*, 1973.

⁵³ Section-190 of the *Code of Criminal Procedure*, 1973.

2.2.3. Failure of Judiciary in granting relief to the victim

It would be misleading to assert that the courts or policy makers have not paid any attention to the issue of victims' rights. On the contrary, the Law Commission of India⁵⁴ and special committees like the Malimath Committee on Reforms of the Criminal Justice System have emphasized issues like witness protection, victim compensation, and victim participation in police investigations. Sadly, however, progress in terms of effective legislation has been sluggish. In a few of its provisions, the *Code of Criminal Procedure Code, 1973*, addresses the status of victims in Indian criminal proceedings. Nonetheless, these provisions are inadequate to address the multitude of problems faced by crime victims. In spite of constitutional and legislative protection to ensure a competent criminal justice system, one group particularly affected by such procedural lapses is the Dalits.⁵⁵ Dalits, historically considered as "untouchables," are discriminated against and victimized every day in various ways, ranging from social boycotts to grave criminal offences. More often than not, the perpetrators of crimes against Dalits get away with absolute impunity.

The *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, enacted to ameliorate the suffering of Dalits, ultimately failed in many respects. A study of judgments delivered by various courts in Gujarat conducted by a voluntary organization in Ahmedabad reveals that in many cases, offenders are acquitted and set free due to the sheer negligence of police authorities and prosecuting advocates.⁵⁶ For example, in Gujarat approximately 95 percent of cases prosecuted under the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, have resulted in acquittal, mainly on account of defective investigations. Those Dalits that do attempt to file complaints concerning crimes perpetrated by members of the upper caste often

⁵⁴ Law Commission of India, *135th Report on Women in Custody* (1989); Law Commission of India, *152nd Report on Custodial Crimes* (1994); Law Commission of India, *198th Report on Witness Identity Protection and Witness Protection Programs* (2006).

⁵⁵ "Dalits" means someone who belongs to the lowest caste in the traditional Hindu social system.

⁵⁶ S.H.Iyer, *Atrocities Act – An Orphan Act*, *Combat Law*, Apr.-May 2005, at 48-55, available at <http://www.indiatogether.net/combatlaw/vol4/issue1/index.htm>. site last visited on 22/11/2013, 23:05 IST.

face serious retribution, as was the case of Bant Singh in Punjab. When Singh complained against members of a higher caste who raped his daughter, he received justice from the court, but at the cost of both of his arms and a leg.⁵⁷

2.2.4. Plight of Female Victims

Another area of serious concern is the plight of female victims. In spite of recent developments, violence against Indian women of all ages persists. In many states, there is no Women's Commission to safeguard the rights of female victims of sexual harassment, rape, and other gender-related crimes. Even where such commissions exist, they are generally far from adequate. Moreover, no special provisions to support victims of rape exist to enable them to overcome trauma. Although the Indian Supreme Court outlined guidelines to help law enforcement in immediately assisting rape victims, compliance with these guidelines is rare this was held in *Delhi Domestic Working Women's Forum v. Union of India*.⁵⁸

The fallout from the path-breaking *Vishaka v. State of Rajasthan* judgment helps to illustrate the situation of female victims.⁵⁹ After police and medical personnel prevented a social worker who was gang raped by upper caste individuals in a village in Rajasthan from registering her case and providing evidence, social activists and NGOs brought a writ petition seeking legal redress for the sexual harassment of working women and to "assist in finding suitable methods for realisation of the true concept of 'gender quality'". Relying on the Convention on the Elimination of All Forms of Discrimination against Women, 1979, the Supreme Court both recognized sexual harassment of women in the workplace and outlined guidelines to prevent and redress complaints of such crimes. Notwithstanding the landmark judgment, over a decade later those guidelines are still the only law on this issue; successive governments have failed to formulate adequate legislation. Concerned over the non-implementation of its own guidelines, in 2006, the Supreme Court directed the labour commissioners of all the states to take steps to implement them. In the seven years since, however, the circumstances have barely changed.⁶⁰

⁵⁷ *ibid.*

⁵⁸ (1995) 1 SCC 14.

⁵⁹ A.I.R. 1997 SC 3011.

⁶⁰ *Sexual harassment at workplace: States told to set up panels*, The Hindu, Jan. 23, 2013, retrieved from <<http://www.hindu.com/2013/01/23/stories/2006012304791400.htm>>last visited on 22/11/2013, 22:50 IST.

Witnesses of crimes, like victims, face tremendous obstacles. In a recent high profile case, the *Best Bakery*⁶¹ case, both the fast track court as well as the High Court of Gujarat acquitted 21 individuals of murder due to insufficient evidence after 37 out of 73 witnesses, including key witness Zahira Sheikh, turned hostile. The individuals were charged with the murder of fourteen people during a riot in Vadodara. Although at that time there was reasonable suspicion that witnesses were being threatened or coerced, the public prosecutor took no steps to protect the witness and made no request to hold the trial *in camera*. Afterwards, in an application to the Supreme Court, Zahira alleged that she was threatened and intimidated not to tell the truth and prayed for the re-trial of the case outside Gujarat. In *Zahira Habibullah Sheikh v. State of Gujarat*,⁶² the Supreme Court ordered a retrial and reinvestigation of the case in Maharashtra, which ultimately contributed to life sentences for nine of the accused. In its decision, the Supreme Court noted that “the lower Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice.”

Despite having exposed the harassment of witnesses, the Supreme Court, nevertheless, convicted Zahira of perjury.

2.2.4.1. *Victim as Witness*

In the present criminal justice system of India, offences registered by police are offences against the State, which after investigation are sent to the Court through prosecution agency for trial of the offender.⁶³ The victim of the crime has no say during the investigation except examining him as a prosecution witness under Section 161 of the *Code of Criminal Procedure*, 1973. Therefore, it can be said that in India the victims play no role unless the police considers it necessary, for instance under Section 161 which deals with, “*Examination of Witnesses by police*”, the police has the power to examine witnesses in which the statement is recorded by the police. However if there is a delay on part of the police in recording statement of the witnesses and the same is not explained then the evidence will become suspect and the same will be pernicious for the prosecution case. In

⁶¹ 2004 Cri LJ 2050.

⁶² (2004) 4 SCC158.

⁶³Retrieved from, <<http://www.pucl.org/Topics/Law/2005/compensation.htm>> last visited on 23/11/2013, at 10:25 IST.

Bala Krishna v. State of Orissa,⁶⁴ there was an unexplained delay for ten days in recording statement of eye-witnesses during the investigation of a murder case and there were some contradictions also. The Supreme Court observed that the contradictions by themselves do not have much significance, yet, considered in the light of delay in the examination, the evidence became suspect. The investigating officer however should be specifically asked about such delay and the reasons therefore. So also in *Ram Singh v. State of M.P.*,⁶⁵ it was observed that where the belated examination of the victim of an offence was unexplained, it was held to throw doubt on the veracity, of the prosecution case.

Similarly, during the trial of the case also, the victim is examined as a witness before the court. He has no jurisdiction to oppose the bail application of the accused before the court.⁶⁶ Similarly, at the stage of the framing of the charge or passing an order of discharge, the views of the victim are not gathered. He is not consulted or his views are not considered by the trial court at any stage of the case. Even after the case ending in conviction or acquittal, the victim has no right to file an appeal against acquittal or inadequate sentence.

Ironically it can be said that on one hand the main aim of law is to administer justice, but on the other hand in our legal system the victim after the lodging of the FIR and giving evidence he is considered as Mr. Nobody and throughout the proceedings he is just a mute spectator and nothing more than that.

2.3. Report of National Human Rights Commission (NHRC)

According to a report of NHRC given with regard to the total number of complaints received, number of cases disposed off and number of cases disposed off, we come to know about the plight of the people who are on the receiving end of these complaints and cases and we also come to know about the slow processing of the judicial system of our country. The report shown us the statistics collected by NHRC in September 2013 and it is as follows

I. Number of fresh complaints received -6351.

⁶⁴ 1971 Cr. L.J. 670 (S.C.).

⁶⁵ 1989 Cr. L.J. (NOC) 206 MP.

⁶⁶ Retrieved from, <<http://www.tribuneindia.com/2006/20060311/edit.htm>>, last visited on 23/11/2013 at 10:30 IST.

II. Number of Cases disposed off - 7208.

III. Number of cases under consideration-27125.⁶⁷

From all this we come to know that even in the present era in our country human rights are violated to a great extent and many a times even by the public servants as they do not do their duties in a required manner because they to a great extent are actually responsible for the abetment of the violation of the human rights.

2.4. Conclusion

After taking into account the aforementioned material it can therefore be said that in India no doubt there are laws for the protection of the victims, but they are outnumbered if we take into account the laws which give rights to the accused persons. So also the laws for the protection of the victims are not implemented or there is some sluggishness in their implementation, for their protection and also there are loopholes in these laws as a result of which the suffering of the victims of crime amplifies. Whereas on the other hand there are relentless number of rights of the accused person which are executed to the best possible extent, as there have been many landmark judgments by the Supreme Court which makes sure that for the purpose of fair trial all the rights of the accused person are executed in the best possible manner or makes sure that there is not any sluggishness in the execution of the same, as there is in the rights of the victims of crime. In order to make the matters worse the police officials who are actually considered as law protectors don't even do their duties properly as they are corrupt from their very disposition because they while administering their services to the society many a time penetrate corruption into various aspects of their duty. This makes the judicial process slow hence; no justice is administered to the victims or even it is administered then the victim is not satisfied with the same. It will therefore not be wrong to say that as far as the criminal justice system in India is concerned the victim is actually considered as a forgotten man and his vocal as well as effective presence in the process of delivery of justice is not ensured.

⁶⁷ Retrieved from <<http://www.nhrc.nic.in/nhrc.htm>> last visited on 23/11/2013 at 10:42 IST.

CHAPTER-III

EMERGING TRENDS RELATING TO THE VICTIMS OF CRIME

3.1. Introductory

Large number of laws have been administered by the legislative systems of various countries with regard to the administering of relief to the victims of crime mainly in the form of compensation and restitution and these laws are to some extent different from their very disposition from one another, but their role is the same and that is the granting of relief to the victims of crime in order to make sure that the victim can be rehabilitated to the best possible extent in order to ensure the wellbeing of the victim. But it is important to know that until 1970s the victims of crime were a forgotten entity in the criminal justice system.

The attitude began to change as the discipline of victimology came into its own. The past few decades have witnessed a revolution in the way in which the society deals with the victims of crime. Many countries have now recognized the need to provide services to the victims to help them in order to recover from the effects of crime and assist them in the dealings with the criminal justice system. This chapter of the paper basically deals with the emerging trends relating to the victims of crime for the administering of relief to them with special reference to CAT convention and the position of laws in UK and US with regard to the rehabilitation of the victims.

3.2. Meaning of Victim of Crime

Indian Legislature and Judiciary have not defined ‘Victim of Crime’ anywhere. In this regard reliance can be placed upon United Nations General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power adopted in November 1985, which through Articles I and 2 give exhaustive definition of the phrase.

Article 1- “Victims” means persons who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial deprivation of their fundamental rights, through acts or omissions that are in violation with the criminal laws operative within member states, including those laws prescribing criminal abuse of power.

Article 2- 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.⁶⁸

3.3. Definition of Rehabilitation

Rehabilitation means to restore useful life through therapy and education or to restore to good condition, operation or capacity.⁶⁹

3.3.1 Some Other Rights to Rehabilitation

- I. **Reparation-** Reparation is arguably the most comprehensive means of compensating the individuals and groups whose rights have been violated. Reparation acknowledges that serious wrongs have been done and consequently that the injured person is entitled to remedy and redress.⁷⁰ Reparation is mainly associated with the paying of the monetary compensation. While this form of compensation is an important means to offset the damages suffered, India should not overlook other, non-monetary forms of reparation.

⁶⁸ Retrieved from <<http://www.un.org/documents/ga/res/40/a40r034.htm>> site last visited on 24/11/2013, 16:55 IST.

⁶⁹ Retrieved from <[http://en.wikipedia.org/wiki/rehabilitation_\(penology\)](http://en.wikipedia.org/wiki/rehabilitation_(penology))> last visited on 24/11/2013 at 17:00 IST.

⁷⁰ Theo van Boven, ‘*The Perspective of the Victim in The Universal Declaration of Human Rights: Fifty Years and Beyond*’ 14 (Yael Dnaeli et al. eds., Baywood Publishing Co. 1999).

According to the Basic Principles and Guidelines, reparation includes “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”⁷¹

II. Victim Assistance- Apart from compensation, Victim assistance seems to be a dire necessity for Victim rehabilitation. This would include, but it is not limited to, the following services like Crisis intervention, Counseling, Emergency shelter, Criminal justice advocacy and emergency transportation.⁷²

III. Right to Engage an Advocate of his choice

The Court is empowered to permit the victim to engage an advocate of his choice to assist the Prosecution under Section 24(8)⁷³ of the *Code of Criminal Procedure*, 1973.

IV. Right to prefer an Appeal

The Victim shall have the right to prefer an Appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.⁷⁴

In addition to bolstering monetary reparations for Victims, a new legislation should also address other needs of Victims, including medical or psychological care, economic care, immediate protection and security, and long term rehabilitation.⁷⁵

3.4. International Perspective towards Victims Rehabilitation

The UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power constituted an important recognition of the need to set norms and minimum standards in International Law for the protection of the Victims of crime.⁷⁶ The UN Declaration recognized four major components of the rights of Victims of Crime and they are

I. Access to justice and fair treatment;⁷⁷

⁷¹ Basic Principles and guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, annex, U.N. Doc A/RES/60/147 (Mar.21, 2006) 18.

⁷² Retrieved from <https://www.ncjrs.gov/ovc_archives/factsheets/cvfvca.htm> last visited on 24/11/2013, 18:00 IST.

⁷³ The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a special public prosecutor.

⁷⁴ Section 374 (2) and (3) of the *Code of Criminal Procedure*, 1973.

⁷⁵ Retrieved from <www.wcl.american.edu/hrbrief/17/2sarkar.pdf> last visited on 25/11/2013, 14:30 IST.

⁷⁶ UN General Assembly Basic Principles of Justice for Victims of Crime and Abuse of Power, November 29, 1985.

⁷⁷ *ibid.* Clause 4 and 5 of UN Declaration.

II. Restitution;⁷⁸

III. Compensation;⁷⁹ &

IV. Assistance.⁸⁰

It is important to note that this declaration is actually considered as the *magna carta* of the rights of the victims globally. This declaration has made certain suggestions for dealing with the problems of the Victims of crime including the Victims of abuse of power. Some of the suggestions which deserve a special note are:

- I. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to promote redress, as provided by national legislation, for the harm that they have suffered.
- II. Judicial and administrative mechanisms should be established and strengthened where necessary to enable Victims to obtain redress through formal or informal procedure that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
- III. Informing Victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information.
- IV. Allowing the views and concerns of the Victims to be presented and considered at appropriate stages of the proceeding where their personal interests are affected without prejudice to the accused and relevant with the national criminal justice system.
- V. Taking measures to minimize inconvenience to the Victims, protect their privacy whenever necessary, and ensure their safety as well as of their families and witnesses on their behalf, from intimidation and retaliation. Avoiding unnecessary delay in the disposition of the cases and the execution of the orders and decrees granting awards to Victims.

3.5. Convention Against Torture (CAT)

A right to health care for survivors of torture is specifically stated in the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) that came into force on 26th June 1987.

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

⁷⁸ *ibid.* Clause 8 and 12 of UN Declaration.

⁷⁹ *ibid.* Clause 12 of the UN Declaration.

⁸⁰ *ibid.* Clause 14 (Part-B) of UN Declaration.

*including the means for as full rehabilitation as possible. In the event of the death of the Victim as a result of an act of torture, his dependants shall be entitled to compensation.*⁸¹

The CAT calls on States to make the “*means for as full rehabilitation as possible*” along with other forms of redress, an “enforceable right”. The treatment and rights of torture Victims are also addressed in other international instruments and conventions which are applicable to the rights of the torture survivors of rehabilitation.⁸²

Torture survivors do best where there is a general entitlement to health care and where already high levels of health care are augmented by specialized rehabilitation centers.⁸³

3.6. Position in the USA

The *Victims of Crime Act*, 1964, became a part of Federal Law in the United States in 1984. The Crime Victims Fund was established by the *Victims of the Crime Act 1984* (VOCA) and serves as a major funding source for Victim services throughout the country. Each year millions of dollars are deposited into this Fund from criminal fines, forfeited bail bonds, penalty fees and special assessments collected by U.S Attorney’s office, U.S. Courts and the Bureau of Prisons. It is imperative to note that these dollars come from the offenders convicted of Federal crimes and not from the taxpayers.⁸⁴

⁸¹ Article 14 of the *UN Convention Against Torture AND Other Cruel Inhuman or Degrading Treatment and Punishment (CAT)* 1987.

⁸² Special rehabilitation centers:

- i. The Standard Minimum Rules for the Treatment of Prisoners (1977);
- ii. Additional Protocols to the Geneva Convention of 1949 (1979);
- iii. The Body of Principles for the Protection of All forms of Persons under Any form of Detention or Imprisonment (1988);
- iv. International Covenant on Economic, Social and Cultural Rights as elaborated in General Comment No. 14 (2000);
- v. The Rome Statute of The International Criminal Court (2002);
- vi. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for The Victims of Gross Violations of International Humanitarian Law (2005); and
- vii. The Conventions on The Rights of Persons with Disabilities (2007).

⁸³ Douglas A. Johnson and Steven H. Miles, “*As Full Rehabilitation as Possible*”: *Torture Survivors and The Right to Care*”, available at: www.swisshumanrightsbook.com/SHRB/shrb.../12_453_Johnson_Miles.pdf, site last visited on 25/11/2013, 16:50 IST.

⁸⁴ Retrieved from < https://www.ncjrs.gov/ovc_archives/factsheets/cvfvca.html > last visited on 25/11/2013, 17:00 IST.

In United States every State administers a Crime Victim Compensation Program. These programs provide financial assistance to the Victims of the Federal as well as that of the State crimes. Although each State compensation program is administered independently, most programs have similar eligibility requirements and offer a comparable range of benefits. The typical State compensation program requires Victims to report crimes to law enforcement within 3 days and to file claims within a fixed period of time, usually 2 years. It is important to know that most States can extend this time limit for good cause.

If other financial resources are available, such as private insurance, compensation is paid only to the extent that the collateral resources do not cover the loss.⁸⁵The recognition of common ground between Victim advocates and restorative justice advocates has led to a recent alliances, partnership and collaborations to support or promote restorative justice reform of the criminal justice system. Some of the organizations which have contributed to these efforts include, at the Federal Government level, the U.S Department of Justice Office for Victims of Crime, the National Victim Centre, the National Institute of Justice, the National Institute of Corrections and the Office of Juvenile Justice and Delinquency Prevention's "Balance and Restorative Justice Article."⁸⁶

The United States provide funding to torture treatment centre through the Torture Victims Relief Act, 1998. US has a Victim Compensation Program which is funded from fines against the perpetrators of the corporate fraud. Each year, the Justice Department gives an award to prosecutors who secure the greatest contributions to the Victims Compensation Fund. Ideally, as in the example of the Indian police station fines, these kinds of mechanisms should reinforce the accountability of torturers. Funds received from rogue states or terrorist organizations or their banks could support the rehabilitation of the Victims of State terrorism.⁸⁷

⁸⁵ Retrieved from <https://www.ncjrs.gov/ovc_archives/factsheets/cvfvca.html> last visited on 25/11/2013, 17:55 IST.

⁸⁶ 'Crime and Punishment: Can Mediation Produce Restorative Justice for Victims and Offenders?' available at: <<http://vorp.com?articles/crime.html>> last visited on 25/11/2013, 18:00 IST.

⁸⁷ Douglas A. Johnson and Steven H. Miles, "A Full Rehabilitation as Possible": *Torture Survivors and The Right to Care*, p.221 available at: , Committee on Reforms of Criminal Justice System, (Malimath Committee Report), Para 20.19.4.

Like in the United States, Europe and other developed countries, both the Government of India and the State Governments should enact exclusive legislations for Victims of Crime, as the existing provisions in the criminal laws are not sufficient.⁸⁸

3.7. Position in UK

The *European Convention of Compensation of Victims of Violent Crimes*, 1983 provides for many rights recognized in the UN Declaration. It has also introduced an effective rehabilitation mechanism through the *Criminal Injuries Compensation Act*, 1995 redressing the needs of Victims of Crime. The Criminal Injuries Compensation Scheme is a rapidly growing government initiative. First conceived by the Home in 1995 and later on it was approved by the Parliament. The scheme began in 1996 with the enactment of the *Criminal Injuries Compensation Act*, 1995.

The concept of statutory compensation for criminal injuries reaches as far as back 1964 in the UK. From that year until the establishment of the *Criminal Injuries Compensation Act* 1996 (CICA), this is responsible for running the scheme that has been in place (with minor revisions) since 1996.

The Criminal Injuries Compensation Board dealt with similar claims. This makes UK the first country to have established a scheme of criminal injuries compensation.⁸⁹ This 2008 UK had come out with the Criminal Injuries Compensation Scheme (2008). This scheme was made by the Secretary of State under the *Criminal Injuries Compensation Act*, 1995. Applications are received for the payment of compensation to, or in respect of, persons who have sustained criminal injury under this scheme.⁹⁰

The CICA offers purely financial compensation to the Victims, or close relatives or friends of Victims of violent crimes. The intention of these financial awards is threefold and they are:-

⁸⁸ Murugesan Sirinivasan and Jane Eyre Mathew, '*Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System*' available at: <http://www.doiserbia.nb.rs/img/doi/1450-6637/2007/1450-66370702051S.pdf>, site last visited on 25/11/2013, 18:10 IST.

⁸⁹ '*Criminal Injuries Compensation Scheme*' retrieved from <http://www.compensationculture.co.uk/criminal-injuries-compensation-scheme.html> last visited on 26/11/2013, 10:00 IST.

⁹⁰ *Ibid.*

- I. Firstly, they are intended to give recognition to the fact that physical or mental injuries have been caused by a crime.
- II. Secondly, they are intended to compensate for the lost earnings or any extraordinary expenses incurred as a result of that crime &
- III. Lastly, they are also intended in some circumstances, to compensate a close relative of a Victim of a violent crime for their own lost earnings.

