

**THE EFFECTIVENESS AND EFFICIENCY OF VICTIM  
COMPENSATION SCHEME IN PROVIDING REDRESSAL TO  
VICTIMS OF CRIME IN INDIA: A CRITICAL ANALYSIS**

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

**SUBMITTED BY**

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## **CERTIFICATE**

This is to certify that the dissertation titled, **THE EFFECTIVENESS AND EFFICIENCY OF VICTIM COMPENSATION SCHEME IN PROVIDING REDRESSAL TO VICTIMS OF CRIME IN INDIA: A CRITICAL ANALYSIS** is the work done by **AMANPREET KAUR** under my guidance and supervision for the partial fulfillment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her/his success in life.

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Place- Lucknow

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## **DECLARATION**

Title of Dissertation: **“THE EFFECTIVENESS AND EFFICIENCY OF VICTIM COMPENSATION SCHEME IN PROVIDING REDRESSAL TO VICTIMS OF CRIME IN INDIA: A CRITICAL ANALYSIS.”**

I understand what plagiarism is and am aware of the University’s policy in this regard.

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- (c) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.
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**Place- Lucknow**

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Amanpreet Kaur

LL.M. (CSL)

## **LIST OF ABBREVIATIONS**

- AIR - All India Reporter
- BC – Before Christ
- CJS- Criminal Justice System
- Cr.P.C - The Code of Criminal Procedure, 1973
- CVCF -Central Victim Compensation Fund
- DLSA- District Legal Services Authority
- Gaz. – Gazette
- H.C.- High Court
- Hon'ble- Honorable
- I.P.C - Indian Penal Code
- Ibid.-It means in the same place.
- ICCPR- International Covenant on Civil and Political Rights
- ICESCR -International Covenant on Economic, Social, and Cultural Rights
- J&K - Jammu and Kashmir
- MP- Madhya Pradesh
- NALSA - National Legal Services Authority
- NHRC- National Human Rights Commission
- SC- Scheduled Castes
- SCC- Supreme Court Cases
- Supra- Means above or on the upper side. Whenever an authority has been fully cited in preceding footnotes, the "supra" is used.
- U.N. – United Nations
- UT – Union Territories
- VCS- Victim Compensation Scheme
- Vs. – Versus

## LIST OF CASES

1. *Ahmmed Kutty v. Abdulla Koya* (2009) 6SCC 660=(2009) 3 SCC(Cri) 302
2. *Alister Anthony Pareira versus State of Maharashtra* (2012) 2 S.C.C. 648.
3. *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC 770
4. *Baker Versus Willolughby* 3 All ER 1528
5. *Bhim Singh vs. State of J&K* AIR 1986 SC 494
6. *Birhum rape case* AIR 2014 SC 2816
7. *C.R. Reddy v. State of Andhra Pradesh* AIR 1989 AP 235.
8. *D.K. Basu Versus State of West Bengal* AIR 1997 SC 610
9. *Dayal Singh v. State of Uttaranchal*(2012) 8 SCC 263
10. *Dilip S. Dhanukar v. Kotak Mahindra Co. Ltd and Anr*(2007)6 SCC 528
11. *Dr. Jacob George v. State of Kerala* (1994) (1994) 3SCC 430
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13. *Hari Kishnan and Anr Versus Sukhbir Singh &Ors*1988 AIR 2127
14. *Inder Singh v. State of Punjab* (1995) (1995) 3SCC 702
15. *KA. Abbas H.S.A. v. Sabu Joseph & Anr Criminal Appeal No. 1052 of 2011 (Arising out of SLP (Crl.) No. 334 of 2008).*
16. *Kasturi Lal vs. State of U.P* AIR 1965 SC 1039
17. *Laxmi Versus Union of India*(2014) 4 SCC 427
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21. *Nilabati Behera vs. State of Orissa* AIR 1993, SC 1960
22. *Prem Shanker Shukla v. Delhi Administration* 1980 AIR 1535
23. *Rajendra Kumar Seni v. State of Rajasthan*
24. *Ramawatar Vs State of Madhya Pradesh Criminal Appeal No. 1393 of 2011*

25. *Ravikant Patil v. DG Police* 1991 ACJ 1060
26. *Rudul Shah vs. State of Bihar* (1983) 4 SCC 141
27. *Saraswate Parabhai v. Grid Corp. of Orissa* AIR 2000 Ori 13
28. *Sarwan Singh v. State of Punjab* AIR 1978 SC 1525
29. *Satya Prakash v. State Criminal Revision Petition No.338/2009*
30. *Shantilal case*
31. *Smt. P. Ramadevi Versus C.B. Saikrishna* 1993 ACJ 1072
32. *State of Gujarat v. Hon'ble Gujarat High Court* (1998) 7 SCC 392.
33. *State of Himachal Pradesh Versus Ram Pal* (2015) 11 SCC 584
34. *State of MP versus Pehlaraj Dwarkadas* AIR 1976 MP 208
35. *Suresh vs. State of Haryana* 2015 Cri L J 661
36. *Tekan Alias Tekram Versus State of Madhya Pradesh* (2016) 4 SCC 461
37. *Vijagan v. Sadanandan* 2009 (2) KLT 618
38. *West v. Shephard* [1963] UKHL J0527-2

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# **CHAPTER 1**

## **INTRODUCTION**

The administration of criminal law must be fair and effective in order to build public trust and confidence in the court. The ultimate goal of criminal law is to punish the guilty while still protecting the individual's rights. In every welfare state, it is the government's responsibility to preserve people's rights and to uphold principles of equality, justice, and good conscience. As cultural norms and values develop, so do methods of imposing punishment. Compensation to the victim is the primary method of punishing the perpetrator.

If we trace the history of the notion of compensation back to the Ancient Sumeria about 2050 BC, the Code of Hammurabi from 1750 BC established the concept of compensation as a reward. Ancient Greek, Roman, and Arab laws all allowed for specific loss compensation. The philosophy of might is existed, and it was widely thought that the only way to repay a victim is to damage someone else in return so that he does not repeat the same in the future. The need for revenge was there, but it was subsequently realized that an eye for an eye would blind the whole world, and another method of treating the victim and accused was adopted.

In every civilized nation, a criminal commits a crime, and the State apprehends and prosecutes the perpetrator. He is convicted and sentenced to any kind of punishment if he is proved guilty. At this point, various questions come in my mind. Is this the last cog in the criminal justice wheel? If so, what about the victims of crime? Traditionally, it may have sufficed if the culprit was apprehended and punished. However, contemporary ideology emphasizes the victims of crime. It is all very well to give the accused a fair and just trial, to punish the guilty, to treat convicts and inmates humanely, to improve jail conditions, and to rehabilitate former offenders, but what about the crime victim?

In response, the *Hon'ble Supreme Court*<sup>1</sup> has stated:

*"In our efforts to protect the convict's human rights, we must not forget the victim or his family in the event of his death or who is otherwise unable to earn a living as a result of the convict's criminal act. The victim is unquestionably entitled to compensation, restitution, and the protection of his rights. If the victim of the crime is not given justice, criminal justice is rendered empty. Victimology is gaining popularity, but we are also concerned about prisoner rights and jail reform."*

*A victim of crime cannot be labeled a "forgotten man" by the criminal court system. He has endured the most. His family consists of. His family is damaged, especially if he dies or suffers severe harm. This is in addition to concerns such as loss of reputation, humiliation, and so on. An honor that is lost or a life that is taken cannot be repaid, but monetary compensation may bring some relief."*

Victim compensation initiatives are designed to provide financial support and help to victims of crime as they recover from the damage they have suffered. The efficacy and effectiveness of victim compensation systems in India in giving restitution to crime victims is determined by a variety of factors, including the legislative context, how the programs are implemented, and the availability of resources.