In the UK, *Criminal Justice Act*, 1988 has made fresh provisions for payment of compensation by the Criminal Injuries Compensation Board. A specialized legislation called ‘The Code of Practice for Victims of Crime’ sets out the services that the Victim can expect to receive from each of the Criminal Justice agencies, like the police and the Crown Prosecution Service.⁹¹

Far reaching reforms have taken place in England and the year 2000 is a watershed and enactments like the Powers of the Criminal Court Sentencing Act, 2000 modifying earlier laws were enacted introducing a whole range of new and novel punishments such as curfew order, community rehabilitation order, a community punishment order, a community punishment rehabilitation order, a drug treatment and testing order, attendance order, a supervision order, an action plan order. The *Power of Criminal Courts Sentencing Act*, 2000 provides for a compensation order.⁹²

3.8. Conclusion

Taking into account the material mentioned above we come to know that the definition of victims of crime has been administered by the United Nations General Assembly Declaration of Basic Principles of Justice for Victims and Abuse of Power adopted in November 1985, and is responsible for the setting up of norms and minimum standards in International Law for the protection of Victims of Crime and due such reasons this declaration is considered as the *magna carta* of the rights of the victims globally. So also there is CAT a UN Convention which mainly administers the victim of torture with the right to acquire compensation for his/her adequate rehabilitation and in case of his death the same to be administered to his dependants. The CAT actually calls on States to make the “*means for as full rehabilitation as possible*”.

⁹¹ ‘Victim’s rights’, available at: <http://www.justice.gov.uk/about/vc/rights.htm>, site last visited on 26/11/2013, 10:55 IST.

⁹² *ibid.*

In USA the victims are rehabilitated through the Victims of Crime Act which is actually a major funding source for victim services throughout the country. Millions of dollars are deposited in this fund and this money comes from offenders convicted of federal crimes and not from taxpayers. So also in USA every State administers a Crime Victim Compensation Program, which provide financial assistance to the victims of the federal as well as that of the State crimes. In UK there is *Criminal Injuries Compensation Act, 1995* which redresses the needs of the victims of crime. Under this act a board named Criminal Injuries Compensation Board has been established which has a scheme which gives the victims of crime the right to be rehabilitated and even the rehabilitation to be administered to their dependants if such circumstances accrue.

CHAPTER-IV

LEGISLATIVE SCHEME FOR VICTIM COMPENSATION IN INDIA

4.1. Introductory

The legislative measure with regard to the victim compensation is scattered and not properly streamlined. The legislative scheme for the victim compensation in India is mainly dealt under the following acts-:

- I. The *Code Criminal Procedure* , 1973;
- II. The *Fatal Accidents Act*, 1855;
- III. The *Motor Vehicles Act*, 1988;
- IV. The *Probation of Offenders Act*, 1958⁹³ &
- V. *Indian Penal Code*, 1860.

All these acts under the Indian legislature incorporate in them many schemes relating to the victim compensation and all these schemes in one way or the other are up to some extent same as well as different from their own disposition from one another.

⁹³ *Supra* note 1,p.847.

Another important point which is required to be taken into consideration is that the legislative scheme in India with regard to the administering of relief to the victims of crime mainly revolve around the following concepts-:

- I. Assistance;
- II. Restitution;
- III. Access to Justice and Fair Trial;
- IV. Compensation.

The present chapter of this paper basically deals with the legislative provisions in India with regard to the administering of relief to the victims of crime through various acts and also deals with the brighter as well the darker aspects of the provisions administered under the aforementioned acts.

4.2. Legislative scheme given under the *Code of Criminal Procedure, 1973*, for the grant of compensation

Under the *Code of Criminal Procedure, 1973*, the provisions with regard to the victim compensation have mainly been administered under Section 357, 357-A, 250 and 358.⁹⁴

It is to be noted that the function of a criminal court is to punish the offender while that of a civil court is to make the wrongdoer compensate for the loss or the injury caused to the aggrieved party. However, if these two procedures can be combined without affecting the civil and criminal process, it would be just and expedient to do so as it would save time and money in seeking remedy in two different courts. Section 357 incorporates this idea to an extent and empowers the court to grant compensation to the victim and to order the payment of the costs of prosecution.⁹⁵

4.2.1. Section 357- Order to pay compensation⁹⁶-

The bare wording of this section is-

- 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-*

⁹⁴ *Supra* note 1, p.848.

⁹⁵ *Supra* note 37, p.614.

⁹⁶ *Supra* note.7, p.529.

- a) *In defraying the expenses properly incurred in the prosecution,*
- b) *In the payment to 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 shelf all offence, in paying in, compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to them from such death;*
- 2) *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.*
- 3) *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 is elapsed, or if an, appeal be presented, before the decision of the appeal.*
- 4) *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 reason of the act for which the accused person his been so sentenced.*
- 5) *An order under this section may also be made by all Appellate Court or by the High Court or Court of Session when exercising its powers of revision.*

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.

Section 357 basically deals with the payment of the compensation to the victim by guilty person as well as the payment of the costs of the prosecution. This section empowers the Court to order the convicted person to pay compensation and costs and thereby combine the functions of the civil court (to pay compensation for wrongs) with that of the criminal court (of punishing the offender). This is just as well as expedient to give speedy and less expensive redress to the person who suffered at the hands of the offender.

When a court imposes a sentence of fine, the court may, while passing judgment, order the whole or part of fine recovered to be applied-

- I. in defraying the expenses properly incurred in the prosecution;
- II. in the payment to any person of compensation for any loss or injury caused by the offence, when such compensation is recoverable by that person in a civil court;
- III. when any person is convicted of committing or abetting the commission of an offence for having caused the death of another person, in paying compensation to the dependants of the deceased who are entitled to claim compensation under the *Fatal Accidents Act, 1885*;
- IV. when any person is convicted of an offence which incorporates theft, criminal misappropriation, criminal breach of trust or of cheating, or of having dishonestly received or retained stolen property, etc., 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.⁹⁷

When the court imposes a sentence, of which fine does not form a part, the court may, when passing the 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.⁹⁸

It is important to know that in fixing the amount of fine or compensation, the court in *Jacob George (Dr) v. State of Kerala*, held that it is the Court's duty to take into account the following:

- I. the nature of crime;
- II. the injury suffered;
- III. the justness of the claim for compensation &
- IV. the capacity of the accused to pay and other relevant circumstances.⁹⁹

⁹⁷ Section.357(1) of the *Code of Criminal Procedure, 1973*.

⁹⁸ Section.357(3) of the *Code of Criminal Procedure, 1973*.

⁹⁹ (1994), 3 SCC 430.

In *Palaniappa Gounder v. State of Kerala*¹⁰⁰ it was held that the court, however, should not first consider what compensation ought to be awarded to the heirs of the deceased and then impose a fine which is higher than the compensation itself.

Under Section 357 compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, this is the *brighter aspect* of this section. However such compensation under this section can be awarded only if the accused is convicted and sentenced otherwise not, this therefore can be considered as the *darker aspect* of this section.

4.2.1.1. *Duty of the Court while administering Compensation*

In *Hari Singh v. Sukhbir Singh*¹⁰¹, it was held that the compensation should be payable for any loss or injury whether physical or pecuniary and the court shall have due regard to the nature of the enquiry, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors. In *Sarwan Singh v. State of Punjab*,¹⁰² the Supreme Court observed that if the Court comes to the conclusion that compensation is to be paid then in that case the capacity of the accused to pay the same has to be taken into account. In directing compensation, the object is to collect the fine and pay it to the person who has suffered loss. This person would be frustrated if the person accused is not able to pay the fine. However, if the accused is in a position to pay compensation to the injured or his dependants to which they are entitled, there could be no reason for the Court not directing such compensation. In *Harikishan and State of Haryana v. Sukhbir Singh*,¹⁰³ it was observed that while awarding compensation the Court must take into account the nature of crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances. If there are more than one accused, quantum of compensation may be divided unless there is considerable variation in their paying capacity. The payment may vary depending upon the acts of each accused. Reasonable period for the payment of compensation, if necessary, by installments, may also be given.

4.2.1.2. *Compensation when to be paid and how the amount is to be determined*

¹⁰⁰ (1977) 2 SCC 634.

¹⁰¹ (1988) 4 SCC 551.

¹⁰² 1978 Cr. L.J. 1598 (S.C.).

¹⁰³ 1989 Cr. L.J. 116 (S.C.).

Under Sub-section 1 of Section 357, compensation could be directed to be paid only if the accused is punished with a sentence of fine or with some other offence of which fine forms a part and secondly it could be paid out of the amount of the fine recovered.

Consequently the amount of compensation could not exceed the amount of fine and the quantum of fine would again depend upon the limit up to which the fine was awardable for the particular offence and also upon the extent for which the court had the power to impose fine.¹⁰⁴ In *Mangi Lal v. State of Madhya Pradesh*,¹⁰⁵ it was held that Sec. 357(1) deals with a situation when a Court imposes a fine or a sentence (including sentence of death) of which fine also forms a part. It confers a discretion on the Court to order as to how the whole or any part of the fine recovered is to be applied. For bringing in application of Section 357(1), it is a statutory requirement that the fine is imposed and thereupon make further orders as to the disbursement of the said fine. In the manner envisaged therein. If no fine is imposed then Section 357(1) has no application. In this case it was also held by the Court that the power of the Court to award compensation under Section 357 of the Code is not ancillary to power to award the other sentences. It is in addition thereto.

4.2.1.3 Sub-Section (3) of Section 357

It is important to know that under Sub-section 3 of Section 357, compensation can be granted quite liberally and without any abovementioned restrictions. But it is to be noticed that the liberal provisions of sub-section (3) are applicable only if a sentence of fine is not imposed, otherwise the compensation then can be paid only out of the amount of fine as mentioned in Sub-section (1) of Section 357. In *Mangilal v. State of Madhya Pradesh*,¹⁰⁶ it was observed that Section 357(3) deals with the situation where fine does not form part of the sentence imposed by a Court. In such a case the Court while passing the judgment can order the accused person/persons to pay by way of compensation such amount as may be specified in the order to the person who has suffered a loss or injury by reason of the act of which the accused person has been so convicted and sentenced. The basic difference between sub-section (1) and (3) of Section 357 is that in the former case, the imposition of fine is the basic and essential requirement, while in the latter in the absence thereof

¹⁰⁴ *Supra* note 37, p.615.

¹⁰⁵ (2004) Cri.L.J. 880 (S.C.).

¹⁰⁶ *ibid.*

empowers the Court to direct the payment of compensation. Such power is available to be exercised by the appellate Court or by the High Court or Court of Session when exercising revisional powers. However an appellate or revisional Court can award compensation only after giving accused an opportunity of hearing.

In *Sarwan Singh v. State of Punjab*¹⁰⁷, it was held that the main objective of Section 357(3) is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence. An astonishing thing which is required to be noticed is that under Section 357(3) the power of a magistrate or judge to grant compensation is unlimited. For instance, a magistrate of second class has the power to pass a sentence of fine not exceeding Rs 1000;¹⁰⁸ but if the same magistrate instead of imposing a fine awards compensation under Section 357(3), he can do so without any apparent limit; and the amount of compensation can even be Rs 10,000 or Rs 50,000, depending upon the loss or injury to the victim. This can also be considered as one of the brighter aspect of Section 357. Further, it should also be noted that unlike Sub-Section (1), Sub-Section (3) does not make any provision for the payment of the costs incurred in the prosecution.

In *Hari Krishan and State of Haryana v. Sukhbir Singh*¹⁰⁹ the Supreme Court highlighted the importance of Section 357(3) and held that it is an important provision but the Courts have seldom invoked it, perhaps due to the ignorance of its object. This section empowers the Court to award compensation while passing judgment of conviction. In addition to conviction the Court may order the accused to pay some amount by way of some compensation to the victim who has suffered by the action of the accused. This power to award compensation to award ancillary to other sentences but it is an addition thereto. It is a measure of responding appropriately to crime as well as reconciling the victims with the offender. It is to some extent a constructive approach to crime. It is indeed a step forward in our criminal justice system.

4.2.1.4. *Defraying Expenses of Prosecution, [clause-(a)]*

¹⁰⁷ (1978) 4 SCC 111 : 1978.

¹⁰⁸ Section 29 (3) of the *Code of Criminal Procedure*, 1973.

¹⁰⁹ AIR 1988 SC 2127.

In *Girdhari Lal v. State of Punjab*¹¹⁰ it was held that for sustaining an order directing expenses to be paid to the state under clause (a) of Section 357(1), there must be a substantive sentence of fine. In the absence of such a fine no direction under this clause can be made. The high court's direction under section 357(a) to the accused on whom no fine was imposed and who was let off on probation was liable to set aside¹¹¹.

4.2.1.5. *Compensation to Victim, [clause-(b)]*

This clause basically deals with the payment of compensation to the very person to whom any loss or injury has been caused as a result of the offence committed against him or his property and when the compensation is recoverable by such person in a civil court and a likewise statement was administered by the Court in *Palaniappa Gounder v. State of Kerala*.¹¹²

4.2.1.6. *Compensation under the Fatal Accidents Act, [clause-(c)]*

This clause enables the court to direct that the whole or any part of the fine to be recovered may be applied in paying compensation to the persons who are under the *Fatal Accidents Act, 1855*, entitled to recover the damages from the person sentenced for the loss resulting to them from the death of the person whose heirs, as described in the Act of 1855, they claim to be.¹¹³

In *Ankush Shivaji Gaikwad v. State of Maharashtra*¹¹⁴ it was held that under Section 357 the Court is empowered to direct the State to pay compensation to the victims in such cases where compensation awarded under Section is not adequate for such rehabilitation or the case ends in acquittal or discharge and the victim has to be rehabilitated.

4.2.1.7. *Important Considerations with regard to Section 357*

- I. In awarding compensation, the court should not consider what compensation ought to be awarded to the deceased and then impose a fine which is higher than the compensation.

¹¹⁰ (1982) 1 SCC 608.

¹¹¹ *ibid.*

¹¹² (1977) 2 SCC 634.

¹¹³ (1977) 2 SCC 634.

¹¹⁴ AIR 2013 SC 2453.

II. It is the duty of the court to take into account:-

- a) The nature of the crime;
- b) The injury suffered;
- c) The justness of the claim for compensation;
- d) The capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation. A likewise decision was administered in *Sarwan Singh v. State of Punjab*¹¹⁵

III. The Supreme Court has urged the other courts to exercise the powers under this Section 357 liberally.

IV. It has also been held that if there are more than one accused then they may be asked to pay in equal terms unless their capacity to pay varies. The payment may also vary depending upon the acts of each accused.

V. The court in *Hari Singh & State of Haryana v. Sukhbir Singh*,¹¹⁶ opined that the reasonable period for the payment of compensation may also be administered in the form of installments. It is important to note that the Supreme Court in this case regretted the fact that the Courts have seldom invoked Section 357 of the Code, perhaps due to the ignorance of the object behind it. This power of the Court is intended to do something to reassure the victim that he is not forgotten in the criminal justice system. The Court recommended that the power of the Courts under this Section is to be used liberally so as to meet the ends of justice in a better way. Any such measure which would give victim succor is far better than a sentence by deterrence.

VI. It is only appropriate to direct the payment of compensation to the dependants of the victim by the accused who has the capacity to pay.

VII. In case of murder it is only necessary that proper compensation should be provided for the dependants of the deceased. Such a decision was also administered in *Guruswamy v. Sukhbir Singh*¹¹⁷

¹¹⁵ *Supra* note 107.

¹¹⁶ (1988) 4 SCC 551.

¹¹⁷ (1988) 4 SCC 551 797.

VIII. Where the power of speech of the victim of offence is impaired permanently the amount of compensation may be enhanced and this was also held in *Harikishan and State of Haryana v. Sukhbir Singh*.¹¹⁸

4.2.1.8. Shortcomings of Section 357 of the Code of Criminal Procedure

- I. Under Section 357 of the *Code of Criminal Procedure*, 1973, the power of the Court to award compensation is not ancillary but is merely an addition; hence the Court may or may not grant compensation to the victim who suffered loss, as the Court is not bound to do the same.
- II. In deciding the amount of compensation under Section 357, the Court uses its discretion all the time, which in fact is seldom used by the courts while delivering judgments.
- III. Under Section 357(1) the compensation will be awarded by the Court in the form of fine only if the Court imposes a sentence of fine or sentence (including sentence of imprisonment) of which fine forms a part, otherwise not. Therefore in case if the accused is sentenced, but fine does not form part of the same then in that case the victim will not be paid anything at all, even though he has suffered damages because of the criminal act done against him.
- IV. Under Section 357(1) no compensation can be ordered when a person is dealt under Section 360, “*When a person is released on probation of good conduct or after admonition*”, of the Code and fine is imposed.¹¹⁹ The Supreme Court has directed the attention of all the courts in *Hari Singh & State of Haryana v. Sukhbir Singh*,¹²⁰ to exercise the provisions under Section 357 liberally and award adequate compensation to the victim, particularly when an accused is released on admonition, probation or when the parties enter into compromise. But still the Courts are reluctant in executing this principle.

¹¹⁸ *Supra* note 109.

¹¹⁹ Section 5 of, the *Probation of Offenders Act, 1958*, empowers the court to require released offender to pay compensation and costs.

¹²⁰ *Supra* note 109.

- V. Under Section 357(1) (b) the trial court is empowered to award compensation for any loss or injury caused by the offence to the victim, subject to the provisions that compensation must be recoverable by the victim in a civil court. The word ‘ambiguous’ renders the provision ambiguous as this word may be construed in two ways:
- a) That the victim is entitled to sue the offender for damages in a civil court and that the offender is liable to pay,
 - b) that the offender has the capacity to pay the compensation.
- VI. Under Section 357 (1) (c) a criminal court can grant compensation only if the victims are entitled ‘to recover’ damages from the offender under the *Fatal Accidents Act, 1955*. This condition obviously brings hardship to the victims.

4.2.2. Victim Compensation Scheme¹²¹ as provided by the Code of Criminal Procedure Amendment Act 2008

Section 357A provides that

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

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in Sub-Section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 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 dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under Sub-Section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

¹²¹ *Supra* note.7, p.532.

(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."

This Section was added in the *Code of Criminal Procedure, 1973*, in 2009. Under this section the State Government is required to work in co-ordination with the Central Government in order to prepare a scheme for providing funds mainly for the purpose of administering compensation to the victim or his dependants, as the case may be, which have suffered loss or injury as a result of the crime and require rehabilitation.

It is to be noted that when the trial ends and the compensation awarded is inadequate or where the case ends in acquittal or discharge of the accused and the victim still requires rehabilitation then in that case this Section will come into play in order to make sure that the victim's rehabilitation takes place to the required extent. All that is need to be done is that an application is required to be made on part of the victim or his dependants to the State or District Legal Services Authority to pay further compensation.

In short, under this the compensation can be recommended even in cases where the trial ends in acquittal or discharge, provided there is a need for rehabilitation of victims. Compensation can also be granted where no trial takes place because the offender cannot be identified or traced, but the victim requires rehabilitation.

In short the present Section was inserted requiring every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victims who suffered the injury. The District Legal Services Authority shall decide the scheme and the quantum for the compensation. If the trial court is convinced that the quantum of the compensation is not enough for the rehabilitation of the victim the court may make recommendation for the compensation according to the reasonable needs of the victim. But no endeavor has been made by the concerned authorities under this section to provide relief to the victims of crime.

4.2.3. Compensation to the Person Groundlessly Arrested:¹²²

Section 358 of the code provides as follows;

- 1) *Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom case is heard that there was no sufficient ground of causing such arrest, the Magistrate may award such compensation, not exceeding 1[one hundred rupees], to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses the matter, as the Magistrate thinks fit.*
- 2) *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 hundred rupees, as such Magistrate thinks fit.*
- 3) *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.*

Section 358 empowers the court to pay compensation to another person for causing a police officer to arrest such other person wrongfully.¹²³ Usually it is the police officer who investigates and makes the arrest and the complainant, if at all can be considered to have a nexus with the arrest, it is rather indirect or remote. In *Mallappa v. Veerabasappa*¹²⁴ it was held that for applying Section 358 some direct and proximate nexus between the complainant and the arrest is required. In *Pramod Kumar Padhi v. Golekha*¹²⁵ it was held that there should be something to indicate that the informant caused the arrest of the accused without any reasonable cause.

There have been instances where the judiciary ordered compensation by the state to be paid to the victim because of the failure of the police to process prosecution. In such a case, the police was asked to bear the cost of petition against them filed by the victims of their illegal acts. In *Hazari Choubey v. State of Bihar*¹²⁶ the High Court in exercise of its inherent powers ordered the complainant to pay compensation to the harassed dependant; in yet another complainant was asked to pay the cost to the Government, rather than to the defendant.

¹²² *Supra* note 37, p.617.

¹²³ *ibid.*

¹²⁴ 1977 Cri LJ 1856, 1858 (Kant).

¹²⁵ 1986 Cri LJ 1634 (Ori).

¹²⁶ 1988 Cri LJ 1390 (Pat).

The Section does not make any express provision for giving an opportunity to the complainant or other concerned person to show that there was sufficient ground for causing the arrest to be made or to show that why an order to pay compensation under this Section should not be passed against him. However looking to the consequences which are likely to follow from the order of the payment of compensation, the principles of natural justice would require that such an opportunity should be given to the complainant or other concerned person. This was also held in *Shah Chandulal Gokaldas v. Patel Baldevbhai Ranchhoddas*.¹²⁷

It is important to note that before making an order for compensation, an opportunity to show cause against the order must be given to the complainant. Hence, this Section is to be read with natural justice principles, same was held in *Shah Jabdu lal's case*.¹²⁸

It is to be noted that the fine imposed under this Section is just Rs 1000¹²⁹ which is such a meager amount if we take a look at the present economy. Therefore it can be said that this is actually a loophole in the provisions of this Section as a result of which it up to a great extent fails to administer relief to the victim.

4.2.4. Order to pay costs in non-cognizable cases:

Section 359 of the *Code of Criminal Procedure (Amendment Act 2008)*, 1973 provides that:

- 1) *Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant, in whole or in part, the cost incurred by him in the prosecution, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days and such costs may include any expenses incurred in respect of process-fees witnesses and pleader's fees which the Court may consider reasonable.*
- 2) *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.*

This Section basically deals with the payment of compensation to the victim in case of a non-cognizable offence committed against him. It is important to note one thing about the disposition

¹²⁷ 1980 Cri LJ 514, 515 (Guj).

¹²⁸ 1980 Cr,LJ 514 (guj).

¹²⁹ Substituted for the words "one hundred rupees" by the Cr. P.C. (Amendment) Act, 2005, Section 30.

of this section that under this the complainant is empowered to order the accused to pay the costs to the complainant in addition to the penalty imposed upon him.¹³⁰

It is to be noted that if the offender fails to pay the decided compensation amount then he will be given imprisonment for a period not more than 30 days.

4.2.5. Section 250 Compensation for accusation without reasonable cause.¹³¹

This section basically states that in case if a person is accused of any offence which is triable by the Magistrate and during the trial of such case the Magistrate is of the opinion that the accused has been arrested groundlessly, then in that case the Magistrate will-

¹³⁰ Retrieved from <http://law.chdfirms.com/criminal_procedure_code/chapter_27.php> last visited on 28/11/2013, 19:00 IST.

¹³¹ *Section 250-(1) If in any case instituted upon complaint or upon information given to a police officer or to Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information or the accusation is present, call upon him forth how cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.*

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may for reasons to be recorded, make an order that compensation to such amount not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under Sub-section (2) further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under Sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken in to account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under Sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order as if such complainant or informant had been convicted on a trial had by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under Sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons-cases as well as to warrant cases.