The victim may now be reimbursed in a variety of ways, including monetary compensation and incarceration. In India, courts have recently begun to compel the planting of trees as a form of punishment or restitution. In a power theft case in New Delhi, the Delhi High Court ordered a man to plant 50 trees as a public duty within a month.

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<sup>1</sup> State of Gujarat v. Hon'ble Gujarat High Court, (1998) 7 SCC 392.

## **1.1 MEANING AND DEFINITION OF VICTIM**

### **1.1.1 Meaning of Victim**

The word "victim" has been taken from the Latin word *victima*. The victim notion is relatively old, prevalent in many cultures, and is inextricably linked with religious sacrifices. Many instances of symbolic sacrifices of victims may be found in epics and mythology. When there were no written laws, the codes of conduct mirrored the prevalent social standards. The victims or their family members were in charge of dealing with the perpetrators, and it was up to the victims or their survivors to determine what action to take against the criminals.

Society accepted the retributive and restitutionary system.

**Retribution** meant that the perpetrator should suffer in proportion to the amount of damage done to the victims as a result of their conduct.

**Restitution** means repaying the amount necessary to put the victim back in the same situation.

Punishment was proportional to the victim's suffering. This was a "victim justice system" setup. This approach gradually made its way into early codified laws such as the Law of Moses, the Code of Hammurabi, Roman law and Manusmriti. All of the codes emphasized the individual's responsibility for creating injury. Many of these rules had restitution, vengeance, and deterrent as key aspects.

A "**crime victim**" is someone who has been physically, financially, or emotionally hurt by a criminal, or who has had their property taken or destroyed by a criminal.

A "**general victim**" is defined as someone who has been physically, financially, or emotionally damaged, or whose property has been taken or destroyed by someone, an event, an organization, or a natural phenomenon.

Another pressing concern is the identification of **victims of power abuse**. If a person is harmed as a result of a government action, he is a victim of power abuse.

The Supreme Court referred to under-trial inmates and those in correctional institutions as victims of abuse of power in *Rudul Shah vs. State of Bihar*<sup>2</sup>, allowing them and their rights to be protected to a substantial extent.

The Court concluded in *Alister Anthony Pareira vs. State of Maharashtra*<sup>3</sup> that the legal system owes it to such victims of crime and abuse of power to safeguard them, thereby increasing the state's engagement in the justice system.

### **1.1.2 Definition of the term 'Victim'**

1. The term victim is defined in *Oxford English Dictionary* as:

“victim 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.”

2. The word ‘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”.

3. *The U.N. Declaration on Justice to Victims of Crimes and Victims of Abuse of Power (Magna Carta on Victims' Rights)* has related the term victim to two distinct categories, namely victims of crimes and victims of abuse of power and defined it as follows:

**“Article 1 states “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative**

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<sup>2</sup> (1983) 4 SCC 141

<sup>3</sup> (2012) 2 S.C.C. 648

*within Member States, including those laws proscribing criminal abuse of power.*

4. *The Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009)* instituted in *Section 2(wa)* and defines the word “victim means a person who has suffered any loss of injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes with his/her guardian or legal heir.

## 1.2 Victim Compensation Scheme in India

Victim compensation initiatives must be able to achieve their stated aims, which include providing victims of crime with support, financial help, and rehabilitation, in order to be successful. The ability of victim compensation initiatives to fulfill their goals in a financially sustainable manner is referred to as **efficiency**. The efficacy of victim compensation initiatives in India may be measured by factors such as administrative expenses, the time it takes to process claims, and the total budget of the plan etc.

In India, victim compensation initiatives are governed by the Criminal Law (Amendment) Act of 2013 and the Victim Compensation Scheme of 2015. Victims of a number of crimes, including rape, acid assaults, and human trafficking, are eligible for compensation ranging from INR 50,000 to INR 10 lakh under the plan.