- 1) firstly acquit that person who was arrested groundlessly;
- 2) then will call forth that person under whose complaint the accused was arrested;
- 3) will ask him to give a reasonable cause that why he should not pay compensation to the accused;
- 4) if he is satisfied that such person does not have any reasonable cause then in that case the Magistrate will order him to pay compensation of such amount as he may think fit;&
- 5) Lastly, such Magistrate may, if he thinks fit, also give an order to give an imprisonment not exceeding the period of thirty days.

Under this section the person liable to pay compensation is the person upon whose complaint or information the accusation is made.¹³² Compensation is awarded to the person who has suffered from the accusation and not to his relatives. Before awarding the compensation the Magistrate shall not only record but also consider any objection which the complainant or the informant raises against the making of the direction. The provisions are imperative in nature and must be complied with.¹³³

4.2.6. Compensation as Mitigating Factor

It is to be noted that the Courts have used compensation as a mitigating factor and reduced the quantum of punishment accordingly. Some of the cases are discussed below in which the Courts have commuted the sentences and the compensation has been awarded to the victim.¹³⁴ 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. The amount of compensation awarded ranges from Rs. 10,000/- to Rs. 1,00,000/- depending upon the number of dependents of the deceased and the capacity of the accused to pay the same.¹³⁵

In *Mudhukar Chandar v. State of Maharashtra*,¹³⁶ the High Court pointed out that retribution for the damage done to the dependants of the deceased should be given a predominant consideration and awarded Rs. 40,000/- as compensation to the old mother and three children of the deceased.

¹³² *Supra* note.1,p.405.

¹³³ *Supra* note 1, p.406.

¹³⁴ *Supra* note.7, p. 96.

¹³⁵ *Supra* note.7, p. 97.

¹³⁶ 1993 Cri LJ 3281 (Bom).

In *Venkatesh v. State of Tamil Nadu*,¹³⁷ the Supreme Court awarded compensation to the extent of Rs. 10,000/- payable to the widow and the unmarried daughter of the deceased. However the Supreme Court is not consistent in awarding compensation while reducing substantive sentence. For instance in *Palianappa Gounder v. State of Tamil Nadu*,¹³⁸ the Supreme Court held that the compensation amount of Rs. 20,000/- awarded by the High Court was unduly excessive, therefore it reduced the amount to Rs. 3000/-.

After taking into account not only it can be said that it is evident that even if in cases which are serious from their very disposition the amount of compensation which has been awarded in majority of such cases is actually meager.

4.2.7. Restitution

Restitution is reimbursement for economic loss, which is defined as “*any loss incurred by a person as a result of the commission of an offense.*” When a defendant has been convicted of a crime causing economic loss to another person, the court may order that some or all of the fine imposed be allocated for restitution.¹³⁹ Such reimbursements help the victim in regaining their previous position to the crime or infringement of their rights. For restitution and restoration of property involved in crime to the victim, the following provisions are available:

Section 451 enables a court to sell such property as is subject to speedy and natural decay, involved in crime, during the pendency of the case. The sale-proceeds of such property can be paid by courts after the conclusion of the trial to the victim as ordered by the court. Under Section 452 the court is empowered to return the property to the possession of the person entitled to it after the conclusion of the trial, and Section 456 empowers the court to put the complainant or the victim back into possession of immovable property of which he has been wrongfully dispossessed, after the conclusion of the trial.

Unless the amount of compensation is voluntarily paid by the offender, the only recourse open under Sections 421, 422 or 423 of the *Code of Criminal Procedure*, 1973, which provides for realization of amount of compensation from the fine imposed by the court on the accused while sentencing him for conviction, which is invariably very meagre in amount.

¹³⁷ AIR 1993 SC 1230.

¹³⁸ AIR 1977 SC 1323.

¹³⁹ Retrieved from <<http://www.azcourts.gov/restitution/Home.aspx>> last visited on 28/11/2013, 21:50 IST.

4.3 Legislative Scheme given under the *Fatal Accidents Act, 1855*

The *Fatal Accidents Act, 1855* provides for compensation to the dependants of the deceased persons whose deaths are occasioned by actionable wrong,¹⁴⁰ Court's view in *C.K. Subramania Iyer v. T.Kunhikuttan Nair*¹⁴¹ was that compulsory damages under Section 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss of the beneficiaries. In *M.S. Grewal v. Deep Chand Sood*,¹⁴² where the criminal negligence of the two teachers resulted in the accidental drowning of the 14 school children on picnic, the Court awarded a compensation of Rs 5 Lakhs for each student's family to be paid by the school.

This was separate obligation apart from the negligent teachers. However the disadvantageous feature of civil litigation like delay, cost and cumbersome character of the procedure, the remedy has been blunt instrument.¹⁴³

It is to be noted that every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator, or representative of the person deceased; and in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the court by its judgment or decree shall direct.¹⁴⁴

4.4. Legislative Scheme for Compensation Given under the *Probation of Offenders Act, 1958*

¹⁴⁰ Section 1-A of the Act;” *Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.*

¹⁴¹ AIR 1970 SC 376.

¹⁴² (2001 SCC (Cri) 1426.

¹⁴³ K.I. Vibhute, *Justice to Victims of Crime: A Human Rights Approach*, Eastern Book Co., Lucknow 2004, at pp. 350, 352.

¹⁴⁴ Retrieved from <<http://www.advocatekhaj.com/library/bareacts/fatalaccidents/1a.php>> last visited on 29/11/2013, 18:00 IST.

In the *Probation of Offenders Act, 1958*, the compensatory provision has been given under Section 5 of the Act which reads as follows:

(I) The court directing the release of an offender under Section 3¹⁴⁵ or Section 4¹⁴⁶, may, if it thinks fit, make at the same time a further order directing him to pay:

¹⁴⁵ Section 3 of the Act provides that, *When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) 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 circumstances 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.

¹⁴⁶ Section 4 of the Act states that: “(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, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behavior: Provided that the court shall not direct 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 Sub-Section (1) is made, the court may, if it is of 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, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences 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.*

- (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 costs of the proceedings as the court thinks reasonable.
- (II) The amount ordered to be paid under Sub-Section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.
- (III) 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.

Under Section 5 of the Act Courts have the power of ordering reasonable compensation for loss or injury in the cases where the accused is released on probation or left off with admonition.¹⁴⁷

4.4.1. Court's power to order for the payment of compensation¹⁴⁸

Section 5(1) of the Act deals with the power of the court to require an offender released under Section 3 or 4 of the Act to pay compensation. Any order for the payment of compensation shall be such as the court thinks for the loss or injury caused to any person by the commission of the offence. The court is also empowered to order the payment of such costs of the proceedings as it thinks reasonable.

4.4.2. Compensation to be recovered in the form of fine¹⁴⁹

Sub-Section (2) of Section 5 provides that the amount of compensation ordered to be paid under sub-section (1) may be recovered as fine in accordance with the provisions of Section 386 and 387 of the *Code of Criminal Procedure*, 1972.

4.4.3. Civil Court's Duty regarding amount paid or recovered as compensation¹⁵⁰

Sub-Section (3) lays down that where a Civil Court is trying any suit, arising out of the same matter for which the offender is prosecuted it shall take into account any amount paid or recovered as compensation under Sub-Section (1) in awarding damages.

¹⁴⁷ *Supra* note.1. p.850.

¹⁴⁸ *Supra* note.1.p.877.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

In *Prabhu Ram v. State of Haryana*¹⁵¹ it was held that the court ordering the release of an offender on probation of good conduct may also direct him to pay reasonable compensation to any person who suffered loss or injury due to the offence. The amount of compensation may be recovered as fine.

The powers to fix the amount of fine is entirely within the discretion of the court, limited by the power of the court in imposing the sentence of fine.

4.5. Compensation given under the *Motor Vehicles Act, 1988*

The enormity of the motor vehicle accidents has necessitated adequate provisions for compensating the victims. Under Section 140(1) of the *Motor Vehicles Act, 1988*, "where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the section." The amount of compensation payable under this provision on no fault liability is fixed whereas Section 163-A provides for the payment of compensation according to the formula of the loss of earning ability. Streamlining the whole law along with insurer's liability has reinforced the policy of social security. Likewise decision was held in *Deepal Girishbhai Soni v. United India Insurance Co.Ltd.*¹⁵²

It is to be noted that the amount of compensation which is given under this section is 50,000 in case of victim's death and 25,000 in case of permanent disability of the victim. But looking at the present economy such amounts are actually meager, hence, an amendment must be made in order to increase such amount in order to amplify the deterrent effect. Another thing which is required to be noted is that the court before granting compensation must take into account the condition of the victim in case of permanent disability or the condition and requirement of the victim's family in case of victim's death, as the case may be, and then administer the amount of compensation accordingly.

4.6. Provisions under the *Indian Penal Code, 1860*

¹⁵¹ 1999 Cri LJ 1972 (P & H).

¹⁵² (2004) 5 SCC 385.

In 2013 provisions with regard to the compensation were added in the IPC in Section 326-A¹⁵³, 376-D¹⁵⁴ after the addition of Section 357B in the *Code of Criminal Procedure*, 1973. It is also to be noted that with the addition of Section 357C¹⁵⁵ relief can be administered to the victims of crime under Section 326A, 376, 376A, 376B, 376C, 376D or 376E.

*Gopal Singh v. State of Uttarkhand*¹⁵⁶ in this the Court under Section 324 of IPC gave rigorous imprisonment of one year and further the respondent was awarded Rs 20,000 towards compensation as envisaged under Section 357(3) of the CrPC to victim.

4.7. Provisions under the *Consumer Protection Act, 1986*

In *Indian Medical Association v. V.P. Sanstha*,¹⁵⁷ the Supreme Court gave a landmark judgment in which it gave the parameters of rights and obligations of professionals of allopathic and homeopathic systems of medicine. The Court ruled that the *Consumer Protection Act, 1986*, is applicable on the persons engaged in medical profession either as private practitioners or as government doctors working in hospitals or government dispensaries. It was further held that a patient who is a “Consumer” within the meaning of this Act has to be awarded compensation for

¹⁵³ Section 326A of *Indian Penal Code*, 1860 provides that: *Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine*

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

¹⁵⁴ Section 376D of *Indian Penal Code*, 1860, states that: *Where a woman is raped by one or more persons*

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Continued from last page

constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

¹⁵⁵ Section 357C of the *Code of Criminal Procedure*, 1973, provides that: *All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident".*

¹⁵⁶ AIR 2013 SC 3048.

¹⁵⁷ 1995 AIR SCW 4463.

loss or injury suffered by him due to the negligence of the doctor by applying the same tests as are applied in action for damages for negligence in law of torts.¹⁵⁸

4.7.1. *Quantum of Compensation*

As regards the amount of compensation to be awarded in case of medical negligence the National Consumer Forum in *Sau Madhuri v. Dr. Rajendra*,¹⁵⁹ in which the complainant had been operated in a negligent manner in as much as the surgeon left the forceps inside the body of the patient which caused pain and suffering and endangered her life necessitating another operation, in which some portion of the intestine had to be removed. Following this the National Consumer Forum (after the State Consumer Forum had awarded the sum of Rs. 2,000/- to the complainant) while raising the amount to Rs 10,000/- observed that:

We are of the opinion that no standard criteria can be prescribed for determining the amount of compensation in such like cases. In the present case the period of discomfort and agony are taken into consideration in order to determine the amount of compensation.

4.7.2. *State Liability for Medical Negligence*

The Supreme Court has held that the State Government is vicariously responsible for the negligence of doctors while discharging their duty on the principle of master and servant relationship and liable to pay damages to the victims in such cases. In a significant judgment delivered in February, 1996, the Supreme Court has enlarged the ambit of vicarious liability and extend the reach of *Consumer Protection Act, 1986*. Chandrika Bai a teacher died in 24th July 1963 as the doctors had left a towel in her abdomen after performing the sterilization operation in Aurangabad's Government hospital on 10th July 1963 where she was admitted for delivery. The Supreme Court said that running a hospital could be a welfare activity by the Government but not a sovereign function. The judgment came in the wake of an appeal filed 17 years ago by the deceased's husband and her four children. They challenged the judgment delivered by the Bombay High Court's Aurangabad bench, which denied the petitioners Rs.36,000/- which were awarded as damages by the Trial Court. Setting aside the High Court's verdict the Supreme Court held that

¹⁵⁸ *Supra* note 7, p. 100.

¹⁵⁹ (1996) CPJ 75 (NC).

once death by negligence is established, the State as an employer would be liable to pay damages for the negligence of the doctor.¹⁶⁰

In *State of Haryana v. Smt. Santra*,¹⁶¹ the Supreme Court held that the State Government is liable to pay damages for negligent act of a doctor in performing an unsuccessful tubectomy (Sterilization) at the Government Hospital resulting in the birth of an unwanted child. Smt. Santra filed a suit for the recovery of Rs 2,00,000/- as damages in the Judicial Magistrate Court for medical negligence, which was decreed for a sum of Rs. 54,000/- with interest at the rate of 12% from the date of institution of the case till the payment is made. After the dismissal of appeal in the District as well as the High Court the State Government filed Special Leave Petition (SLP) in the Apex Court on the plea of sovereign immunity. Dismissing the State appeal, the Supreme Court upheld the High Court's finding and rejected the theory of sovereign immunity advanced by the State Government. The Court held that the State Government is under an obligation to pay full damages to enable the respondent to bring up the child at least till she attains the age of puberty.

While highlighting the gravity of population explosion the Court said,

*In the country where the population is increasing by the tick of every second on the clock and the Government has taken up the family planning as an important program for the implementation of which it had created mass awakening for the use of various devices including sterilization operation. The doctor as well as the State must be responsible in damage if the sterilization operation performed is a failure on account of his negligence, which is directly responsible for another birth in the family creating additional economic burden on the person who had chosen to be operated upon for sterilization.*¹⁶²

In *Shakuntala Shaema v. State of U.P.*,¹⁶³ the Mother and her newly born child filed a writ petition under Article 220 of the *Constitution of India*, 1950 in Allahabad High Court in the nature of mandamus commanding the State of U.P. to pay them the sum of Rs. 10,00,000/- as compensation for the indignities and loss of reputation which they have suffered in account of the birth of an unwanted child, in spite of the fact that her husband underwent vasectomy operation. According to the petitioned, she was led to believe that after the said operation no child would be born, but even after the said operation she became pregnant. After coming to know of the facts, she was

¹⁶⁰ *Supra* note 7, p. 101.

¹⁶¹ AIR 200 SC 1888.

¹⁶² *Supra* note 7, p. 102.

¹⁶³ 2000 All LJ 1550.

mentally disturbed, her reputation as a devoted Hindu wife became suspicious, even her husband started doubting her character, her relations with in-laws became strained, comments and remarks of their neighbors became unbearable and she had to live under mental agony and torture.

Allowing the Petition, Justice Raza of Allahabad High Court held that:

A woman carrying a stigma on her character cannot live a meaningful life of dignity and respect (as envisaged under Article 21 of the Constitution). Such a lady will have to live under trauma of insult, humiliation and shame. The petitioner was subjected to indignities not because of her own fault, but because of the fault of the medical practitioner who conducted the operation on her husband.

Therefore the Court accordingly awarded a sum of Rs. 1,00,000/- to the petitioner No. 1 (Mother) for mental agony and torture, insult and humiliation, which she has faced as well for the expenses she had incurred in bringing up the child. The Court further said that since the Petitioner No.1 never wanted another child who was born due to negligence and callous attitude of the surgeon, who is an officer of the State, it is therefore the duty of the State to maintain the child. Hence, the State Government was directed to award a sum of Rs. 50,000/- to the petitioner No.2 (Child), which shall be deposited in a fixed deposit in a bank in his name under the guardianship of the Mother and spend for food, clothes and education of the child, till he attains the age of majority. This was a welcome judgment.

In the last three cases what positive we can see is that the State took the primary responsibility for the payment of compensation to those persons who were victimized because of the acts done by its servants. Therefore, just like this the State must always endeavor to extend its helping hand to the victims especially by administering them with sufficient amount of compensation so that their plight as mentioned previously can be obviated to the best possible extent.

4.8. Provisions under the *Constitution of India, 1950*

Social and economic justice is the signature tune of the Indian Constitution. It guarantees fundamental rights which cannot be ordinarily derogated from. For the protection of these rights, the *Constitution of India, 1950* has provided for writ remedies enforceable by the High Courts and the Supreme Court.¹⁶⁴ Often these rights are violated by the State, though in some cases private parties may also be involved. An important dimension of these remedies is the award of

¹⁶⁴ Articles 226 and 32 of *Constitution of India, 1950*.

compensation as part of the relief that can be granted to the affected person. This arises from the fact that not only does the State have a legal duty in protecting the rights guaranteed, but also a social duty to compensate the affected, when State violates these rights.¹⁶⁵ Through the various decisions of the Courts in India it may be stated that this dream of human rights enthusiasts is now an obligation of the state¹⁶⁶. The rights have been interpreted to imply a contract between the State and the citizens a breach of which may be regressive monetarily.¹⁶⁷

The question of liability to compensate for infringement of fundamental rights was first raised in the *State of Bihar v. Bhagalpur Binding*.¹⁶⁸ The Supreme Court refused to order compensation under its writ jurisdiction until *Rudul Sah v. State of Bihar*¹⁶⁹ where the unfortunate detainee suffered detention for 14 years, even after trial court's acquittal. In this case petitioner who was detained in prison for over 14 years after his acquittal filed a habeas corpus petition under Article 32 of the *Constitution of India*, 1950, praying for his release on the ground that his detention in the jail was unlawful. He also asked for certain other reliefs including compensation for his illegal detention. When the petition came up for hearing the Court was informed by the respondent State that the petitioner had already been released from the jail.¹⁷⁰ In this case the honorable Supreme Court directed the State to pay the compensation of Rs 35000, as there was the violation of the fundamental right given under Article 21.

Y.V. Chandrachud the then CJI observed for the Court

One of the telling ways in which the violation of that right can reasonably be prevented and due compliance of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which are in the name of public interest and which present for their protection the powers of the state as a shield. If civilization is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true

¹⁶⁵ Leelakrishnan. "Compensation for Lawlessness". XVII C.U.L.R. (December 1992).

¹⁶⁶ P. Srikrishna Deva Rao. *Custodial Deaths in India, Critical Inquiry into Law*, as quoted in, P.Ishwara Bhat, *Law and Social Transformation*, Eastern Book Company, Lucknow, 2009.

¹⁶⁷ *ibid.*

¹⁶⁸ AIR 1981 SC 928.

¹⁶⁹ AIR 1983 SC 1086.

¹⁷⁰ Retrieved from <<http://indiankanoon.org/doc/810491>> last visited on 28/11/2013, 22:57 IST.

*bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.*¹⁷¹

So basically Justice Y.V. Chandrachud in his observation mainly mentioned that in case if a public official does not do his duty in a proper manner then a recourse shall be taken against him he shall be severely dealt with and compensation is to be considered as a way to relieve the victim of his/her pain.

It is important to note that the sole repository of the victim's fundamental rights is Article 21 of the Constitution which deals with, *Right to life and personal liberty*, which is available to everyone irrespective of his being accused or victim. Also, it is trite knowledge that the adversarial system zealously protects the liberty of individual and the protection extends to the perpetrator of crime as well. Often this leads to the compromise of victim's rights and the victim feels letdown and left out by the system.¹⁷²

In view of the fact that along with compensating the victim the officers responsible for deprivation of right should be held personally liable in the ultimate analysis in order to promote legality by spreading ripples of deterrence and communicating the message of liability to the right point,¹⁷³ the thinking of Y.V. Chandrachud is on the right direction. The trend of awarding compensation in cases of unjustified detention given in *Bhim Singh v. State of J&K*,¹⁷⁴ unreasonable beating given in *Saheli v. Commissioner. Of Police*,¹⁷⁵ arbitrary handcuffing given in *State of Maharashtra v. Ravikant Patil*¹⁷⁶ and custodial death *Sebastian M. Hongray v. Union of India*¹⁷⁷ has been continued along with suggestion for recovering the damages from the erring public servants or apportioning their responsibility with that of the government.

¹⁷¹ *Supra* note 169.

¹⁷² *Supra* note 7, p. 76.

¹⁷³ *Supra* note.1.p.125.

¹⁷⁴ (1985), 4 SCC 677: AIR 1986 SC 494.

¹⁷⁵ (1990) 1 SCC 422: AIR 1990 SC 513.

¹⁷⁶ (1991) 2 SCC 373.

¹⁷⁷ (1984) 3 SCC 82.

In *Bhim Singh v. State of J & K*¹⁷⁸ Bhim Singh an MLA was arrested by the police only to prevent him to attend the Legislative Assembly, the Court here not only entertained the writ petition of his wife but also awarded the compensation of Rs. 50,000 to be paid by the State.

Custodial death is another burning issue where the courts have awarded compensation to the victims of crime because this area of custodial death seems to be one of the areas of high judicial activism, with respect to the grant of compensation.

In *Nilabati Behra v. State of Orissa*¹⁷⁹ the son of the petitioner was arrested by the police and next morning his body was found laying down with several injuries on the railway track. The honorable Supreme Court in this case awarded the compensation of Rs.1,50,000 to be paid by the State.

A.S Anand, J. in this case observed as follows:

*It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have molded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interest of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned.*¹⁸⁰

*SAHELI v. Commissioner of Police*¹⁸¹ is the leading case on custodial death where the son of Kamlesh Kumari died due to the ill treatment by a Sub- Inspector of Delhi Police, the honorable Supreme Court directed the Delhi Adm. To pay the compensation of Rs 75,000.

One of the most important case under the heading of custodial death is *Mrs. Cardino v. UOI*,¹⁸² where although the accused was arrested on the charge of misappropriation of some plastic ware and hospital; utensils worth Rs 1500, but was tortured like a hardcore criminal and hence, succumbed to the torture. Here when the matter was brought in front of the

¹⁷⁸ 1984 Supp (1) SCC 504.

¹⁷⁹ (1993) 2 SCC 746 at p. 769.

¹⁸⁰ *ibid.*

¹⁸¹ 1989 SCR 488.

¹⁸² 2007 Cri LJ 1758.

honorable High Court of Bombay it administered the compensation of Rs.2,00,000 to be paid by the state.

After taking into account these cases it can be said that the Supreme Court has taken a clear stand of awarding compensation where the detention resulted in the person's death, which has been described as a barometer in the award of compensation. But it is actually not the correct test and will lead to arbitrariness in its application, which we can see in the aforementioned cases. It is also to be noted that among the all High Courts it is only the Guwahati High Court from which a number of cases have been reported, but this does not mean that there are no custodial deaths elsewhere. An inference can thus be drawn that in a majority of High Courts, this remedy has not been utilized. In *Lasith v. D.G.P*¹⁸³ it was held that another drawback is the tremendous delay and the trend also seems to be to award compensation to only the wives and not to the other dependents.

4.8.1. *Compensating the Rape Victims*

Regarding the duty to compensate the rape victims, it was viewed in *Delhi Domestic Working Women's Forum v. Union of India* that it is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment. 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 the pain, suffering and shocks as well as the loss of earnings due to pregnancy and the expenses of the child, but if this occurred as a result of the rape.¹⁸⁴

In *Baundhisattwa Gautam v. Subhra Chakraborty*¹⁸⁵, it was held, if the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, then in that case there is no reason to deny to the Court the right to award interim compensation. On the basis of the principle set out in the aforesaid decision in *Delhi Domestic Working Women's Forum*, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying

¹⁸³ 1989 Cri.L.J. 1732.

¹⁸⁴ (1995) 1 SCC 14.

¹⁸⁵ (1996) 1 SCC 490; AIR 1996 SC 922 at para 18.

the offence of rape which, as pointed out above is an offence against the basic human rights and also the Fundamental Right of Personal Liberty and Life.

It is to be noted that the Apex court has come to the rescue of the victims of sexual assault by holding that interim compensation may be awarded to a rape victim even during the pendency of the criminal trial. The Court has said on more than one occasion that the victim of rape, must be compensated, though there can be no compensation for what she has suffered or lost, as the same 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.¹⁸⁶ This philosophy is actually reflected in *Kunhimon v. State*,¹⁸⁷ where five accused committed rape on a rustic young girl. The High Court of Kerala, justifying the necessity of compensation to the rape victims observed that the courts should enforce the conscience of law as seen in Section 357 of the Code to force the accused to pay a fine of Rs. 3,000/- each and to one accused Rs. 10,000/- to be paid as compensation to the victim of rape. Taking into account the seriousness of the matter, the Supreme Court, suggested the Government to set up Criminal Injuries Compensation Board, in order to award compensation to the victims of rape, whether or not a conviction has taken place. At the same time the Court has directed the trial courts to award compensation to the victims of sexual assault on conviction.¹⁸⁸

It is to be seen that the crime of rape is not only against the body, but also against the mind. The victim in such cases is completely shattered. The compensation should be given on a case-to-case basis. For instance, the victims in serious rape cases and those hailing from poor families should be given greater compensation.

4.8.2. Negligence of Police in dealing with Injured

In this area interestingly enough, the courts attention have been drawn by events that attract considerable media attention, such as the shabby treatment to those injured in the police firing in the Mandal agitation, covered by the video magazine *Newstrack* in *Susheela v. State of Karnataka*.

¹⁸⁶ *Supra* note 7, p. 97.

¹⁸⁷ (1988) Cri LJ 493).

¹⁸⁸ *Supra* note 7, p. 98.

¹⁸⁹ In *P.V. Kapoor v. Union of India*¹⁹⁰ it was held that the police is also accountable if care or medical attention has not been accorded. This area it is has shown the way for the courts to rely on the evidence of the media, especially in respect of incidents concerning police crimes, wherein adequate evidence or witnesses may otherwise be lacking.

4.8.3. Encounter deaths and Police Firing

The important aspect of this area in awarding compensation is the fact that the highest court of the land in *S.C.L.A.C. v. Union of India*¹⁹¹ has recognized that the vehemently denied encounter deaths do take place this it is submitted. Constitutes a recognition of the reality, but this is only the tip of the ice berg. Details of these incidents are shrouded in secrecy and the award of compensation should be accompanied by directions to produce all relevant material that exists on these outrages. In *P.U.D.R. v. State of Bihar*¹⁹² a quest was made for a formula to award compensation in respect of police firing. This, it is submitted deserves immediate judicial attention.

4.8.4. Common Law Remedy for regulating Compensation through Writs

In *Nilabati Behra v. State of Orissa*¹⁹³ it was observed that awarding compensation in relation to a custodial death has held that the claim in public law for enforcement of fundamental rights is distinct from the claim in private law for tort damages. The case has in effect, created a new remedy for violation of fundamental rights which is part of the constitutional common law: that is, the contribution of decisions of courts of law in developing constitutional law. Whether this right will become a fundamental right remains to be seen.

4.8.5. Law Commission and Committee Report on Victim Compensation

The Fifth Law Commission in its 42nd report (1971) recommended for inclusion of one provision in IPC enabling the Court to direct that the whole or part of fine realized from the offender be paid as compensation to the victim. One of the members of, Justice R.L. Narsimha, suggested for inclusion of a statutory duty (proposed Section 70-A) upon the offenders to pay compensation to

¹⁸⁹ 1991 Cri. IMI. 2675.

¹⁹⁰ 1992. Cri. LJ. 128.

¹⁹¹ (1991) 3 SCC 482.

¹⁹² 1991 (2) SCALE 463.

¹⁹³ 1993 SCR (2) 581.

the victims of offence against human body, property, privacy, reputation, as an additional punishment. In 1997, the Fourteenth Law Commission viewed in its 156th report that the question of fine as additional punishment was problematic in some circumstances and that the proposal for victim compensation scheme as suggested in its 154th report and its recommendation in 152nd report for compensating the victims of custodial crimes and the Tamil Nadu victim compensation fund may be taken into consideration acting upon the request made by the Central Government to comprehensively review the working of scheme under Section 357, the Law Commission examined from the perspective of victimology and made the following findings:

1. The efficacy of Section 357 of the *Code of Criminal Procedure, 1973*, is doubtful because of its meager application by the Courts, and its expanded scope by itself will not be sufficient;
2. Compensation should not be confined to fines, penalties and forfeiture realized, but State should assist victims of crime;
3. State's duty to compensate is theoretically justified because of its basic duty to protect people and property by the enforcement of law and also because of failure of welfare system that resulted in continuation of poverty, unemployment, discrimination and insecurity;
4. State's duty to compensate has constitutional underpinnings because of the provisions in part 3, 4 and 4-A of the *Constitution of India, 1950*. (Articles 14, 21, 22, 23, 24, 32, 38, 39-A, 41, 51-A).

The recommendations made by the Law Commission in its 156th report are as follows:

1. Inserting of a mandatory provision in the *Code of Criminal Procedure, 1973*, notwithstanding Section 357, imposing a duty upon the Criminal Court to award compensation not less than Rs 25,000 and rupees one lakh respectively to persons who sustain bodily injury not causing death during custody and victims of custodial death with a joint and several liability of the convicted public servant and the concerned government;
2. Insertion of legal provision imposing obligation upon every State Government to formulate, in co-ordination with the Central Government, a scheme for providing funds for compensating the victims of crimes or their dependants who suffered loss or injury as a result of the crime who required rehabilitation;
3. The said scheme shall be administered by the District Legal Service Authority (DLSA) and State Legal Services Authorities (SLSA) constituted under the *Legal Services Authorities Act, 1987*;

4. The Trial Court may, at the conclusion of the trial, if satisfied that the compensation awarded under Section 357 is inadequate for rehabilitation, recommended to District Legal Services Authority for award of compensation, if in its opinion is less than Rs 30,000, or may recommend to State Legal Services Authority, if the proposed amount is more than Rs 30,000;
5. Where the offender is not traced or identified, but the victim is identified, and no trial takes place, the victim or his dependants may make an application to District Legal Services Authority or State Legal Services Authority, as the case may be, for award of compensation;
6. District Legal Services Authority or State Legal Services Authority, as the case may be, may order for immediate first aid facility or for medical benefits to be provided free of cost in order to alleviate the suffering of the victims;
7. District Legal Services Authority or State Legal Services Authority, as the case may be, should have special consideration while compensating the victims of custodial crimes, rape and child abuse and physically and mentally disabled victims of crime.

Efforts have been put by the independent agencies to formulate their models to compensate the victims. The Victim Compensation Bill, 1995 prepared by the Indian Society of Victimology, the National Law School of India University (NLSIU) Bill and Professor Madhava Menon's proposal are products of such efforts. All these models suggest for establishing Victim Compensation Fund and provide compensation to the victims of crime who do not have criminal records and need criminal rehabilitation. The NLSIU bill proposes to compensate the victims or their dependent irrespective of outcome of trial, establishing of hierarchy of victims assistance authority and funds at District, State and National levels and suggest methods of computing compensation on the basis of "percentage points of disability".¹⁹⁴ Madhva Menon's paradigm of Victim Compensation Fund presupposes sources from governmental grants, court fee, collection of fines on conviction, donation from public (with income tax exemption), cess on pleadings, punitive damages, bail bond forfeitures and wages earned by prison labour.¹⁹⁵ He suggests for constituting Compensation Board for its management with diverse representation and links with Legal Services Authorities.

¹⁹⁴ *Supra* note, 143, p. 387.

¹⁹⁵ *ibid*, p. 365.

Compensating the victims of serious crimes, exclusion of victims who have criminal record and who suppress facts and its liberal administration to benefit children have been suggested.

Justice Malimath Committee, 2003, on criminal justice reforms observed:

Victim compensation is a State obligation in all serious crimes, whether the offender is approached or not convicted or acquitted and recommended for enhancement of fine under IPC by fifty times and for passing of a comprehensive law on victim compensation with creation of a victim compensation fund to be administered by the Legal Services Authority. It was suggested that the proposed law should spell out the scale of compensation in different offences; point out the categories of offences in which it shall not be awarded; and the condition subject to which compensation shall be awarded. Fines, funds generated by Criminal Justice System and public contribution were expected to be substantial source.

4.9. Conclusion

After taking into account the aforementioned material it can be said that in the *Code of Criminal Procedure, 1973*, provisions with regard to victim compensation have been administered, but these provisions are of such a disposition that they seem to be favoring the accused more and not the victim because under these provisions the Court while deciding the amount of compensation takes into account the paying capacity of the accused rather than considering the victim's plight and his dire need for rehabilitation. Another thing is that in some sections the amount of compensation is not enough if we take into account the present economy and if the provisions of a particular sections are elegant such as Section 357-A then in that case the provisions actually are not implemented. Moreover the judges while granting compensation do not take into account the plight of the victim rather they are more inclined toward the rights of the accused, hence this is a darker side of the Indian judiciary with regard to the granting of compensation to the victims of crime.

CHAPTER-5

**POSITION OF VICTIMS OF CRIME UNDER VARIOUS LEGAL SYSTEMS OF THE
WORLD**

5.1. Introductory

The role of victims in criminal justice prosecutions has changed dramatically over the centuries in common law countries- from an eye-for-an-eye system in which victims were expected to deal with offenders directly, to a system in which the monarch assumed the duty of imposing punishment, to the present system in which a Government prosecutes a defendant on behalf of the State and the victim is relegated to the role of lead witness. For most victims, even their role as witness never materializes. As a result of attrition in the criminal process, most cases do not result in arrest, much less prosecution. Many crimes remain unreported to the police, and for those that are the offenders are charged in only a portion of incidents. Some charges are subsequently stayed

or withdrawn by the prosecutor acting in public interest because there is no reasonable prospect of a conviction. In a large percentage of cases- estimates range as high as 90% the offender enters a guilty plea following negotiations with the prosecutor, obviating the need for a trial. The victim therefore has no opportunity to testify.¹⁹⁶ If the offender pleads guilty to a much less serious offence than the crime with which he or she was charged, the victim often feels let down by the criminal process. In this scenario, the victim's role is as a backup- a threat waiting in the wings if the plea bargaining breaks down. Unlike continental systems the adversarial system does not accord victims full standing in the prosecution of the offenders, and until fairly recently victims provided no fairly input into handling or disposition of the offenders. Even today, in most states, most victims' legal rights have no remedies for non enforcement- they are only courtesies to be extended or withheld at the discretion of the police or the prosecutor.¹⁹⁷ The outcome is a curious blend of independence and dependence with the result that victims have little influence over whether the state chooses to proceed against offenders. At the same time the state is highly dependent on the cooperation of the victims, without which the criminal prosecution is unlikely to succeed. Despite this reality over the last decade, legally enforceable rights with remedies for non-enforcement at federal level have been recognized at federal level (e.g., the *Crime Victims' Rights Act* of 2004) and in some states. This form of participation, referred to as the third wave of the victims' rights", provides victims with standing in criminal proceedings to assert their rights and receive remedies when they are breached.¹⁹⁸ This chapter mainly deals with the position of victims in US, EU, U.K and its comparison with the position of the victims in India.

5.1.1. Participatory Rights for Victims of Crime

The development of victim related policies and the enactment of the victims' "rights" has become a standard feature of common law jurisdictions. Although most countries do not provide victims with legally enforceable rights in courts, the term "rights" is frequently employed by politicians,

¹⁹⁶ It is important to note that in some cases-particularly rape- it may be to the advantage of the victim to be spared the need to testify, which carries the likelihood of cross examination. Indeed, this is one of the justifications for imposing a less severe sentence on the offenders who plead guilty.

¹⁹⁷ Robert C. Davis et al., *Victims of Crime*, Sage Publications, 2013, p.252.

¹⁹⁸ *ibid.*

academicians, and media to designate an array of different expectations or entitlements that victims should expect from justice system.¹⁹⁹

Until the 1970's the crime victims were invisible to the general public and had little profile within criminal justice system. The names of high profile offenders were well recognized: Charles Manson, Peter Sutcliffe and Ted Bundy. Their victims however remained unknown. Public and media attention continues to focus on offenders and still overlooks their victim. However, this is no longer true for the criminal justice system. The government of most Western nations have legislated many victim rights and created a wide range of services for the victims of crime. Victims have the rights to receive information about the status of the case in which they are involved, and they also have the right to apply for psychological and financial assistance.²⁰⁰

It is important to note that in the early 1970s victims began to exert more influence over the decisions taken in the criminal justice system. This was largely due to an alliance of feminist scholars and advocates (advocating to improve the treatment of victims of rape) and law-and-order groups (lobbying to “get tough” on crime). As a result of their combined efforts, criminal justice systems were adapted to make the justice system more sensitive to victims' needs and concerns. Efforts initially focused on responses to the economic and psychological problems that the victims experienced as a result of the crime, leading to the creation of the programs that addressed the psychological consequences of the crime. For instance, rape shield laws were enacted to limit the scope of defense efforts to introduce a victim's past sexual history in evidence at trial. In a similar way, domestic violence laws were enacted that are distinct from other laws against assault. Police departments began to offer specialized training regarding the investigation of crimes of sexual aggression and the need of rape and domestic violence victims. These reforms were motivated by a realization that the criminal justice system would benefit by treating victims with more sensitivity.²⁰¹

Victimization surveys at the time revealed that a large proportion of crimes were not reported to the police, because among other reasons victimized citizens were apprehensive about how they

¹⁹⁹ Retrieved from<<http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/rd6-rr6.pdf>> last visited on 13/03/2014, 14.39 IST.

²⁰⁰ Robert C. Davis et al., *Victims of Crime*, Sage Publications, 2007, p.278.

²⁰¹ *Supra* note 200, p.280.

would be treated by the justice system and whether they would be believed or not. Studies done at that time also showed that the victims and witnesses were “uncooperative” with respect to prosecutorial efforts to bring offenders to justice because they were intimidated by the criminal justice system. Accordingly, victim witness assistance units were established to respond to victims’ desire for better treatment and information, as well as to address the State’s need for cooperative witnesses. Today such units form parts of most Western criminal justice systems and provide a variety of services to crime victims from first contact with the police from the sentencing of the offender. Victims began to be notified when hearings were scheduled so that they would not be kept waiting in court unnecessarily. In many courthouses, separate waiting rooms were established for defense and state witnesses;²⁰² the main reason behind this is that in those times victim and the accused person came in close contact at the courthouse.

More importantly in many jurisdictions victims also enjoy participatory rights throughout the criminal process. Although most rights and benefits for victims have been generally accepted, the right to participate in the judicial process has proved controversial and proved to be the subject of heated debate. Victim participatory rights apply throughout the criminal justice process. They pertain to hearing on bail or pre-trial release of the offender, through plea agreements or sentencing, to post trial relief or release hearings, including probation and commutation or pardon hearings. Victim participation is buttressed by laws that mandate victim notification, protection, and financial compensation in the event that they incur expenses in the course of participating. For instance, notification applies to the victim or victim’s family who should receive advance notice of proceedings where the victim has the right to attend and/or make a statement as well as when hearings have been cancelled and rescheduled. The right to protection from intimidation and harassment by the offender or the offender’s family or associates may be extended to the victim’s family members. The participation of victims whose victimization renders them particularly vulnerable to intimidation, such as domestic violence, is facilitated by rights that ensures police escorts to and from court, secure waiting areas separate from that of the accused and his/her family during court proceedings, and witness stand that are shielded from the direct view of the offender.²⁰³

²⁰² *ibid.*

²⁰³ *Supra* note 200, p.278.

5.1.1.1. *Position in US (Claim for Participatory Rights)*

Victims' rights have also assumed a constitutional dimension in the United States. The proposed victims' Rights Amendment to the U.S. Constitution would establish various participatory rights for crime victims nationwide, with remedies in cases of noncompliance. These rights include notification of guaranteed admission to and the right to speak during the course of legal proceedings, including pretrial release, plea bargains, sentencing, and parole. The amendment would also require the courts to consider victims' interests to ensure that trial occurs without "unreasonable delays," and to consider victim's safety when the prisoners are considered for conditional release from prison.²⁰⁴

It is imperative to note that to be enacted; the proposed amendment requires a two-third vote in U.S. Congress (both the Houses and the Senate) as well as ratification by two-thirds of all states. To date, despite campaigns for its passage and joint resolutions presented in Congress, the proposed Victims' Rights Amendment has failed to gain necessary support. The principal argument against its passage has been that victim participation can be accomplished by enforcing existing laws found in state constitutional amendments or statutes. Although the initial reforms that provided victims various services and rights were welcome, crime victims demanded more than sympathy and support; they wanted to have a voice in the criminal justice system. A number of studies have found that while some victims prefer to stay out of the criminal justice system, many others wish to participate. Moreover, the need to accord the victims participatory rights has been recognized by many national committees established to study victims in the criminal justice process, of which the following examples are-

- I. United States: the President's Task Force on Victims of Crime (1982);
- II. Canada: the report of the Standing Committee on Justice and Human Rights (1998);
- III. New Zealand: the Victim's Task Force (1987); and
- IV. England and Wales: Justice Committee on the role of the victim in criminal justice (1998).²⁰⁵

²⁰⁴ *Supra* note 197, p.252.

²⁰⁵ *Supra* note 200, p.278.

The *President's Task Force on Victims of Crime*, a particularly important undertaking that explored victims' personal experiences, revealed the extent of their secondary victimization as a result of their treatment by the criminal justice system. The international community has also recognized the need to integrate victims in the criminal justice process. In 1985, the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted a declaration (the Declaration for Basic Principles of Justice for Victims of Crime and Abuse of Power) that allowed the victims be allowed to present their views and concerns at appropriate stages of the criminal justice process.²⁰⁶

5.1.1.2. *Emergence of Victim Participation Reforms in United States*

In the midst of this debate, a new generation of participatory reforms emerged. Many of these reforms were prompted by the recommendation of the President's Task Force on Victims of Crime (1982) that the sixth amendment be amended to guarantee victims a right to be present and to be heard at all critical stages of a judicial proceeding. Most States in the United States adopted laws that address victims' right to be present in the proceedings by excluding victims from the sequestration requirements or otherwise accommodating their wish to participate. In 1991 'Omnibus Crime Bill'(Pub.L.NO. 101-647) state that the victims have a right *to be present at all public court proceedings related to the offense*. Title V, the *Victims Rights and Restitution Act* of 1990, provides that victims in federal courts have rights to restitution; to be present *at all the public court proceedings related to the offense* (unless the court determines that the victim's testimony would be affected by the testimony of others at trial); to confer with the U.S. attorney; and to be informed of the arrest, conviction, sentencing, imprisonment, parole, release or death of the offender. Many states in the United States have enacted victims' bills of rights that vary in scope, from mandating the criminal justice officials show respect towards victims, to establish victims' rights to be present and heard, to allowing victims to sit at the prosecutor's table during trial. In several states, victims' rights legislation is by specific statute. A substantial number of states have adopted constitutional amendments to give victims' rights greater permanence and visibility. The majority of states also allow victim participation in sentencing and parole hearings. States also provide for victim participation in plea bargaining. For example, crime victims in Arizona have the right to be consulted with

²⁰⁶ *Supra* note 197, p.252.

respect to any potential plea agreement. Furthermore, prosecutors are required to demonstrate that they have complied with victims' rights legislation. However the extent to which the victims are allowed to participate in plea discussions varies widely, with no state providing victim the right to veto plea agreements.²⁰⁷

5.1.1.3 *Hesitation on Part of Victims and Remedies*

It should be noted that many victims are hesitant or unwilling to partake in the arrest and prosecution of their violators. This is particularly true of battered women, who list as barriers to prosecution reasons such as fear of retaliation, issue of privacy and emotional and financial dependency on the abuser. Reforms have addressed these circumstances through laws that require police to make arrests regardless of whether the victim signs the complaint. Similarly, prosecutors are allowed to proceed with a case even if the victim refuses to cooperate, this is known as “no-drop” policy. Mandatory arrest laws and no-drop prosecutorial policies recognize that victims of domestic violence are especially vulnerable to retaliation for pressing charges and therefore remove this decision from victims. These reforms however create a potential conflict with the principal goal of victims' advocates: to give victims a say in that affect their lives. Accordingly, some battered women's advocates and feminist scholars have criticized the mandatory elements of these policies, arguing that coercing victims to participate further disempowers them.²⁰⁸

5.1.1.4 *Participation and Protection of Vulnerable Victims*

The participation of vulnerable victims- such as victims of domestic violence- is facilitated by rights that ensure police escorts to and from court, secure waiting areas separate from those of the accuse and his or her family during court proceedings, and witness stands shielded from direct view of the offender. This protection is particularly significant if a victim is a child in which case many courts now allow videotaped testimony to be used to protect the child from the trauma of the courtroom and further exposure to the accused. Other special circumstances

²⁰⁷ *Supra* note 197, p.254.

²⁰⁸ *ibid.*

allow for closure of the courtroom to those that are not parties to the case and for the residence relocation of victims.²⁰⁹

5.1.1.5 *U-Visa Concept*

In the current globalization era, marked by mass immigration to desired destination countries such as United States, Canada and Australia, governments have established measures to encourage vulnerable victims (for example, undocumented or battered women) to report victimization and participate in proceedings. In the United States the U visa is aimed at providing undocumented immigrants with legal residence if they cooperate with law enforcement, thereby overcoming their fear of deportation. Battered immigrant women, who are otherwise dependent on an abuser for legal residence can utilize “self-petition” procedures to receive their visa and, if they so wish, participate in proceedings against the abusers.²¹⁰ It is imperative to note that there are other jurisdictions which have adopted various type of legislation dealing with the rights of victims, but not to the extent to which the United States has adopted. Hence, it can be said that United Nations play a leading role as far as the administering of rights to the victims in the criminal justice system.