However, the scheme's implementation has been criticized for being slow and inadequate. Many crime victims are unaware of the compensation programs, and those who are usually met with administrative difficulties when attempting to access it. Furthermore, the compensation granted is sometimes insufficient to compensate the victim's real expenditures.

To enhance the effectiveness and efficiency of victim compensation programs in India, it is critical to raise public knowledge of the programs and simplify the claims procedure. The government should enhance financing for victim compensation initiatives to guarantee that victims get proper recompense.



The number of victims who have received compensation, the speed with which compensation has been provided, and the adequacy of the money provided are all factors that may be used to judge the efficiency of victim compensation systems in India.

The victim compensation system in India is overseen by the National Legal Services Authority (NALSA), an autonomous institution established in line with the Legal Services Authorities Act of 1987. The project provides financial assistance to victims of rape, acid assaults, human trafficking, and domestic abuse, among other crimes. The initiative, among other things, covers medical expenses, property damage, and missed earnings.

Thus, the primary goal of this study is to evaluate and analyze the compensation given to victims and victim compensation scheme programs in the Indian context, and to recommend a suitable compensation scheme for India. In doing so, the victim of crime in brief victims and other types, as well as statutory provisions regarding compensation, have been taken into account.

### 1.3 Statement of the Problem

- Numerous issues impede victim compensation schemes' effectiveness and efficiency in India when it comes to offering redressal to crime victims.
- There is a **lack of knowledge** about the compensation programs among crime victims, which results in **underuse of the programs**.
- The **lengthy claims process** and other **administrative barriers** that must be overcome in order to access the programs **frequently cause delays and annoyance for the victims**.
- The **amount of compensation frequently falls short** of the actual expenses incurred by the victim, creating an impression of injustice and dissatisfaction.
- Victim compensation programs in India have **limited funding and resources**, which has an impact on how well they work to compensate crime victims.

- The scheme has also come under fire for its **cumbersome and slow procedures**, which frequently cause delays in the payment of victims' compensation. This delay frequently results in **financial hardship** for the victims, which can exacerbate their trauma.
- The victim compensation scheme in India's **limited coverage** is another problem. There are restrictions on the amount of compensation that may be given, and the **program does not apply to all crime victims**. The maximum compensation for rape, for instance, is INR 7 lakhs (\$9,200), which is frequently **insufficient** to compensate victims for their actual losses. Additionally, the program **does not cover all types of losses, including psychological and emotional trauma**, which can be equally as devastating for victims.
- The victim compensation program in India has drawn criticism for its **inefficient and cumbersome procedures**. The **complex bureaucracy** involved in the scheme frequently causes delays in the processing of compensation claims
- The scheme is also frequently hampered by a **lack of coordination between various agencies**, which can cause further delays in victim compensation payments. The scheme is also opaque, and **victims frequently don't know the status of their claims for compensation**.
- Even those who are aware of their right to compensation frequently **encounter significant obstacles** when trying to access the program because many victims are unaware of it.
- This is especially true for **marginalized groups** like women, children, and Dalits who frequently become victims of crime but encounter significant obstacles when trying to access justice.
- The scheme only covers a **small portion of the population**, and bureaucratic delays and victims' ignorance compromise its effectiveness and efficiency.
- Several steps must be taken in order to increase the victim compensation scheme's effectiveness and efficiency in India.
  - i. First, regardless of the type of crime committed, the program needs to be broadened to include all victims of crime.

- ii. Second, to make sure that victims are fairly compensated for their losses, the maximum amount of compensation that can be granted must be raised.
  - iii. Thirdly, the program needs to be simplified to get rid of red tape and guarantee that
  - iv. compensation claims are handled quickly.
- Finally, there is a need to improve marginalized communities' access to justice and raise victim awareness of their right to compensation.
  - Overall, these issues show how crucial it is for India to have a victim compensation program that is more organized, easily accessible, and adequately funded in order to better support and compensate crime victims.

#### **1.4- Research Objectives**

1- This objective will concentrate on the institutional and legal frameworks that support victim compensation programs in India, including the statutory provisions, operational procedures, and administrative frameworks that support the provision of compensation to victims. **Evaluating the design and implementation of victim compensation schemes in India.**

2- To gauge **how much victims of crime in India are aware of and using victim compensation programs:** This goal will look at how much victims are aware of their rights to compensation and what obstacles, like information gaps and social stigma, stand in the way of them using these programs.

3- To investigate the **variables affecting the efficacy and efficiency of victim compensation programs in India:** This goal will look into the various aspects, such as funding sufficiency, service quality, and the degree of coordination and cooperation among various stakeholders, that affect victim compensation program capacity to offer victims prompt and adequate redress.

4- determine the **most effective strategies and lessons discovered from other nations in developing and putting into practice victim compensation programs:** With the aim of

identifying cutting-edge approaches and strategies that can be modified for the Indian context, this objective will draw attention on global experiences to identify best practices and lessons learned in creating and implementing victim compensation programs.

**5-** To make **policy suggestions for enhancing the viability and effectiveness of victim compensation** programs in India: In order to improve the design, implementation, and administration of victim compensation programs in India and increase their effectiveness and efficiency in providing redressal to crime victims, this objective will summarize the research's findings and suggest specific policy recommendations.

**6-** To study the concept of Victims of Crime and their classification.

**7-** To study the evolution of the concept of victim compensation globally.

**8-** To study the existing provisions in Indian legislation regarding victim compensation.

**9-** To study the judgments of Supreme Court of India pertaining to Victim Compensation.

**10-** To study the Recommendations of Malimath Committee on the subject of Victim Compensation.

**11-** To study various initiatives undertaken in India regarding victim compensation.

**12-** To review the crime scenario in India.

**13-** To propose / suggest Victim Compensation Schemes suitable to India.

**14-** To discuss the financial implications to Government of India to implement the proposed Victim Compensation schemes.

## **1.5 - Hypothesis of Research**

**1.** The effectiveness and efficiency of victim compensation schemes in India are significantly **impacted by the way they are created and put into action.**

**2.** The ability of crime victims in India to obtain prompt and adequate compensation is hampered

by a **significant gap between their awareness of and use of victim compensation schemes.**

3. **The adequacy of funding, the standard of services rendered, and the degree of coordination and collaboration among various stakeholders** are just a few of the many variables that affect how effective and efficient victim compensation schemes are in India.

4. There is general feeling that compensation provided under different acts in India is somewhere **inadequate** and is not justified according to present scenario.

5. There is a **delay in execution of the compensation awarded.**

6. The introduction of **plea bargaining** is a good initiative in Indian Criminal justicesystem.

This research hypothesis will guide the research design, methodology, data collection, and analysis, and will help to provide a structured and systematic approach to exploring the effectiveness and efficiency of victim compensation schemes in India.

## **1.6 Scope of the Research**

The current analysis will include both statutory and constitutional issues in light of reported higher court judgments. Attempts may be made to study the compensating provisions under criminal justice in order to provide some recommendations that may be useful to both the lawmakers and scholars in different ways.

A survey of the general public's comprehension of victims' rights will be conducted. An attempt will also be made to analyze the present gaps that need a fresh look in comparison to other industrialized countries.

This research will also look at backlogs and docket management, which may lead to protracted trials. Whether present processes can help victims of crime get justice in a fast, efficient, and low-cost manner.

## **1.7 Research Methodology**

- In order to complete this task, primary and secondary sources will be used for data utilization and correction. Standard reference books, legal reports (AIR, SSC, etc.), Committee and Commission reports, journals, periodicals, and newspapers are all acceptable sources of information.
- This study's methodology is analytical, comparative, criminal, and comparative. This research takes on the Malimath Committee's report.
- The methodology may include a case study analysis of victim compensation programs in various Indian states and around the globe as well.
- A case study examination of victim compensation systems in different Indian states and throughout the world may be included in the technique.