5.1.1.6 *Victim Impact Statement*

Of all the participatory reforms, victim input into sentencing decisions, or victim impact statements (VISs), have attracted the most opposition. The VIS is a statement in which the victim describes the impact of the crime on his or her life, including physical, financial, social and psychological harms. In many jurisdictions relatives of a homicide victims or the dependants of parents whose life savings were misappropriated by a fraudulent defendant may provide input regarding their suffering into sentencing.²¹¹ VIS actually aids the victim in telling about his/her plight to the court as a result of which the victims are aided psychologically because they get a feeling that participation has been done on their part. It also aims to obviate secondary victimization to a great extent.

²⁰⁹ *ibid.*

²¹⁰ *ibid.*

²¹¹ *id.*,p.255.

A victim impact statement is a written or oral statement made as part of the judicial legal process, which allows crime victims the opportunity to speak during the sentencing of their attacker or at subsequent parole hearings. In some instances videotaped statements are permitted.²¹² It is imperative to note that in case if the victim dies as a result of the crime committed against him, then in that case the opportunity of giving VIS is administered to the victim's family members. But if such a scene accrues then in that case there is a great chance that the punishment may be less harsh.

It is important to mention that in US, the VIS used at the time of sentencing of defendants and in many states, at parole hearings, is actually considered as one of the most effective tools which the victims have in the fight against crime. All fifty states now allow some form of victim impact information at sentencing. Most states allow either oral or written statements, or both, from the victim at the sentencing hearing, and require the victim impact information to be included in the pre-sentence report, given to the judge prior to the imposing sentence.²¹³

In a majority of States, victim impact statements are also allowed at parole hearings, while in other states a copy of the original statement is attached to the offender's file to be reviewed by the parole board. Some states allow these statements to be updated by the victims, to include any additional impact the original crime has had on their lives. In fact in few states the VIS is also allowed at bail hearings, pre-trial release hearings and even pre bargain hearings.²¹⁴

For most victims of crime, these statements provide them with an opportunity to focus the Court's attention on the human cost of the crime and allow victims to be part of the criminal justice process. More than 80 percent of crime victims who have given such statements consider them to be a very important part of the process, according to a survey by National Center for Victims of Crime. In some states, but not all, the law allowing VIS specifically requires the judge or parole board, as the case may be, to consider the statements in making a

²¹² Retrieved from<http://en.wikipedia.org/wiki/Victim_impact_statement> last visited on 18/04/2014, 08:24 IST.

²¹³ Retrieved from<http://www.1800victims.org/victims.org/victims_rights/victim_rights_justice%20system.htm> last visited on 18/04/2014, 10:23 IST.

²¹⁴ *Supra* note 37, p.72.

decision. In those States, the victim statements indeed have more impact on the judicial process and outcome.²¹⁵

The first VIS was actually made in 1976 by a person named Fresno County, California, probation officer James Rowland.

Typically a VIS will contain the following;

1. The physical, financial, psychological or emotional impact of the crime;
2. The harm done to family relationship by the crime, such as a loss of a parent or caregiver;
3. Descriptions of medical treatment or psychological services required by the victim as a result of the crime;
4. The need for restitution; and
5. The victim's opinion of an appropriate sentence for the offender.²¹⁶

6.2.1.6.1. Purposes of Victim Impact Statement (VIS)

1. First and foremost purpose is to allow the person or persons most directly affected by the crime to address the court during the decision making process;²¹⁷
2. Due to its disposition it personalizes the crime which results in the elevation of the victim's status;
3. To aid the victims psychologically by making sure that they have participated in the criminal justice process by having a saying in the matter;
4. To obviate secondary victimization;
5. For the purpose of the proper execution of victim's right to speak during the trial; and
6. To aid the court in knowing precisely about the harm suffered by the victim due to the crime committed against him, so that the court can give appropriate punishment to the offender.

6.2.1.6.2. Arguments in favor of Victim Participation

²¹⁵ *ibid.*

²¹⁶ *ibid.*

²¹⁷ *ibid.*

1. It recognizes victims' wish to be treated as a party to the proceedings and with dignity;²¹⁸
2. It reminds judges, juries, and prosecutors that behind the "state" stands an individual with an interest in how the case is resolved;²¹⁹
3. If the VIS is accurate then in that case there is a great chance that the punishment administered by the court of law will be proportionate to the crime committed by the offender;
4. It also aids the victim in recovering from the ordeal which the victim had gone through because of the crime committed against him;
5. It also aids the victims in correcting the misconceptions created with regard to them by the media; and
6. It makes sure that during the court proceedings the victim is not just a mere spectator, but an active participator in the court proceedings, participating for his interest.

5.1.1.8 Arguments against Victim Participation

1. First and foremost argument is that because of victim participation vengeful justice will take birth;
2. Secondly, it will slow down the judicial process;
3. Thirdly, it has been argued by the legal professionals and scholars that victim input violates the fundamental principles of the adversarial legal system, under which the victim is actually not considered as a party to the court proceedings;
4. Fourthly; it has been argued that VIS may create unrealistic expectations in victims that are not or cannot be met, for instance, if a judge imposes a sentence that is at odds with the victim's wishes as expressed in a VIS, the victim may become resentful.²²⁰ Due to this there is a great chance that the victim may get a feeling that submitting a VIS on his part was actually in vain; and

²¹⁸ *Supra* note 197, p.255.

²¹⁹ *ibid.*

²²⁰ *ibid.*

5. Lastly, there is one more argument which has been made on ideological grounds by the opponents of victim input. They argue that victims have been exploited by a conservative “law-and-order” ideology whose real goal is to get tough on offenders, not to help victims, suggesting that reform euphemistic label to camouflage efforts to make sentencing harsher.²²¹

5.1.1.9 *Legal Rights for Crime Victims in the US Criminal Justice System*

The development of the victim related policies and the enactment of victims’ rights has become a standard feature of common law jurisdictions. Although most countries do not provide victims with legally enforceable rights in courts, the term rights is frequently used by politicians, academicians, and the media to designate an array of different expectations or entitlements that victims should expect from the justice system. Victim rights in this broader sense can be divided into two separate categories: *service rights* and *procedural rights*. Service rights are initiatives that aim to provide victims with better treatment in and experience of criminal justice system. Procedural rights on the other hands provide victims with a more central participatory role in the decision making process.²²²

In US the main thrust is upon procedural rights, i.e. the focus is put upon victim’s participation in the criminal proceedings. It must be noted that all these rights are mainly entrenched in the statutes and state constitutions. It is because of the efforts of victims rights groups in US, that crime victims no longer get lost or forgotten in the criminal justice process. The US Attorney’s Office is committed to ensuring that crime victims and witnesses are treated fairly, with dignity and respect, throughout their involvement in the federal criminal justice system. Federal laws affording crime victim rights include:²²³

- I. The *Victim Witness Protection Act* of 1982;
- II. The *Crime Control Act* of 1990;
- III. *Victims’ Rights and Restitution Act* of 1990;

²²¹ *id.*, p.256.

²²² Susan Mcdonald, “*The Victims of Crime*”, Research Digest, Canada, Issue 6, 2013, p.36.

²²³ *Supra* note 37, p.69.

- IV. The *Victims of Child Abuse Act* of 1990;
- V. *Violent Crime Control and Law Enforcement Act* of 1994;
- VI. The *Mandatory Victims Restitution Act* of 1997;
- VII. The *Victims of Trafficking and Violence Protection Act* of 2000; and
- VIII. The *Victims' Rights Act* of 2004.

As mentioned before the victims' rights under Federal American model have developed much more around the principle of victim participation in criminal proceedings, an approach which was emphasized by the enactment of the *Federal Crime Victims' Rights Act, 2004 (CVRA)*. One of the main features of this statute is to have administered the victims with the ability to have a standing in criminal proceedings to assert their rights and hire lawyers to represent them whenever a crime is committed against them.²²⁴

A brief account of the federal statutory rights of Victims as mentioned in the *Victims' Rights Act of 2004* is as below:²²⁵

- a. The right to be reasonably protected from the accused;
- b. The right to reasonable, accurate, and timely notice of any court proceeding involving the crime or of any escape of the accused ;
- c. The right not to be excluded from any public proceeding;
- d. The right to be reasonably heard at any public proceeding involving, release, plea, or sentencing;
- e. The right to confer with the Attorney for the Government in the case.
- f. The right to full and timely restitution as provided in law;
- g. The right to proceedings free from unreasonable delay; and
- h. The right to be treated with fairness and with respect for the victim's dignity and privacy.

It is important to note that in any court proceedings involving an offense against a crime victim, the court shall ensure that the crime victim is afforded with the rights mentioned above. The reasons for any decision denying relief shall be clearly stated on the record.²²⁶ In fact in US

²²⁴ *Supra* note 222, p.38.

²²⁵ *Supra* note 28.

²²⁶ *Supra* note 37, p.70.

the Government itself plays an important role through its officers and employees of the Department and Justice and other departments and agencies of the US engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights mentioned above. In the event of any material conflict of interest between the prosecutor and the crime victim, the prosecutor shall advise the crime victim of the conflict and takes reasonable steps to direct the crime victim to the appropriate legal referral, legal assistance, or legal aid agency.²²⁷

At present all the states in US as well as the federal government each have a comprehensive set of statutory rights for the victims, and thirty two states have also amended their state constitutions to protect victims' rights. Victims' rights continue to expand in breadth and scope.²²⁸ As the criminal justice system becomes more attuned to the interests of crime victims, victims' rights to be informed and to participate throughout the process are being further defined. These rights are generally viewed by the criminal justice officials today as improving the quality of justice.²²⁹

It is important to take one thing into consideration that in US while all states provide crime victims' rights; they differ in the applicability of those rights, with varying definitions of *victim* and *crime*. Every system provides rights for victims of violent felonies, and the majorities also extend rights to victims of violent misdemeanors; a little more than half also provide rights to victims of non violent felonies. Only about 40% provide rights to victims of any crime.²³⁰

In some states all victims are entitled to certain rights, such as the right to be notified of their legal rights, while other rights such as the right to confer with the prosecutor before a plea agreement is entered, are reserved for victims of violent felonies. In general, homicide survivors or one designated survivor per family have the same rights as other crime victims. The parent or guardian of a minor or incapacitated victim is generally afforded the rights of the victims, unless that person is accused of the offense.²³¹

²²⁷ *Supra* note 37, p.71.

²²⁸ Davis, et al., "Effects of State Victim Rights Legislation on Local Criminal Justice Systems", Vera Institute of Justice, 2002, p.29.

²²⁹ *ibid.*

²³⁰ *Supra* note 200, p.300.

²³¹ *ibid.*

In some states, people who have crimes committed against them while they are incarcerated have no rights as crime victims. In other states, such victims may have certain rights, such as right to be informed and right to submit a written impact statement, but not have other rights such as right to attend criminal justice proceedings relating to the case.²³²

5.1.1.9.1 Various Rights of the Crime Victims in US

I. The Right to Notice-

This right of the victims takes one of the two forms; the right to general information of interests of victims of crime or the right to be kept informed throughout the criminal justice process. This right is often called as fundamental victims' right. Unless a victim is informed of his or her legal rights, the victim cannot hope to exercise those rights. Unless a victim is informed of those events and proceedings, the victim cannot exercise the rights relating to such events and proceedings. Information is also important to crime victims as they recover from crime. Their sense of safety and security is enhanced when they are kept informed of the status of the offender. In a study of 1300 crime victims across four states, victims rated the right to be informed of the arrest or release of the defendant as very important.²³³

A victim's right to receive notice of what is happening with the case and the offender throughout the criminal justice process is one of the crucial components of victim rights law. The right to be notified includes both the right to information that is of likely interest to a crime victim and the right to know that various key proceedings in the case are scheduled. Ensuring notification affords victims the choice to actively participate in criminal proceedings or to stay removed if they so desire.²³⁴

Victims often have a right to general information, such as information about the crime victim compensation program, referrals to local services such as rape crisis,

²³² *ibid.*

²³³ Kilpatrick, et al., "*The Rights of Crime Victims: Does Legal Protection Make a Difference*", as quoted in Robert C. Davis et al., *Victims of Crime*, Sage Publications, 2013, p.274.

²³⁴ Sarah Brown Hammond, "*Victims' Rights Laws in the State*", available at <<https://www.ncjrs.gov/pdffiles1/Digitization/218944NCJRS.pdf>> last visited on 19/04/2014 at 20:23 IST.

information about the steps involved in criminal prosecution, and information about their rights as crime victims. Victims also have the right to case specific information relating to criminal justice proceedings and the status of the offender. There are dozens of events in the ordinary criminal justice process for which notice may be legally required by the statute. These range from major proceedings, such as trials, sentencing hearings, or parole board hearings, to such court proceedings as arraignments, grand jury proceedings, or probation revocation hearings. Most, but not all, States also give victims the right to be informed when a proceeding is cancelled or rescheduled, saving them a trip to the courthouse with all the attendant stress and inconvenience. So also there are many states which give victims the right to be notified of an offender's escape or post conviction release. Many States also give victims the right to be notified of any pre trial release, the transfer of a convicted defendant to a different facility, the death of an inmate while in custody, or other such matters.²³⁵

An important development in recent years is use of technology to improve notice and therefore facilitate victim participation in the criminal justice process. Automated victim notification systems in many states provide victims with a toll-free number to call and receive basic information about their offender. Systems automatically call to notify of any change in status.²³⁶

Automated notification system which has increased the states' willingness to extend the right of notification to more victims. Such system allows the registered victims to call in at any time and using personal identification number (PIN) to find the status of the offender. They also allow the victims to be automatically called in the event of a defendant's release, escape, or other event. As of 2014 more than 40 States in the US either have statewide automated notification system or used such system for notice by their departments of corrections. Many local jurisdictions also use such systems to notify victims of criminal justice proceedings or release from local jail. While these systems were designed to provide notice by telephone or U.S. mail, many now also provide e-mail notifications.²³⁷

²³⁵ *Supra* note 197, p.273.

²³⁶ *Supra* note 234.

²³⁷ Retrieved from<www.docs.state.ny.us> last visited on 19/04/2014 at 15:14 IST.

Technology also aids the victims of crime through one more of its branch which is known by the name of VINE (*Victim Information and Notification Everyday*) automated information system can provide victims with immediate information and direct access to information. VINE was developed in Kentucky in 1994 after a woman was murdered in Louisville by her ex-boyfriend after he was released from jail without her knowledge. VINE is an anonymous free 24 hours per day, 365 days per year telephone service that provides victims with access to inmate custody information and the ability to verify the custody of an offender. Further, victims who register with VINE can be automatically notified of any change in an inmates' custody such as release, escape, transfer or even death. It is a fully automated computer service that electronically links inmate custody data at the state prison or local jail to the VINE Call Center.²³⁸

In India the right to notice has been administered in various acts and once such act is *Protection of Women from Domestic Violence Act, 2005*. Section 5²³⁹ of this act basically deals with the duties of police officers, service providers and Magistrate. After taking into account the bare wording of section 5 of the Act, it can therefore be said that under India legislations the victims' right to notice is present, but it is not as wide as compared to the one as in administered by various legislation in US, for instance under no Indian legislation nowhere has it been mentioned about the use of various branches of technology such as *Automated notification system* and VINE system, which are used in US in almost all the states for the proper execution of victims' right to notice.

²³⁸ *ibid.*

²³⁹ Section 5 of the Act provides that “(1) A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person:

Continued on next page

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- (a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
 - (b) of the availability of services of service providers;
 - (c) of the availability of the services of the Protection Officers;
 - (d) of her right to free legal services under the Legal Services Authorities Act, 1987;
 - (e) of her right to file a complaint under section 498-A of Indian Penal Code, wherever relevant:
- Provided that nothing in this act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.*

Under the *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012, it has been mentioned expressly that throughout the victim's interaction with the criminal justice system, he/she should be given contact details to all the agencies involved in the case.²⁴⁰ This will ensure that the victim knows who to contact to receive more information or ask any further questions regarding a specific part of the case or the process.²⁴¹ Victims get information about their rights and their case in a way they understand.²⁴² Therefore, the information to the victim should be given in such a language which the victim can understand easily. Throughout the victim's interaction with the criminal justice system, he/she should be given contact details to all the agencies involved in the case.²⁴³ This will ensure that the victim knows who to contact to in order to receive more information or ask any further questions regarding a specific part of the case or the process.²⁴⁴ Once a victim has reported the crime to the Police, it is important that the victim is kept informed of what actions are taken in the case. Without regular updates, victims may get the impression that nothing has happened and that the victim's report is not taken seriously. So it is important to recognize that victims have a need to see progression in their case.²⁴⁵ Therefore, Up-to-date information should therefore regularly be provided, for instance when an accused has been identified and apprehended.²⁴⁶ It has also been mentioned that the victims of crime should get information with regard to the compensation scheme, if any.²⁴⁷ In their first contact with the criminal justice system, they should therefore be informed of any available compensation scheme, how to apply and where they can find

²⁴⁰ Article 4 (1)(i), *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012.

²⁴¹ Victims Support Europe, "*Handbook for Implementation of Legislation and Best Practice for Victims of Crime in Europe*", Victims Support Europe, Europe, 2013, p.10.

²⁴² Articles 3, 4, 6, 7, recital (26) and (34), *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*.

²⁴³ *Supra* note 240.

²⁴⁴ Victims Support Europe, "*Handbook for Implementation of Legislation and Best Practice for Victims of Crime in Europe*", Victims Support Europe, Europe, 2013, p.10.

²⁴⁵ *Supra* note 244, p.25.

²⁴⁶ Article 6 of the *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012.

²⁴⁷ Article 4 of the *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012.

more detailed information. Any basic requirements that must be fulfilled in order to apply for compensation should be fully explained to them in a language and manner they can understand.²⁴⁸ If the offender has requested early release or a formal process has been initiated to scrutinize the possibility of releasing the offender for instance on parole, the victim should be informed.²⁴⁹ The victim should be informed of the outcome of the trial, including the sentence. The victim should also receive an explanation why that particular sentence was given.²⁵⁰ Even if the victim does not agree with the sentence given, he/she should be able to understand how it was reached.²⁵¹

So also in India no legislation expressly mentions that the victim should be notified by the appropriate authority with regard to the escape or pre-trial release of the offender. For instance, in *The Probation of Offenders Act, 1958*, the legislature has mentioned about the rights of the probationer to be released under various circumstances, but it has nowhere mentioned explicitly that the victim must be notified with regard to the same, so that he/she can brace himself, if any danger may emanate. This example of one of India's legislation also shows us the inclination of the legislature towards the rights of the accused, rather than endeavoring to develop and maintain equilibrium between the rights of the accused and the victim. Therefore, it can be said that in India the right to notice for a crime victim is present, but its horizons need to be widened, so that the victim is notified about each and every aspect of the case automatically by the appropriate authorities.

II. The Right to Protection-

Among the basic needs of victims of crime one of the needs that is imperative is the protection from the offender. Policymakers and criminal justice officials increasingly recognize the importance of crime victim safety. Prosecutors routinely cite witness intimidation as a barrier in their ability to secure convictions. Approximately half of

²⁴⁸ Article 3 and 7 of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime, 2012.

²⁴⁹ *Supra* note 246.

²⁵⁰ *Supra* note 246.

²⁵¹ *Supra* note 244, p.56.

the states give victims the right to be reasonably protected from the offender during the criminal justice process. Many of these states also require that victims be given information about the protection available to them or measures to take in the event of intimidation by the defendant. A majority of states provide at least one of these rights.²⁵²

Laws in many States have provided "reasonable protection" to the victim from the offender during the criminal justice process, and this language has been included in several victims' rights amendments to state constitutions. Other states such as Alaska and Massachusetts have enacted more specific provisions that provide victims with the right to be protected by local law enforcement agencies from harm and threats of harm arising from their cooperation with law enforcement and prosecution efforts. Some states, such as Michigan, specifically provide that the prosecutor may move that the bond of a defendant be revoked based upon any credible evidence of acts or threats of physical violence or intimidation by the defendant against the victim or the victim's immediate family. Victim notice laws in some states also require that victims be apprised of protection available to them under law. These and other provisions seek to make it easier for frightened or intimidated victims to exercise their rights to participate in proceedings. For example, it is common for the state law to require separate court waiting areas where victims need not be in close proximity to the defendant or his or her friends and family.²⁵³

Under many state laws, victims may request confidentiality in the criminal justice system. Measures often prescribe, upon the court's approval, that law enforcement, prosecution, defense, or parole, probation or corrections officials not disclose or state in open court the residential address, telephone number, or place of employment or school of the victim, a victim's family member, or a witness. Eleven States in recent years have enacted measures to keep victims' addresses confidential. The confidentiality programs created under these laws generally apply to victims of

²⁵² *Supra* note 200, p.304.

²⁵³ *Supra* note 234.

domestic violence or to victims of sex crimes or stalking. For example, Maine's Address Confidentiality Program (ACP), administered by the secretary of state, protects the confidence of victims of domestic violence, stalking or sexual assault. The program has two basic parts. First, the ACP provides a designated address to victims who have moved to a new location unknown to their abuser. The second part of the program provides participants with a free first-class confidential mail forwarding service.²⁵⁴

Under the *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012, it has been mentioned expressly that States have a responsibility to look after their residents and protect them from harm. To fulfill this responsibility, States should develop a range of preventative measures, available in cases where a person feels at risk of falling victim to crime. For instance, people who are threatened with violence by their partner or ex-partner should be able to access restraining orders or other suitable protective measures whereby restrictions are being placed on the person causing the threat to increase the safety and security of the person at threat. Where appropriate, protection measures should also include family members. European protection orders should be used to ensure victims of crime who move to another EU Member State are able to maintain their protection in their new country of residence.²⁵⁵

So also, the right to protection has also been mentioned as there is a positive obligation on all EU Member States to protect their residents, including victims of crime on their territory. European countries must therefore adopt necessary legislative or other measures to protect the rights and interests of victims at all stages of the Police investigation and throughout the judicial proceedings. Following a victim's report of a crime, the Police should conduct a risk assessment to determine whether or not the victim is at risk of further threat, intimidation or victimization and protective measures should be established accordingly. If a suspect is identified, the Police or any other authority identified by the State should assess whether or not the suspect poses a risk of retaliation, intimidation, repeat or further victimization to the victim. If so, the

²⁵⁴ *Supra* note 234.

²⁵⁵ *Supra* note 234, p.13.

competent authorities should be granted the power to order and enforce suitable protection measures.²⁵⁶

The victim also has been given the right to avoidance of contact with the accused as it has been mentioned that to protect the victim from risk of further victimization, threat or intimidation, conditions should be established to enable avoidance of contact between victims and accused persons in any venue where victims may be present as the result of victimization.²⁵⁷

It puts stress on the victims' protection during trial as EU Member States are required to adopt measures to protect all victims of crime, and their family members, from retaliation, threat or intimidation, and secondary or repeat victimization.²⁵⁸ There is a range of measures that can be put in place to protect the victim from psychological or emotional harm during questioning or when testifying in court. Victim Support Europe believes all victims who are asked to give evidence in court should be informed of the range of measures on offer and given access to any special measures of his/her choice.²⁵⁹

It also mentions about the protection of the victim after the trial has been concluded. It has been stated that once the trial process is concluded, there may be a need to protect the victim, witnesses or any related family members. For instance, any person giving evidence in court may be at risk of threat or intimidation from the accused/offender or any associated friends or family members. Any concerns from the victim or victim's family should be taken seriously and the Police should conduct a risk assessment to determine whether or not any protective measures should be put in place to protect the victim or anyone else at risk.²⁶⁰

In India the right to protection for the victims' of crime is available under various legislations. For instance, under Section 8 which deals with the *appointment of protection officers*²⁶¹ and Section 9 which deals with the *duties and functions of*

²⁵⁶ *Supra* note 234, p.30.

²⁵⁷ *ibid.*

²⁵⁸ Article 18, EU Directive establishing minimum standards on the rights, support and protection of victims of crime.

²⁵⁹ *Supra* note 244, p.42.

²⁶⁰ *Supra* note 244, p.55.

²⁶¹ Section 8 of the Act provides for the Appointment of Protection Officers.

protection officers²⁶² of *Protection of Women from Domestic Violence Act, 2005* provides for the appointment of Protection Officers and duties of Protection Officer, respectively. After taking such section into account it can be said that there is the presence of legislation regarding the protection of the victims' of crime. But this legislation as compared to the legislations, enacted in various states of the US, dealing with the same right, is an infant because its scope is not that wide because in India there are legislations which put more focus on the rights of the accused only and to a great extent sideline the rights of the victim of crime. One such legislation is *Probation of Offenders Act, 1958*, as far as this legislation is concerned it simply mention the rights of the offender in various of its provisions, but deals with the victim's right of

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- (1) *The State Government shall, by notification appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.*
 - (2) *The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.*
 - (3) *The terms and conditions of service of the Protection Officer and other officers subordinate to him shall be such as may be prescribed.*

²⁶² Section 9 of the Act provides for the Duties and functions of Protection Officers.

- (1) *It shall be the duty of the Protection Officer-*
 - (a) *to assist the Magistrate in the discharge of his functions under this Act;*
 - (b) *to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service provider in that area;*
 - (c) *to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for insurance of a protection officer;*
 - (d) *to ensure that the legal person is provided legal aid under the Legal Services Authorities Act, 1987 and make available free of cost the prescribed form in which a complaint is to be made;*
 - (e) *to maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;*

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- (f) *to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;*
 - (g) *to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have taken place;*
 - (h) *to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973;*(i) *to perform such other duties as may be prescribed.*
- (2) *The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under this, Act.*

compensation only under Section 5²⁶³, under which the giving of compensation actually rests upon the discretion of the court and is not as the right of the victim and it must be noted that this provision is rarely used courts. But in this Act other than this right of the crime victim, they have nowhere provided the right of the victim to be administered protection after the offender is released on Probation. Therefore it is a must for India to modify the provisions of this Act in such a manner so that it not only is beneficial to the offender, but is also beneficial to the victim. So also in India no specific program with regard to the address's confidentiality has been enacted, which further depletes the scope of the right to protection for the crime victim.

III. The Right to Employment Protection-

Crime victims, right to participate in the criminal justice process are meaningless for victims who must risk their jobs to exercise them. As a result states are passing laws to protect victims' employment status during the time they exercise their legal rights.²⁶⁴

A majority of states have adopted laws protecting the employment of victims who participate in court related activities. More than 30 countries prohibit employers from discharging or penalizing an employee who must miss work as a consequence of responding to a subpoena. Some states provide employment protection when the victim attends hearings or consults with the prosecutor prior to the trial. A few states provide more expansive protection. For example, *Arkansas* and *Delaware* guarantee a victim's employment when the victim misses work to attend any criminal justice proceeding if such attendance is reasonably necessary to protect victim's interests.²⁶⁵

²⁶³ Section 5 of the Act deals with the Power of the Court to require released offenders to pay compensation and costs-

- (1) *The court directing the release of an offender under Section 3 or 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 costs 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.*

²⁶⁴ *Supra* note 200, p. 307.

²⁶⁵ *ibid.*

Pennsylvania guarantees a victim's employment if the victim attends court proceedings related to the offence, with no requirement that the victim show that his or her attendance is necessary to protect his or her interests or exercise his or her legal rights. A few States in the US have also extended the employment protection to the victims who miss work because of medical appointments, counseling sessions, or other activities related to the effects of the crime. These are generally limited to the victims of domestic violence and occasionally, sexual assault or stalking. In Maine, for example, an employer must grant reasonable and necessary leave for a victim of violence to attend court proceedings, receive medical treatment, or obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking. However it is important to mention that the laws in US also provide an exception to this right for instance if an employee does not request the employer for reasonable amount of time in order to attend the court proceedings and also goes to attend the same then in that case this right will not be exercised.²⁶⁶

Unlike most crime victims' rights, the violation of a victim's right to employment protection carries penalties. Criminal penalties against employers, who violate employment protection laws, however are minimal. Most States that provide criminal sanctions classify the violation as criminal contempt or a low level misdemeanor, punishable by small fines and terms of imprisonment. For example, in Connecticut, an employer who violates the employment protection law is guilty of contempt and can be fined up to \$500 or imprisoned for not more than 30 days. In addition to criminal penalties, about a third of the States that offer employment protection provide civil remedies to employees terminated or penalized in violation of employment protection laws. Employees typically have the option to sue for back wages and reinstatement. A few States allow victims to recover punitive damages or attorney's fees.²⁶⁷

IV. Right to Privacy and Confidentiality-

²⁶⁶ *ibid.*

²⁶⁷ *ibid.*

Privacy is a major issue for many crime victims. They may fear harassment or retaliation by the defendant or unwanted media attention, or they may not want their friends or family to know the details of the case. Statutory protection of a victim's right to privacy takes many forms. A number of States protect victims from having to testify about their home address or place of employment in open court. Many of the states limit this right to the cases where the court finds that the victim has a "reasonable apprehension" of acts or threats of physical violence. Other States provide a general protection but permit the court to waive that protection where the information is relevant evidence. Several States limit disclosure of victim identifying information in criminal justice records, including law enforcement reports or court files. For example Alaska withholds documents relating to a crime from public inspection unless the victim's address and phone number have been deleted. Alabama's laws provide that confidential information in court records is not considered to be of public records. Many states provide that documents relating to a victim's claim for crime victim compensation, or request for notice, are to be kept confidential. Along with general confidentiality provisions, states often have special provisions for certain classes of crime victims. These may apply to child victims, elderly or vulnerable adult victims, domestic violence victims or sexual assault victims. In addition to these more than 35 states have created address confidentiality programs for the victims of domestic violence, stalking and sexual assault. These programs provide such victims an alternate official address; mail is then forwarded to a confidential address provided by the victim.²⁶⁸

It is imperative to note that under the *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012, EU requires that the Member States should adopt measures for protecting the privacy and photographic images of victims and their family members, before, during and after the court proceedings.²⁶⁹

²⁶⁸ *Supra* note 197, p.281.

²⁶⁹ Recital (54) and Article 21, EU Directive establishing minimum standards on the rights, support and protection of victims of crime, 2012.

Victim Support Europe recognizes the important role played by the media in supporting victims' rights and recognition, for instance by highlighting victims' rights violations and calling for changes in legislation and strengthening of victims' rights. However, in some cases, the media are themselves violating victims' rights to privacy by publishing detailed accounts of the crime and of the actions and behaviors of the people involved. Guaranteeing integrity, respect and human rights for victims, witnesses and their families when at their most vulnerable is essential. In line with the victim's right to privacy, the victim should be able to determine what information should be disclosed to the media. Although generic information about the crime falls under the remit of freedom of the press and freedom of speech, the media should not print detailed accounts of the crime, personal details or images of the victim or their family without consent. For instance, victims' last words, pictures of crime scenes or details about victims' personal life should not be published without consent from the victim.²⁷⁰

In India the right to privacy and confidentiality is present in various legislations and one such legislation is *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. This Act under its Section 16²⁷¹ deals with this right and in case if the same is violated then in that case a remedy has been administered under section 17²⁷² of the Act. Therefore, it can be said that section 16 of the said Act administers a remedy to protect the right of privacy and confidentiality and in case if this section is violated then section 17 comes into play which actually puts a deterrent effect. So these two sections of the act play a good role in maintaining the privacy and confidentiality of the crime victim.

²⁷⁰ *Supra* note 244, p.34.

²⁷¹ Section 16 of the Act provides that- *Prohibition of publication or making known contents of complaint and inquiry proceedings- Notwithstanding anything contained in the Right to Information Act, 2005(22 of 2005), the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner: Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.*

²⁷² Section 17 provides that: *Penalty for publication or making known contents of complaint and inquiry proceedings- Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of Section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.*

But then on the other hand there is *Probation of Offenders Act*, 1958, which under section 7²⁷³ deals with maintaining confidentiality but only with regard to the information of the offender. But throughout the act the legislature has nowhere mentioned to keep the address, identification or any other information of the victim to be confidential from that of the offender. So therefore this is another legislation in India through which we come to know about the inclination of the legislature towards the rights of the accused, rather than endeavoring to promote the rights of the crime victim. Section 21 of Juvenile Justice Act which deals with, *Prohibition of publication of name, etc. of juvenile or child in need of care and protection involving any proceeding under the Act.*²⁷⁴ This section expressly mentions that any report regarding a juvenile in conflict with law or a child in need of care and protection, due to which his/her identity may become public, shall not be administered in any newspaper, magazine, etc. Otherwise punishment in the form of fine shall be given to that person who contravenes the provisions of this section.

V. The Right to Restitution-

Restitution is the act of restoring someone to a position he or she would have been in without the wrongdoing.²⁷⁵ According to *Universal Declaration of Human Rights*, 1985, restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of

²⁷³ Section 7 of the Act states that: *Report of probation officer to be confidential- Report of probation officer to be confidential. The report of a probation officer referred to in Sub- Section (2) of section 4 or Sub- Section (2) of section 6 shall be treated as confidential: Provided that the court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report.*

²⁷⁴ Section 21 provides: *Prohibition of publication of name, etc. of juvenile or child in need of care and protection involving any proceeding under the Act-*

- 1) *No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child be published : Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.*
- 2) *Any person who contravenes with the provisions of Sub-Section (1), shall be liable to a penalty which may extend to twenty five thousand rupees.*

²⁷⁵ *Black's Law Dictionary*, 5th ed., p. 1180.

international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights.²⁷⁶

In the context of criminal cases it generally refers to the defendant, acting under court order, paying back those who were harmed by the criminal acts. Courts may order a defendant to pay a crime victim for costs relating to physical injury, mental health counseling, lost wages, property lost or damaged, and so forth. Courts may also order the defendant to reimburse others who paid all or a part of victim's expenses, such as insurance company or the state's crime victim compensation program. The payment of restitution is of great importance to victims of crime. Restitution for their financial harm can be a key factor in helping them rebuilding their lives. Restitution is also important for offenders. Courts have recognized that restitution is significant and rehabilitative because it "forces the defendant to confront in concrete terms the harm his or her actions have caused."²⁷⁷

It is to be noted that there is a connection between restitution and recidivism as the individuals who have paid a higher percentage of their ordered restitution were less likely to commit a new crime.²⁷⁸ In US all states allow courts to order restitution for crime victims. In more than one third of states, courts are required to order restitution unless there are extraordinary or compelling circumstances that why it should not be ordered. Of the 32 states with victims' rights amendments to their constitutions, 18 include a right to restitution from the offender. Many of the states that do not require the courts to order restitution do require the courts to state their reasons on the record if they fail to order restitution or order restitution for only a part of victim's financial loss.²⁷⁹

²⁷⁶ Retrieved from <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>> last visited on 23/04/2014, 14:34, IST.

²⁷⁷ *People v. Moser*, 50 Cal. App. 4th 130, 135 (1996).

²⁷⁸ Kempinen, C., "Payment of Restitution and Recidivism", Research Bulletin 2, No.2, State College, Pennsylvania.

²⁷⁹ *Supra* note 197, p.281.

Under the *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012, when seized property is no longer needed for the criminal investigation or any subsequent proceedings, the agency holding the property should contact the victim without delay to arrange the return of the property. European States should make arrangements for property to be returned as soon as possible, since items such as for instance mobile phones or computers may be of vital importance to victims and may be difficult to replace. If possible, the needed information could be copied and saved by the investigative agency in order for the property to be immediately returned to the victim. All costs for such return should be covered by the State. The property should be returned in the same condition as when it was collected, or if the victim prefers the property can be cleaned or repaired to the victim's specification.²⁸⁰

In India as well the provision of restitution of the victim of crime is present under the *Code of Criminal Procedure*, 1973, in section 451 which deals with *Order of custody and disposal of property pending trial in certain cases*²⁸¹, Section 452 which deals

²⁸⁰ *Supra* note 244, p.49.

²⁸¹ Section 451 of the *Code of Criminal Procedure*, 1973 provides for- *Order of custody and disposal of property pending trial in certain cases- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.*

Explanation.- For the purposes of this section, "property" includes –

(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

with, *Order for the disposal of property at conclusion of trial*²⁸² and Section 456 which deals with, *Power to restore possession of immovable property*.²⁸³

VI. The Right to Speedy Trial-

The criminal justice process is not always timely. An individual case can drag on for years as the parties seek repeated delays and continuances. Meanwhile the victim's life and recovery are put on hold. To address this issue, approximately half the states give the crime victims a right to a speedy trial. In practice this generally requires the court

²⁸² Section 452- *Order for disposal of property at conclusion of trial-*

- 1) *When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property, document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.*
- 2) *An order may be made under Sub-Section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the court if the order made under Sub-Section (1) is modified or set aside on appeal or revision.*
- 3) *A Court of Session may, instead of itself making an order under Sub-Section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457,458 and 459.*
- 4) *Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of Sub-Section (2), an order made under Sub-Section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.*
- 5) *In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of the party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.*

²⁸³ Section 456 of the Code provides for: *Power to restore possession of immovable property-*

- 1) *When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that the possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:*

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- Provided that no such order shall be made by the Court more than one month after the date of the conviction.*
- 2) *Where the Court trying the offence has not made an order under Sub-Section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.*
- 3) *Where an order has been made under Sub-Section (1), the provisions of Section 454 shall apply in relation thereto as they apply in relation to an order under Section 453.*
- 4) *No order made under this Section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.*

to consider the interests of the victim in ruling on a motion for continuance²⁸⁴. For example, Utah's law states the following:

- 1) In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's or minor's right to a speedy trial;
- 2) In ruling on any motion by a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of crime to a speedy disposal of the case; and
- 3) If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.²⁸⁵

In many States the law provides for accelerated disposition in cases involving child victims, elderly victims or victims who are ill or disabled. For example Illinois law provides that "in prosecutions for violations of (listed kidnapping and sexual offences) involving a victim or witness who is a minor, the court shall, in ruling for any motion or other request for a delay or continuance of proceedings, consider and give weight to the adverse impact the delay or continuance may have on the well being of a child or witness and that the court shall consider the age of the victim and the condition of victim's health when ruling on a motion for continuance."²⁸⁶

Under Article 21 of the *Constitution of India*, 1950, which deals with *protection of life and personal liberty* right to speedy trial has been administered. In *Hussainara Khatoon (No. 1) v. Home Secretary, State of Bihar*²⁸⁷, a petition for a writ of *habeas corpus* was filed by number of under trial prisoners who were in jail in the State of Bihar for years awaiting their trial. The Supreme Court held that "*right to a speedy trial*" a fundamental right is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. Speedy trial is the essence of criminal justice. In a significant judgment in *Abdul Rehman Anthuley v. R.S. Nayak*²⁸⁸, the Supreme Court has laid down

²⁸⁴ *Supra* note 197, p.279.

²⁸⁵ *id.*, p.280.

²⁸⁶ *ibid.*

²⁸⁷ AIR 1979 SC 1360.

²⁸⁸ AIR 1992 SC 1630.

detailed guidelines for speedy trial of an accused in a criminal case but it declined to fix any time limit for trial of offences. The right to speedy trial flowing from Article 21 is available to the accused at all stages namely the stage of *investigation, inquiry, trial, appeal, revision and retrial*. The concerns underlying the right to speedy trial from the point of view of the accused are:

- 1) The period of remand and pre-conviction detention should be as short as possible. In other words the accused shall not be subjected to unnecessary or unduly long detention point of his conviction;
- 2) the worry, anxiety, expense and disturbance to his vocation and peace resulting from any unduly prolonged investigation, inquiry or trial shall be minimal; and
- 3) undue delay may result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non-availability of witnesses or otherwise.

The court said that the accused cannot be denied the right to speedy trial merely on the ground that he failed to demand a speedy trial.²⁸⁹

Like every developed criminal legal system, India too has a reputation for long winding procedures and an elaborate system of trial and investigation exists our criminal justice system while the rationale is to ensure that the complainant has the satisfaction of the knowledge and erudition of the best legal minds and the offender does not go unpunished the price for this turns out to be the delay in finality, outcome of proceedings. There have been several attempts to simplify the procedure but the sheer number of cases seems to overwhelm the system and delay in disposal of cases in criminal law courts has really defeated the purpose for which the people approach the courts for remedy.²⁹⁰ In order to obviate this problem the *Constitution of India, 1950*, enjoins the state to secure social, economic and political justice to all its citizens, making the constitutional mandate for speedy justice inescapable through article 14 it guarantees *equality before the law and the equal protection of the laws* and article 39-A of the *Constitution of India, 1950*, mandates the State to secure the operation of the legal system in such a way that it promotes justice on a basis of equal opportunity and ensures that the same is not denied to any citizen by reason of economic or other

²⁸⁹ Dr J.N. Pandey, “*The Constitutional Law of India*”, Central Law Agency, Allahabad, 2012, p.275.

²⁹⁰ Retrieved from < <http://www.lawteacher.net/indian-law/essays/the-indian-constitution-guarantees-justice-to-all-law-essay.php> > last visited on 23/04/2014 on 16:57 IST.

disabilities further equal opportunity must be afforded for access to justice as it is not sufficient that the law treats all persons equally, irrespective of the prevalent inequalities but the law must function in such a way that all the people have access to justice in spite of economic disparities. The expression *Access to justice* focuses on the following two basic purposes of the legal system.²⁹¹

- 1) The system must provide access to all.
- 2) It should lead to results which are fast, fair and economically viable.

One more instance of speedy trial which can be seen in Indian legislations is in *Protection of Women from Domestic Violence Act, 2005*. This act under its Section 12 which deals with, *Application to Magistrate*²⁹², under sub-section 5 states that the Magistrate shall endeavor to dispose of every application made under sub-section(1) within a period of sixty days from the date of its first hearing.

So also in order to make sure that speedy trial takes place the concept of *Summary Trials* has been introduced under the *Code of Criminal Procedure, 1973*, from Section 260 to 265. The object of prescribing procedure for summary trial in case of some

²⁹¹ *ibid.*

²⁹² Section 12 of the Act provides for: Application to Magistrate-

- 1) *An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:" Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.*
- 2) *The relief sought for under Sub-Section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent*

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" Provided that where a decree for any amount as compensation or damages has been passed by any court in favor of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off."

- 3) *Every application under Sub-Section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.*
- 4) *The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.*
- 5) *The Magistrate shall endeavor to dispose of every application made under Sub-Section (1) within a period of sixty days from the date of its first hearing.*

offences is speedy disposal of those cases. It is not intended for contentious and complicated cases which necessitate a lengthy enquiry. Power of summary trial is conferred upon Chief Judicial Magistrate, Metropolitan Magistrate, and a Magistrate of the First class empowered by the High Court.²⁹³ In *re A Deaf and Dumb Man*, it was held by the court that ordinarily a complicated case should not be tried summarily. If the accused is deaf and dumb, he may be tried summarily.²⁹⁴

Other than this there is another concept under the *Code of Criminal Procedure*, 1973, which is known by the name of *plea bargaining*, which is dealt under Section 265-A to 265-L and was added in 2005. Under this concept an accused person agrees to plead guilty and gets some type of concession from the side of the prosecutor. Generally in the concession the accused pleads guilty to some charges and in exchange the prosecutor withdraws the remaining charges. This concept to some extent plays an important role in helping the victim not just to execute his right of compensation but also get executed the right to speedy trial. So also this concept plays an important role in decreasing the burden of cases on the Indian courts at least by doing away with those cases where compromise can be arrived via negotiations between both the parties to the dispute. In layman's language it can be said that under this concept, the victim gets compensation and the accused gets light punishment.

There is also the concept of *Compounding of Offences*, which is dealt under Section 320 of the *Code of Criminal Procedure*, 1973. In brief this section states that there are some offences which affect the private individual alone and not the society at large. Therefore, the offences which are of such a disposition and are not grave from their very nature may be compounded by the consent of the parties or by the Court as the case may be. In *Madan Mohan Abot v. State of Punjab*²⁹⁵, it was held that compounding of offences in cases where the dispute involved is of a purely personal nature, the court should ordinarily accept the terms of compromise even in criminal proceedings as keeping matter alive with no possibility of result in favor of the prosecution is the luxury, which the courts, grossly overburdened as they are, cannot

²⁹³ *Supra* note 9, p.416.

²⁹⁴ (1906) 8 Bom LR 849.

²⁹⁵ (2008) 2 Cr. L.J. 2243 (S.C.).

afford and that the time they save can be utilized in deciding more and meaningful litigation. This is a commonsense approach to the matter based on ground of realities and bereft of technicalities of the law.

Section 14 of *Juvenile Justice (Care and Protection of Children) Act, 2000*, which deals with, *Inquiry by Board regarding juvenile*.²⁹⁶ In this section's proviso it has been expressly stated that the inquiry under this section shall be completed within a period of four months from the date of its commencement.

It is to be noted that even though in India there are many concepts to make sure that the speedy trial is administered, but the application of these concepts has been in vain so far because in India there are millions of pending criminal cases which are overburdening the courts with the passage of time. Therefore endeavor must be put in amplifying the practical utility of these concepts in order to bear their fruits to the best possible extent.

VII. The Right to be Present-

Another basic right of the crime victims is the right to attend criminal justice proceedings, such as pre-trial hearings, the trial, sentencing and parole hearings. This right is important to crime victims and their families who want to see justice at work. They may want to hear the information presented and the arguments made and to view for themselves the reactions of the judge, the jury and the defendant. Forty states and the District of Columbia give crime victims a right to attend criminal justice proceedings, including the trial. However, the majority of those states impose limitations on that right. These restrictions stem from the concern that a victim's right to attend proceedings may conflict with the rights of the accused. Thus, victims are

²⁹⁶ Section 14 of the Act provides for: Inquiry by Board regarding Juvenile-

- 1) *Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit :
Provided that an inquiry under this section shall be completed within a period of four months since the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.*
- 2) *The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.*

often given a right to be present only *to the extent that it does not interfere with the constitutional or statutory right of the accused or as consistent with the rules of evidence.*²⁹⁷

In India the courts follow the principles of natural justice to a great extent and one such concept is known by the name of *Audi Alteram Partem* a Latin phrase which means hear the other side too or both the parties to the dispute must be heard. So this implicitly shows that the presence of the victim is a must while the proceedings of the court are taking place. This is an instance which shows the right of the victim to be present in the court. So also there are some cases in which the victim is a witness, therefore, in such a case it will be a must for the victim to be present.

It must be noted that the victim can also be present in the court through video conferencing if he is afraid to see the offender face to face or due to the nature of the case does not want to be embarrassed. Such a concept is dealt under section 327 of *The Code of Criminal Procedure, 1973*, which deals with the concept of open court. In *Sakshi v. Union of India*²⁹⁸, it was held by the Supreme Court that the language of section 327(2) of the Code which contemplates trial in camera shall apply. For this purpose even video conferencing is permissible. The whole inquiry before the court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose the entire incident in a free atmosphere without any embarrassment. Section 273 of the Code requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video conferencing *vis-à-vis* Section 273 of the code is permissible.

VIII. The Right to be Heard-

²⁹⁷ *Supra* note 197, p. 274.

²⁹⁸ 2004 Cr. L.J. 2881 (S.C.).

Another principle right of crime victims' is the right to be heard at various stages of the criminal justice process. This right basically takes two forms:

- 1) The rights to consult with key criminal justice officials before certain decisions are made, such as the pre trial diversion of the defendant or a plea agreement; and
- 2) Right to address or submit a written statement to the court or other authority at various proceedings including release proceedings or sentencing.²⁹⁹

Granting victims right to be heard at points in the criminal process that impact their interests benefits both the victim and criminal justice process. For the victim, an opportunity to be heard represent acknowledgement that he or she was harmed by the crime and has an interest in the case. The right to be heard also provides victims an opportunity to make known any safety concerns and need of restitution, as well as the impact of the offence on their lives. Victim input also aids the criminal justice process as it provides the means for decision makers to receive information about the dangerousness of the defendant, the concern of the victims, and the extent of the harm caused by the crime. The right of crime victims' to be heard is not a right to control strategy or decision made in the course of the criminal justice process, whether it is a right to ensure that the victims concerned are voiced at appropriate point in the process.³⁰⁰

As mentioned under the last right that in India the courts follow the concept of natural justice and during the court proceedings one concept of natural justice which is known by the name of *Audi Alteram Partem* which states that both the parties to the dispute must be heard, is followed, and this concept implicitly shows us that the victim has got the right to be heard or has got a saying in the matter during the proceedings of the court. So also under the *Code of Criminal Procedure*, 1973, the accused has got the right to have a saying in the matter under Sub-Section (2) of Section 235, which deals with *Judgment of acquittal or conviction*³⁰¹ as well as Sub-Section (2) of Section 248,

²⁹⁹ *Supra* note 197, p.275.

³⁰⁰ *Supra* note 200, p.276.

³⁰¹ Section 235 of the Code deals with: 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.*

which deals with, *Acquittal or conviction*.³⁰² So also if there is a situation in which the accused is convicted by the High Court, then he under Section 379 of the Code which deals with *Appeal against conviction by High Court in certain cases*³⁰³, has got the right to make an appeal to the apex court. These were the sections which give us an example of the right of the accused of being heard. Now if focus is put on the right of the victim to be heard, then in one stage victim's right to be heard is used at the pre-trial stage where the victim is a witness and Section 161 comes into play, which deals with, *Examination of witnesses by police*³⁰⁴ and during the post-trial stage under Section 372 of the Code which deals with, *No appeal to lie unless otherwise provided*.³⁰⁵ As far as victim's right of being heard during the trial stage is concerned then no specific provision has been mentioned under this Code regarding the same. But then the

³⁰² Section 248 of the Code deals with : Acquittal or conviction-

- 1) *If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.*
- 2) *Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.*
- 3) *Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon: Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).*

³⁰³ Section 379 of the Code deals with: Appeal against conviction by High Court in certain cases- *Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.*

³⁰⁴ Section 161 of the Code deals with: Examination of witnesses by police-

- 1) *Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*
- 2) *Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.*
- 3) *The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.*

³⁰⁵ Section 372 of the Code deals with: No appeal to lie unless otherwise provided- *No appeal shall lie from judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force. Provided that the victim shall have the right to prefer any appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the odds of conviction of such Court.*

principle of natural justice *i.e. Audi Alteram Partem*, comes into play which makes sure that the victim's right to be heard is executed.

Here it can be seen that in this code the victim's right to be heard has nowhere been expressly, except as provided under Section 372 and that also to make an appeal to the higher court and not otherwise, mentioned like that of the accused, whereas on the other hand the right of the accused to be heard has been mentioned expressly under three separate sections.

This shows us another instance of the inclination of this code towards the rights of the accused and the main reason behind this is that in our country the courts follow adversarial system in which the victim's participation is minimal or does not speak in favor of the victim. Due to this loophole the victim's right of being heard is like a toothless tiger, as the victim throughout the proceedings is just considered as a spectator or Mr. Nobody.

IX. The Right to Consult with Victim Before Key Decisions are made-

Many states require prosecutors to obtain the views of the victims before entering a plea agreement, dismissing a case or taking similar dispositive action. The California legislature provided an excellent summation of the significance of the crime victim consultation when it amended its Victims' Bill of Rights to provide victims the right to advance notification of a plea agreement.³⁰⁶ The legislature included the following findings in the bill:

- 1) Victims of crime and their family are not formally notified when criminal prosecutions are resolved before trial through *plea bargains*;
- 2) Victims of crime and their families have a right to know if a court intends to dispose of a prosecution through the method of plea bargaining;
- 3) The lack of notification to the victims and their families adds to a perception that they lack representation and participation in the criminal justice system;
- 4) The right of victims of crime to notification can be compatible with the continuing vital need to protect a defendant's right to due process;

³⁰⁶ *Supra* note 197, p.276.

- 5) Nearly 90% of all felony cases in California are disposed of before trial through plea bargains.
- 6) Therefore it is the intent of the Legislature to require a District Attorney's office to notify a victim of a violent felony or in the event of a homicide, the victim's next of kin, of a pending pre-trial disposition before a change of plea is entered before a judge. The District Attorney's office shall also notify the victim of any felony of a pretrial disposition upon the victim's request. If it is not possible to notify the victim of the pretrial disposition before the change of plea is entered, the District Attorney's office or the county probation department shall notify the victim as soon as possible.³⁰⁷

It is to be noted that majority of states in the US provides victims with some level of consultation about a negotiated plea agreement. However, the extents of victim participation ranges from a right to be informed in advance, to a right to have the prosecutor obtain the views of the victim, to a right to confer, to a right to be consulted. Approximately half of the states require the prosecutor to obtain the victim's views on a proposed plea agreement.³⁰⁸ Many of these states provide the same right to consultation before certain other prosecutorial decisions are made, such as dismissing the charges, declining to prosecute any charges, or pretrial diversion.³⁰⁹ It must also be noted that in practice, consultations of such disposition mostly do not take place in person, but through mail or telephone.

Under the *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012, one of the most important right of the crime victim is the right to information. In relation to the trial, the victim should in particular be provided with the following information:³¹⁰

- 1) Current status of the case;
- 2) when will the Prosecutor formally charge a suspect in court;

³⁰⁷ *ibid.*

³⁰⁸ *id.*, p.277.

³⁰⁹ *ibid.*

³¹⁰ Recital (21) and article 3, *EU Directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012.

- 3) The choice of charge ;
- 4) ideally, the victim should be informed and given a chance to comment on the Prosecutor's choice of charge;
- 5) In States whose criminal justice system allows discussions between the prosecution and the defense agent, if the Prosecutor decides to amend the charge or accept a guilty plea of a lesser charge following discussions with the defense, the victim should be informed and ideally given a chance to comment before the plea is accepted;
- 6) If, for any reason, the case will not go trial or a decision is taken to end the trial or conclude the case out with the court room, the victim should be informed and ideally given a chance to comment. The victim should also receive any reasons for the decision;
- 7) Date of trial;
- 8) Final verdict in the trial and reasons why that particular verdict was given;
- 9) If requested, the victim should be provided with a transcript of the trial proceedings.

In India as well this right of the victim is executed through the concept of *Plea Bargaining*, because this concept will be executed only and only after consulting the victim of crime, that whether he wants this concept to be executed and make the bargain or does he want to continue with the proceedings. In other words it can be said that the execution of this concept solely depends upon the discretion of the victim.

X. Victims' Rights in Juvenile Proceedings

Crime victims have had far fewer rights in the juvenile justice system than in the criminal justice system, due largely to the traditionally closed and confidential nature of a system involving the disposition of the minors. However, as the concept of crime victims' rights has become more thoroughly integrated into criminal justice system, rights are being extended to the juvenile justice system, particularly in cases where the offence committed by a juvenile is equivalent to a felony.³¹¹ In other words it can also be said that just as the states have updated laws to hold juvenile offenders accountable for their crimes, they also have extended to victims of crimes committed by juveniles the same rights as victims of adult offenders.³¹²

³¹¹ *Supra* note 197, p.283.

³¹² *Supra* note 234

More than half of the states in US have a comprehensive set of rights for victims of serious juvenile offences. Some of these states such as Alabama include victims of certain juvenile offenders in their general victims' bill of rights. Others such as Arizona and Michigan set out a separate bill of rights for victims of serious juvenile offenders. However, for less serious offences, crime victims' rights have not been as widely adopted. So also the states that do provide victims' rights in less serious juvenile cases take the form of permissive, rather than mandatory provisions. For example, Nevada gives a judge the discretion to allow crime victims to attend juvenile proceedings but does not give victims a right to be present.³¹³

It must be noted that as far as the payment of the restitution on part of the juvenile is concerned, it is allowed by most of the states. But what must be noted here is that in such case receiving restitution from the juvenile is actually not the right of the crime victim, but it solely depends upon the discretion of the court that should restitution be administered to the victim or not, if yes, then how much.

In India as far as victim's right in juvenile proceedings is concerned, the victim has got very few rights. In India the Act which deals with the law dealing with the juvenile offenders is *The Juvenile Justice (Care and Protection of Children) Act, 2000*. This Act has been enacted mainly with a view to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.³¹⁴ Under this Act all the cases which incorporate juvenile in conflict with law in it, shall be dealt by the Juvenile Justice Board, with regard to which the provisions have been administered under Section 5 and Section 6 of the Act which deal with procedure and powers of the board respectively.

³¹³ *Supra* note 197, p.283.

³¹⁴ S.N. Misra, "*The Code of Criminal Procedure, 1973, with Probation of Offenders Act and Juvenile Justice (Care & Protection of Children Act, 1973)*", Central Law Publications, Allahabad, 2011, p.806.

This Act mainly focuses on the rehabilitation and social integration of juveniles through various institutions established under it such as observation homes, special homes, special juvenile police unit. So also this Act in order to achieve its purpose even administers juvenile bail under Section 12 of the Act and it is mandatory for the court to grant juvenile the bail with or without surety [or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person] whether the offence committed by him is bailable or non-bailable in nature, unless there is a chance that the juvenile after being released might get associated with any known criminal or his release would defeat the ends of justice. Even if he is not released on bail, then he won't be sent to prison, instead will be sent to observation home till the inquiry is going on. Under Section 15 of the Act, it has been stated that if the juvenile is found to have committed an offence then he will not be imprisoned straightaway instead he might be released on probation of good conduct and if not this then he might be sent to a special home for a period not exceeding three years. Under Section 16 of the Act, it has been stated that if the court is of the opinion that the offence of the juvenile is so serious from its very nature that it will not be right to send him to special home then in such a case the Board may order the juvenile to be kept in a place of safety and in case if the court orders to imprison the juvenile then in that case he will be imprisoned in the reform facility. According to the provisions of Section 16 a juvenile cannot be given death sentence, lifetime imprisonment and also cannot be committed to prison in default of payment of fine or in default of furnishing security. Under Section 18 of the Act it has been mentioned expressly that no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.³¹⁵

After taking into account such provisions of the Act it can be said that under this Act a juvenile in conflict with law has been administered precious protection, whereas on the other hand the as far as the victim is concerned, he has been given no rights under the Act. There is just one right and that is administered under Section 15(1)(d)³¹⁶of the Act.

³¹⁵ *ibid.*

³¹⁶ Section 15(1)(d) of the Act states that: *Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything contrary contained to any law for the time being in force, the Board may, if it*

But this right is just there in theory and not in practicality because in majority of cases the juveniles are either released on probation of good conduct or on admonition and they belong to a poor family background and also do not earn themselves and it is a rare case if they earn, in which their earning will not be sufficient enough the court will be able to administer the victim with such amount of fine in the form of compensation so that he can be satisfied, this is all because the courts in India before administering compensation to the victim take into account the financial condition of the accused. In order to add to the plight of the victim, the State has also not introduced any policy or scheme through which victims of crime especially the ones who have become victim to juvenile offences can be paid adequate compensation so that their plight can be obviated to the best possible extent.

XI. Victims' Rights when the Defendant is Mentally Ill

Victims of offenders with mental illness who are transferred to the mental health system have fewer rights than the general crime victim population. This can occur when an offender is found incompetent to stand during trial, not guilty by reason of insanity, or guilty but is mentally ill. In the mental health setting such offenders are perceived as patients rather than perpetrators, and consequently, their victims have been overlooked. But the states cannot ignore the interests of the victims. Therefore, in US a few states have endeavored to mandate rights for victims of offenders with mental illnesses, incorporating provisions for notification, participation and protection into their laws. Approximately half of the states have adopted provisions to notify victims when an offender is released from a treatment facility. A few states have also incorporated victim impact information provisions into their commitment or sentencing processes. Some states permit a victim to have input when changes in the offender's status are considered, or when the offender's mental health status is reviewed to determine whether he or she can be released. However it is imperative to note that victims cannot

so thinks fit, order the parent of the juvenile or the juvenile himself to pay a fine if he is over fourteen years of age and earns money.

be awarded restitution from offenders with mental illnesses; because of their disability, such offenders are excused from any liability.³¹⁷

In order to sum up it can be said that in this context a victim of crime just has got the right to be informed of the current condition or mental status of the offender as well as what is his current location, but as far as restitution is concerned, the same will not be awarded to the victim by the offender.

In India when the defendant is mentally ill, then in that case the victim does not have any right except the right to know about the present location and condition of the offender. As far as compensation or restitution is concerned, as the case may be, in a case where it has already been proved that the defendant during the commission of the offence was mentally ill, then the same is not taken into consideration by the court of law to be administered to the victim by the defendant.

XII. The Right to Address or Submit a Statement to the Court or other Decision Making Body

Crime victims may be given the right to address the court or submit a written statement at number of stages. The first such stage is the pre-trial release or bail hearing. About 10 States give victims the right to submit information at bail hearings, or at subsequent hearings, to modify bail or pre trial release. Input from the victim at this stage can be vital in determining appropriate conditions to be imposed in such release, particularly where the defendant poses a danger to the victim. However, extension of victims' right to be heard at such an early stage has been limited by practical barriers because in some jurisdictions defendants may be held only a few hours between arrest and the pretrial release hearing, making it very difficult to guarantee victims an opportunity to be notified and heard at this proceeding. A few States, such as Illinois, have attempted to get around this barrier by providing for written input from the victim or a representation by the prosecutor of the victim's concerns and the impact of the offence.³¹⁸

³¹⁷ *Supra* note 197, p.284.

³¹⁸ *Supra* note 197, p.277.

A third of the States permit the victims to be heard either orally or in writing, at plea entry proceedings. In Missouri, for example, prior to the acceptance of plea bargaining by the court, the court shall allow the victim of such offence to submit a written statement or appear before the court personally or by Counsel for the purpose of making a statement. In some States the court does not have the authority to accept a plea agreement unless the prosecutor advises the court that reasonable efforts have been made to confer with the victim and notify the victim of the right to make a statement in the court.³¹⁹ At the sentencing stage, every state provides crime victims the right to be heard, in person or in writing, regarding the physical, financial and psychological effects of crime. Many of these States also permit victims to State their views on the appropriate sentence or their views about the defendant. In general, VIS may be given by the victim, homicide survivors, or the parent or guardian of a minor victim. So also there are many states which also authorize statements by a representative or family member of the victim who is physically incapacitated. States also generally provide for victim input in the parole release decision. Nearly all States allow victims to present a written or oral statement to the parole board for consideration at the parole hearing. A few states, such as California, specifically authorize the use of audio taped or videotaped statements at the parole hearing.³²⁰

As far as this right is concerned in India, its presence is there but in bits and pieces. Under the Indian law the victim does have the right to give a written statement of arguments through his counsel stating the contentions on which he wants to prove the guilt of the offender. But unlike USA, the concept of VIS has not been incorporated in the criminal justice system of India as a result of which the victim does not get the chance to tell about his plight as well as about the disposition or true character of the offender, due to which the victim is not able to bear the fruits of this right to the best possible extent, plus it also makes difficult for the court to administer a precise judgment. Therefore, it is a must that the concept of VIS to be incorporated in the

³¹⁹ *ibid.*

³²⁰ *id.*, p.278.

criminal justice system of India, so that it can help not just the victims of crime, but also the courts to arrive at a successful conclusion.

5.2.1 *Position in UK*

Victim rights are broadly divided into two separate categories *i.e.* service rights and procedural rights. Service rights are the initiatives that aim to provide victims with better treatment in and experience of the criminal justice system. Whereas procedural rights on the other hand provide the victims with a more central participatory role in the decision making process.³²¹ In England and Wales, victims' rights mainly consist of service rights. Some procedural rights do exist, but they are generally enforced outside the criminal proceedings.³²² It is imperative to note that in England as well the adversarial system is followed which simply means that the criminal justice system in England does not link the Courts with investigation functions. It is due to this reason as well that in England the victims have more service rights as such rights have very little effect on the position of the defendants, whereas in case of procedural rights have the ability to undermine the rights of defendants. In England the rights of victims of crime are generally regulated by the *Code of Practice for Victims of Crime*.

5.2.1.1 *The Code of Practice for Victims of Crime*

The *Code of Practice for Victims of Crime*³²³ has played a major role in providing victims with a minimal level of service they can expect from eleven criminal justice

³²¹ Examples of service rights includes the right victims have to information/notification about the important/notification about the important court dates and the progress of their case, assistance for vulnerable victims and compensation. Procedural rights include opportunities to provide information, views and opinions of criminal justice agencies, for instance, conferring with prosecutors on the key criminal justice decisions on prosecution) and Courts on bail/custody, sentencing decisions, parole release and license decision, largely by victim impact/personal statements.

³²² Susan McDonald, "*The Victims of Crime Research Digest*", available at <<http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/rd6-rr6.pdf>> last visited on 15/05/14 at 12:28, IST.

³²³ This Code was issued by Secretary of State for Justice in 2005 under Section 32 of the *Domestic Violence, Crime and Victims Act, 2004*. It implements relevant provisions of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime, Directive combating the sexual abuse and sexual exploitation of children; and Directive preventing and combating the trafficking of human beings.

agencies³²⁴, including a comprehensive and detailed list of information rights.³²⁵ This Code of Practice for Victims of Crime forms a key part of the wider Government strategy to transform the criminal justice system by putting victims first, making the system more responsive and easier to navigate. Victims of crime should be treated in a respectful, sensitive and professional manner without discrimination of any kind. They should receive appropriate support to help them, as far as possible, to cope and recover and be protected from being re-victimized. It is important that victims of crime know what information and support is available to them from reporting a crime onwards and who to request help from if they are not getting it.³²⁶ This Code sets out the services to be provided to victims of criminal conduct by criminal justice organizations in England and Wales.

It is important to note that the victims in England also have procedural rights that are generally implemented through direct contact with the criminal justice agencies to bring victims interests and views forward into the criminal process.

5.2.1.1.1 *Categorization of victims*

This Code sets out enhanced entitlements for victims in the following categories because they are more likely to require enhanced support and services through the criminal justice process:

- I- victims of the most serious crime;
- II- persistently targeted victims; and

³²⁴ The agencies with obligations under the Code include: the Criminal Cases Review Commission; the Criminal Injuries Compensation Authority; the Criminal Injuries Compensation Appeals Panel; the Crown Prosecution Service; Her Majesty's Courts Service; the joint police/Crown Prosecution Service Witness Care Units; all police forces for police areas in England and Wales, the British Transport Police and the Ministry of Defense Police; the Parole Board; the Prison Service; the Probation Service and youth Offending Teams. These organizations are known as service providers.

³²⁵ For instance, information rights include notifications by police regarding the investigation process, bail, information by Witness Care Units about case progress, and information by prosecutors about decisions to prosecute. Specific timescales for the provision of information are also provided.

³²⁶ Retrieved from < https://www.cps.gov.uk/publications/docs/victims_code_2013.pdf > last visited on 15/05/2014, at 12:59, IST.

III- vulnerable or intimidated victims.³²⁷

The three categories are designed to ensure that victims who are most in need will be able to access enhanced support. A victim may be entitled to enhanced services under more than one category at the same time. For example, if a victim is under 18 years of age then such victim will be automatically eligible for enhanced services as a vulnerable victim regardless of whether he is also a victim of the most serious crime or are a persistently targeted victim. A victim of domestic violence is eligible for enhanced services as a victim of the most serious crime, but may also qualify for enhanced services as a vulnerable or intimidated victim.³²⁸

The final decision on whether the victim falls into one or more of the three categories is the responsibility of the relevant service provider. All victims of criminal conduct are entitled to an assessment by the police to identify any needs or support required. The length and content of this assessment depends on the severity of the crime and the individual needs of the victim. The assessment will take into account the victim's personal characteristics, the nature and circumstances of the crime, and victim's views. The more information victim is able to provide during the assessment, the more tailored the level of support will be to the individual needs of the victim. As victim's needs may change while the criminal conduct is being investigated due to his health, intimidation or any other reason, service providers must give victim the opportunity to be re-assessed if your change of circumstances is brought to their attention. Once a service provider has identified that the victim is eligible for enhanced entitlements under this Code, that service provider must ensure that this information is passed on as necessary to other service providers with responsibilities under this Code and to victims' services where appropriate. Service providers should check with the victim first that is the victim content for them to pass on his information to victims' services. If the victim does not fall into these three categories outlined below, although they are not obliged to do so, the service provider may exercise their discretion and provide enhanced

³²⁷ Retrieved from < <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/rd6-rr6.pdf>> last visited on 15/05/2014 at 03:05, IST.

³²⁸ *ibid.*

entitlements under one of these categories depending on the circumstances of the victim concerned and the impact that the crime has had on them.

5.2.1.1.2. *Victim's Participatory Role in England*

In England even though the adversarial system is followed but still there is participation on part of the victim. For instance, the Code recognizes the prosecutor's key role, not only in informing the victims about the key decisions, but also in meeting certain victims and providing them with explanations when certain prosecutorial decisions are made in the most serious crime cases.³²⁹ *Witness Care Units* also have a unique duty to inform the victims about case progress and to identify victims and witnesses with particular needs that would require enhanced services under the Code.³³⁰

So also in England there is also the provision of *Victim Personal Statement (VPS)* scheme which was rolled out nationally in 2001 and has provided the victims with a right to submit a VPS to the police which is also meant to be a part of victim's file to inform criminal justice agencies about victim's specific needs. A VPS gives the victim an opportunity to explain in his own words that how a crime has affected him, whether physically, emotionally, financially or in any other way. It actually gives the victim a voice in the criminal justice process. It is important to note that the VPS is different from a witness statement about what happened at the time of the commission of crime, like what you saw or heard. The victim is entitled to make a VPS at the same time as giving a witness statement about what happened to the Police about a crime. Once a VPS is signed and complete then it cannot be changed or withdrawn if the victim has second thoughts about what he has said. However the victim may submit a further VPS to the police to add or to clarify the original VPS.³³¹

It is this statement which will constitute part of their file and prosecutors have a duty to draw the sentencing the Court's attention to any victim personal statement in the file

³²⁹ *ibid.*

³³⁰ The Code provides vulnerable and intimidated victims with enhanced services.

³³¹ *Supra* note 326.

to facilitate the Court’s role in reaching an appropriate sentence.³³² It is imperative to note that contrary to the VIS model in the U.S.A, the VPS scheme has a much broader reach in England and Wales and is meant to inform criminal justice agencies from an early stage about victims’ information needs, as well as to inform them about the sentencing decisions.³³³

So also the prosecutors in England in recent years have been increasingly obliged to include victims in the process not only by providing them with information but also by taking into account their interests and views in prosecutorial decisions as part of the wider public interest. Notable examples of these rights include the right victims have to share their views on decision that whether the prosecution is required in the public interest, decisions on whether to accept the guilty pleas and requests for compensation and ancillary orders.³³⁴

Another elegant feature of this Code is “*Victim’s participation through his relative*”, If the victim a disability or has been so badly injured as a result of criminal conduct that the victim is unable to communicate, then in such a case his close relatives are entitled to nominate a family spokesperson to act as the single point of contact to receive services under this Code. If a victim who is under the age of 18 then in such a case the parent or guardian of such victim, is entitled to receive services under this Code.³³⁵

a. Victim’s Participation through Police

In England the police also play an imperative role in victim’s participation in the criminal justice system. A crime victim is entitled to receive the following from the police.³³⁶

1. A clear explanation of what to expect from the criminal justice process when the victim reports a crime;

³³² *Supra* note 327.

³³³ *ibid.*

³³⁴ *ibid.*

³³⁵ *ibid.*

³³⁶ *ibid.*

2. An assessment of victim's needs to help work out what help or support the victim may need;
3. To be informed that how often the victim will receive updates on the status of the case following discussion with the police;
4. In case if the police decides not to investigate the case, then the victim must be given an explanation regarding the same within a period of 5 days from the date of taking such decision;
5. To be advised when an investigation into the case has been concluded with no person being charged and to have the reasons explained to the victim;
6. The victim is also entitled to have his details automatically passed to victims' services by the police within two working days of reporting the crime by the police. So also the victim is also entitled to request that his details are not sent to the victims' services if the victim does not wish them to be, as in such cases the police will first seek the consent of the bereaved victim before sending his details to the victims' services.
7. The victim is also entitled to receive information about victims' services including their contact details from the police so that the victim can access their support at any time.
8. A crime victim is entitled to be informed by the police of the following information and to have the reasons explained to him within 5 working days when the suspect is:
 - i) Arrested;
 - ii) Interviewed under caution;
 - iii) Released with no further action;
 - iv) Released on police bail, or if police bail conditions are changed or cancelled.

However in case of victim of the most serious crime, persistently targeted or vulnerably intimidated, then in such a case the victim is entitled to receive the information within 1 working day.

9. The police must offer the opportunity to the victim to make a VPS to the victims falling under the categories aforementioned. So also the police may make arrangements to submit the VPS to be submitted online. The police may make arrangements for a VPS or further VPS to be taken by an organization offering victims' services or another service provider.

b. Victim Participation through Courts and Witness Protection Units

If someone is arrested and charged, the Crown Prosecution Service (CPS) will decide whether to prosecute and take the victim's case to court. If the case goes to court, then the victim will be contacted before the trial by the Witness Care Unit. It will be victim's

single point of contact from then on, and will inform and support the victim at the Court in the following manner:³³⁷

1. When the victim attends the Court as witness then he is entitled to be given a contact point at the Court so he can find out that what is happening in the case whilst it is being heard.
2. Part of the court process involves the cross-examination of witnesses to test their evidence. It is up to the court to make sure the trial is conducted in a fair and just manner, taking into account representations from the defense barrister and the CPS Prosecutor representing the Crown. The CPS will treat victims who are witnesses in court respectfully and, where appropriate, will seek the court's intervention where cross-examination is considered by the prosecutor to be inappropriate or too aggressive.
3. After the trial the victim has the right to be informed by the Witness Care Unit about the outcome of the trial. This information will be provided within 1 working day of the Witness Care Unit receiving it from the court and also to be directed by the Witness Care Unit to victims' services where appropriate and where they are available.
4. The victim is also entitled to be informed by the Witness Care Unit of the sentence given to the suspect (if convicted) within 1 working day of the Witness Care Unit receiving the information from the court. This includes a short explanation about the meaning and effect of the sentence.
5. So also the victim is also entitled to be referred to the CPS which will answer any questions he may have about the sentence which the Witness Care Unit is not able to answer.³³⁸
6. If an application is made to the Crown Court to appeal against a conviction or sentence in the Magistrate's Court then the victim is entitled to be informed of the following information from the Witness Care Unit within one working day of them receiving from the Court:
 - (i) Any notice of appeal that has been made;
 - (ii) The date, time and location of any hearing;
 - (iii) The outcome of that appeal, including any changes to the original sentence.³³⁹

Through this we come to know that even though in U.K's criminal justice system there is adversarial system which is followed, but even then it is made sure that there is victim's participation as well as protection to the best possible extent through service rights and

³³⁷ Retrieved from < http://www.btp.police.uk/PDF/Victims%20of%20Crime%20booklet_tcm4-22526.pdf > last visited on 16/05/2014, 11:35, IST.

³³⁸ *Supra* note 326.

³³⁹ *ibid.*

procedural rights and it is also made sure that the same does not harm the rights of the defendants. This is indeed an elegant feature of the U.K.'s adversarial system.

5.3. Conclusion

After taking into account the material aforementioned it can therefore be said that U.S. is the first country which endeavored to a great extent to make sure that the victims have a participatory role in the criminal justice system. In the U.S. there are large number of laws at federal as well as state level which ensure that participation takes place on part of the victims of crime so that their plight does not go unheard. The states in U.S. administer the crime victims with certain rights which ensure their maximum participation and protection before, during and after trial such as right to notice, right to protection, right to employment protection, right to privacy and confidentiality, right to restitution, right to speedy trial and many more but there are also concepts such as U-Visa, VIS which ensure participation on part of the victims of crime. In European countries as well such rights have been mentioned under “*EU Directive establishing minimum standards on the rights, support and protection of victims of crime, 2012*”, and after this declaration large number of rights have actually been incorporated in many European Countries. Such kind of rights has been mentioned under various Indian legislations, but there are loopholes in such legislations and also lack of implementation of the same as a result of which the victims of crime are not able to bear the fruits of the same. So also in England where, just like India, adversarial system is followed it is ensured that there is sufficient amount of participation on part of the victims of crime through police, Court and many other organizations which are known by the name of service providers such as witness care units, the crown prosecution service, the prison service, the probation service, youth offending teams, etc. So even though there is adversarial system in England still efforts have been made to make sure that victim participation takes place to the best possible extent and during such participation protection is also administered to the victims. Whereas on the other hand in India such efforts have been made but only in theory and not in practicality, hence, it will not be wrong to say that in India the legislations which are in favor of the victims of crime are nothing more than a mere paper tiger.

CHAPTER-VI

CONCLUSION & SUGGESTIONS

6.1. Conclusion

All the material stated above clearly shows us that in the *Code of Criminal Procedure, 1973*, laws with regard to the compensation to the victims of crime may have been administered from the very inception of the Code, but they are in dire need of renovation. The law relating to the administering of the compensation has been mentioned in Section 357, but it does not administer justice as it is supposed to be because all the provisions mentioned in this section are of such a kind that the judges instead of putting focus on the rights of the victims actually take into consideration the rights of the accused for instance, in case if the accused is administered punishment in which he is given sentence, of which fine forms a part then in that case the court will take into account the paying capacity of the accused before ordering him to pay compensation to the victim in the form of fine, instead of taking into account that how much damage has been suffered by the victim mentally, physically or economically, as the case may be, so that he can be rehabilitated accordingly. Another aspect which is required to be taken into consideration is that if the accused is given a sentence of which fine does not form a part then in that case the court has got the authority to decide the amount of compensation which is required to be given to the victim for the purpose of rehabilitation, but in this case the courts for majority of times administer that much amount which is actually meager if we take into account the present economy and such amount is actually not sufficient enough to help the victim in his/her, as the case may be, rehabilitation.

Another provision administered under CrPC is under section 357A is the duty of the State Legal Services Authority and District Legal Services Authority to work in consonance with each other and make a scheme which will mainly aim to give compensation to the victim in that case where the accused has not been sentenced. But till date no such scheme has been made as these authorities do not endeavor to make such a scheme and even if they are successfully able to make such a scheme then in that case they will execute such schemes sluggishly, hence such schemes will just be considered as a paper tiger and nothing more than that.

So also in India any financial assistance is rarely administered to the victims of crime and even if it is administered then in that case it is not sufficient enough to rehabilitate the victim. In India there is no compensation board which can specifically deal with the cases relating to compensation and can also make sure that the laws relating to compensation are executed to the best possible extent. Unlike USA, in India there is no separate fund specifically for the victims from which the amount of compensation required for the purpose of the rehabilitation of the victims can be taken.

So also in India, unlike USA, no program relating to the compensation to the victims of crime has been initiated, with which it can be easier to not only know about the plight of the victims but the same can also be dealt in the best possible manner.

The existing legal framework in India in relation to the rights of the victims of crime reveals that in the area of providing compensation very little has been done either statutorily or through schemes to address the entire range of problems addressed by the victims of crime. It is a weakness of our jurisprudence that victims of crime and the dependents of the victims do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our law. This is the deficiency in the system, which must be rectified by the legislature.

So also another important point which should be taken into consideration is that in India there is no equilibrium between the rights of the victims of crime and rights of the accused because the rights of the latter one directly outline the rights of the former as the accused person has large number of rights such as right to know about the grounds of arrest, right against handcuffing, right to be produced before the nearest Magistrate within twenty four hours of arrest, right to be represented by the counsel, right against ex-post facto laws, right against double jeopardy, prohibition against self incrimination and many more. But on the other hand the victim of crime is treated with scant disregard and has been relegated to a status of mere prosecution witness as he is considered nothing but just a mere spectator throughout the trial. Whereas if we take into account the condition of victims of crime in US, their condition is far more better because there the victims have so many participatory rights such as right to notice, right to protection, right to employment protection, right to give a *Victim Impact Statement (VIS)*, right to restitution, right to privacy and confidentiality and many more and it is because of the rights of such disposition that the crime victims are incorporated in almost every aspect of criminal proceeding, as a result of which they get supreme mental satisfaction. But same is not the case in India and the main reason behind this is that in India the criminal justice system is based on adversarial system where the Court is totally detached from investigative process, this system also results in the lack of opportunity for third party like victim to interfere or participate in the judicial process. But this is not the case because if we take into account UK, the criminal justice system of which is also based on adversarial system, there have been provided to the crime victims large number of rights in the form of service

rights such as the right to information about the important Court dates and the progress of their case, assistance for vulnerable victims and compensation, etc, and procedural rights which are executed in such a manner that it is made sure that the rights of the accused are not affected by the same or that a reasonable amount of equilibrium can be made between the rights of both the parties to the dispute. But same is not the case in India as the material aforementioned in itself proves that in India the legislations are of such a nature that the Courts from the initial stage of the trial are more inclined in favouring the rights of the accused.

Another loophole in the criminal justice system of India is that there is no specific legislation such as *Crime Victims' Rights Act*, 2004 in US and the *Code of Practice for the Victims of Crime*, 2005, in UK, which deals only and only with the victims of crime, defines their rights specifically with regard to compensation, restitution and the aid to be administered to them from various agencies via. their officials. So also in US and UK there are various other legislations which specifically deals with the victims of crime and give the crime victims such provisions through which it is made sure that a crime victim is rehabilitated to the best possible extent and in the best possible manner, but same is not the case with crime victims in India as more focus is put on the rights of the accused rather than giving equal importance to the rights of both the parties to the dispute and the same is because of no specific legislation in India dealing specifically with the crime victims as a result of which the Courts do not feel obliged to give a part of their concern to the crime victims because as far as administering of relief to the crime victims and to what extent is concerned it solely depends upon the discretion of the Court. So also in US and UK there are various agencies which specifically have been given the duty to serve the victims of crime as a result of which the victims of crime are guided throughout all the stages of the police investigation and judicial proceedings. But the same is not the case in India, there is not even any witness protection program, to provide protection to those victims who play the role of witnesses as well.

In EU as well almost all the states under *EU directive establishing minimum standards on the rights, support and protection of victims of crime*, 2012, make sure that the crime victims interact with the criminal justice system so that they can get information about their rights and their case in the way which is unambiguous to them as well as there are provisions with regard to the protection of victims of crime during all the stages of police investigation and throughout the

proceedings of the Court, the protection of the victim's right to privacy and confidentiality. But in India even though there are legislations present with regard to the same, but they are not very effective because of lack of concern on part of the criminal justice system with regard to the victims of crime.

Therefore it can be said that the legislative framework of India is of such a disposition that more importance is given to the rights of the accused as there are laws regarding the granting of relief to the victims of crime, but the same are in bits and pieces and are very meager if compared with gargantuan number of rights administered to the accused. So also more focus is put up on the punishing of the accused rather than the rehabilitation of the victim, hence, the legislative provisions dealing with the welfare of the crime victims can be considered as a toothless tiger and therefore it is the duty of the legislature to eliminate such loopholes so that adequate justice can be administered to the victims of crime.

6.2. Suggestions

- 1) It should be made mandatory for the Court to grant compensation to the victims of crime.
- 2) Compensation should not merely be considered as a remedy but it should actually be considered as the right of the victims of crime.
- 3) If the Court finds that the accused is not capable of paying the compensation then instead of not giving anything at all to the victim, the State should undertake the duty to pay compensation to the victim. In other words it should be the duty of the State to make sure

that the victim is rehabilitated, whether the accused is capable of paying or not. The main reason behind this is that in a welfare State the State is actually responsible for helping the needy and the distressed persons.

- 4) The Court while giving the order of compensation should not only take into account the paying capacity of the accused, but should also take into account the injury or the damages suffered by the victim and up to what extent he requires rehabilitation and then administering him with the same. In case if the accused isn't capable to give such amount then State should endeavor to pay the same on its own.
- 5) Under Section 358 the maximum amount up to which the compensation can be paid is Rs.1000, and the Magistrate's discretion is also limited to the same. Therefore, such limit on the Magistrate's discretion should be removed so that he can direct the accused to pay compensation to the victim in accordance with the loss suffered by the victim.
- 6) The rehabilitation of the victim should be done in a time-bound manner otherwise the purpose of the scheme will be defeated. A committee should be appointed at the district level to monitor the process.
- 7) The provisions of the laws with regard to compensation are to be changed in such a manner that victim's rights are given due importance if not more then at least equal to that of the rights of the accused and lastly what needs to be done is that these provisions are to be implemented to the best possible extent, so that the justice can be administered in that manner as it is supposed to be.
- 8) The law in India dealing with compensation must also provide for the recording of reasons for the providing or not providing the compensation as we have in case of death sentence in the *Code of Criminal Procedure*, 1973.
- 9) The suggestion given by the Law Commission of India in its 42nd report on the *Indian Penal Code*, 1860, must be taken into consideration.
- 10) A Compensation Board must be established which will specifically be dealing with the provisions of compensation as well as their execution so that there will be no delay in administering relief to the victim for the purpose of his rehabilitation.
- 11) In India there must be established in every State a Crime Victim Compensation Fund as it is in USA. This will be the fund in which the money will be deposited by the offenders who are convicted for the commission of Federal crimes. The advantage of the

establishment of this fund will be that whenever the Court deals with the case in which the rehabilitation required by the victim of crime is expensive up to such an extent that the accused is not financially sound to pay the same, then in that case the Court can give an order to give compensation to the victim for his/her rehabilitation out of this fund. Another advantage of this funding system is that it is less technical from its very disposition as it specifically deals with victim compensation.

- 12) The District as well as the State Legal Services Authorities should endeavor to make such schemes which lay great emphasis on the victim rehabilitation and one great thing which is required to be mentioned here is that the members of these authorities should endeavor not just in making such schemes, but should also endeavor in executing such schemes, otherwise these schemes will just be considered as a paper tiger and nothing more than that.
- 13) A victim support unit should be located in the police department, preferably at the sub-divisional level to co-ordinate matters relating to crime victims.
- 14) Under the present criminal justice system, victim compensation carries a number of ambiguities and the award of compensation is at the discretion of the judges. As there is no separate compensation fund even when it is awarded unless the fine is voluntarily litigation which can be long drawn out, and involve a lot of expenditure. It is little wonder that the victims either do not move the courts or prefer out of court settlements. It is clear that the provisions relating to victim compensation require a close look. Hence, the subject should be thrown open for a public debate at various levels, so that the existing lacunae are discussed specific terms of reference could be appointed to go into this and draft amendments.
- 15) An awareness of the needs of the victims should be created among the police force through periodic re-orientation programs, so that a positive and sympathetic approach is taken by them. This will encourage the victims to come forward and register their complaints promptly as also seek their help when required.
- 16) A specific legislation should be made in India with regard to the victims of crime, in which the rights of the victims will be incorporated
- 17) In India endeavor should be made on part of the criminal justice system to shift from adversarial to accusatorial system, so that focus is also put on the rights of crime victims.

As far as present scenario is concerned India must take example of UK where the criminal justice system is also adversarial, but at the same time there are many statutory and procedural rights administered to the crime victims as a result of which the victims do not feel as forgotten entities or silent spectators in the proceedings of the Court.

- 18) There must be established various agencies in India which will guide the victims of crime with regard to their rights and throughout all the stages of police investigation as well judicial proceedings.
- 19) In India just like UK there should be established Witness Protection Units which will not only provide protection to the victims who are witnesses but will also help the victims to stay alert about the case *i.e.* that what is happening during the trial and also give him the information that what was the outcome of the trial and such information is to be provided to the victim within one working day.
- 20) Effort should be made to make specific legislation which will deal only and only with the rights of the victims of crime, in which the victims will be categorized in such a manner, like in UK, so that it will become easier for the Court to define that to which category does a crime victim belong and can without any delay administer required amount of aid to the victim. Moreover such legislation should specifically state the service and procedural rights, so that not only the protection but also participation on part of the victims of crime throughout the proceedings of the case is guaranteed. The best advantage which will be given by the enactment of the specific legislation is that the provisions stated in it will be a must to be followed by the Court while dealing with the case and in case if the Court does not avail a specific legislation then it will be bound to record its reasons in writing for the same. Therefore a comprehensive *Victim's Bill of Rights, 2017* must be legislated independently, including rights.³⁴⁰
 - a) To be notified of all the charges filed against any person for the crime committed against the victim.
 - b) To be notified of any criminal proceedings, other than the initial appearance, as soon as practical, and of any changes that may occur.

³⁴⁰ *Supra* note 37, p.80.

- c) To co-ordinate with the prosecutor at every stage of the trial, personally or through his lawyer, and present his views including giving views on any dismissal, reduction of charge, sentence recommendation, etc.
- d) To receive a transcript of the trial free of cost.
- e) To have the trial held without unreasonable delay. The trial judge, in determining whether to grant any continuance, should make every reasonable effort to consider what effect granting the continuance would have on the victim.
- f) To be present throughout all the criminal proceedings, including any hearings, arguments or other matters scheduled by and held in the presence of the judge.
- g) To be provided with a waiting area at the trial separate from the offender, his relatives and his witnesses.
- h) To have the prosecutor and/ or the counsel appointed by the victim, petition the Court that the victim or any other witness not be compelled to testify at any pre-trial proceeding or at trial to any facts concerning victim's identity, residence or place of employment that could put him in danger if the victim has been threatened with physical violence or intimidated by the offender or anyone connected with him.³⁴¹
- i) To be present at any proceeding where the accused is going to enter a guilty plea and be sentenced. The judge not to accept a guilty plea unless the victim is present or the prosecutor can assure the judge that every possible effort has been made to contact and notify the victim of his right to be present.
- j) At the hearing, the victim must have the right to present to the judge an impact statement VPS any information about the criminal offence or the sentence.
- k) To be given, after a conviction, information about the function of a pre-sentence report and the name, address and telephone number of the probation officer preparing the report for the judge and about the right of the offender to view the pre-sentence report.
- l) To receive compensation from the offender or in case of his incapacity to pay, from the fund constituted for this purpose, irrespective of the conviction or acquittal of the accused.

³⁴¹ *Supra* note 37, P.81.

- m) To make an oral or written impact statement to the probation officer preparing the pre-sentence report for the judge. In making his report the probation officer will consider the economic, physical and psychological impact of crime on the victim and victim's family.
- n) To be present at the sentencing and to give the judge an impact statement or any information that concerns the criminal offence or the sentence.
- o) To prefer an appeal against any adverse order passed by the Trial Court.
- p) To be informed as soon as practicable of the sentence imposed on the accused.
- q) To be given the names, addresses and telephone numbers of the appropriate agencies and departments to whom further requests for the notice should be provided.
- r) To be given by the public prosecutor, information about the status of any appellate proceeding and any appellate decision as soon as practicable after the status is known or the decision is issued.
- s) To be told when the offender is released.
- t) To be notified of any escape and subsequent recapture of the offender.
- u) To be notified within fifteen days prior to the end of the sentence of the date of the prisoner to be released and to be notified of any medical release or of the death of the prisoner.
- v) To be notified that the victim may submit a written statement, audio or video recording to be placed with the prisoner's records and considered at any review, prior to the release of the prisoner.
- w) To testify at a criminal proceeding or participate in the preparation of the trial without any loss of employment, intimidation or the threat or fear of the loss of employment.³⁴²

These are the minimum standard rights available to the victims in other adversarial systems and shall definitely gel well with the criminal justice system of India.

21) The role of voluntary organizations (NGOs) in helping the victims of crime should not be under estimated, as the victims are not organized and there is no single non-political organization to represent their interests. The NGO's can work with the victims to create a

³⁴² *Supra* note 37, p.83.

personal safety plan, a plan of action to follow if they are victimized again or if they feel that they are in danger.

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