## **1.8 - Importance of Research**

- For a number of reasons, the study on the efficacy and efficiency of victim compensation programs in providing relief to crime victims in India is important. First of all, it will give a **thorough understanding of the difficulties that crime victim** in India face when trying to access and make use of compensation programs. As a result, it will be **easier to spot the system's flaws and propose evidence-based policy recommendations for its improvement.**
- Second, by **identifying best practices and lessons from other nations'** designs and **implementations of victim compensation schemes**, the study will aid in identifying those.

This will make it easier to find novel methods and tactics that can be applied in the Indian context.

- Thirdly, the study will contribute to **greater public understanding of the value of victim support and compensation in India**. This will promote the development of a justice system that is more inclusive and equitable and promote a victim-centric approach to justice.
- Finally, the study will **support the creation of policies and practices** that are grounded in facts, improve the quality of justice, and support the needs and rights of crime victims in India. By doing this, the study will contribute to ensuring that criminal victims in India receive prompt and appropriate redress and that their rights are upheld.

## 1.9 Literature Review

- *G.S. Bajpai. (1997)* reveals various inequalities and vulnerabilities in India's present criminal justice system in his book "*Victim in the Criminal Justice Process.*" He proposes that the state has the obligation of compensating crime victims, and that victims should have the right to compensation in specific circumstances.
- *K.D. Gaur & Co. (2002)* creates a compensating mechanism under several legislation in his book "*Criminal Law and Criminology.*" He also mentions a few judicial prearrangements made by constitutional law courts to recompense crime victims. He is dissatisfied with the victim compensation plan and wants the state, courts, and society to improve their attitude towards crime victims, as well as making a few ideas to make the scheme more comprehensive.
- The idea of plea bargaining is introduced in India in the *154th Report of the Law Commission of India (1996) on "Code of Criminal Procedure, 1973,"* which suggests a new Chapter XXI A in the Code of Criminal Procedure, 1973. The Commission evaluates both pro and con arguments for the notion and makes initiatives to alleviate the miseries of under trial detainees. It places an emphasis on victim protection by compensating victims of crime.

- *Rai, H.S. (2004)* depicts the situation and frustrations of victims in his paper "**Compensatory Jurisprudence and Victims of Crime**". The author investigates the requirements for compensating victims of criminals in different nations.
- *Singh, K.P., and Nagpal, V. (2007)* discuss the utility of the concept of plea bargaining in India in their study "**Plea bargaining in India- A Critique.**" *Protracted trials have damaged India's criminal justice system. Plea bargaining is one such initiative that will help to reduce court overcrowding. However, while using this, keep a close check on it since it may become a curse.*
- *Pradeep and K.P. (2007)* discuss the innovative concept of plea bargaining in their study "**Plea Bargaining - New Horizon in Criminal Jurisprudence.**" *He explains the history of plea bargaining, as well as its advantages and disadvantages. His investigation is comparative and critical.*

## **1.10 Chapters**

### **Chapter 1: Introduction**

This present chapter aims to give a broad outline of proposed research topic, the backgrounds which the researcher has observed upon which the researcher has formulated his hypothesis, the methodology adopted for study and aims and objectives with which the work has been carried out. It also explains the brief idea of research work.

### **Chapter 2: The Meaning and Evolution of the Victim Compensation Concept**

This chapter delves into the meaning and definition of the word Victim, as well as the compensation method proposed for his restitution and rehabilitation. This chapter additionally dives into the history of victim compensation schemes across the globe and in India.

### **Chapter 3: Compensation for Crime Victims Under General and Special Laws**



This chapter will address and elaborate on the provisions regarding compensation codified in general laws such as the Code of Criminal Procedure Code, 1973, and the Indian Constitution, along with special laws such as the Probation of Offenders Act, the Protection of Women from Domestic Abuse Act, and others.

#### **Chapter 4: Recommendations of India's Commissions and Committees on Victim Compensation**

This chapter will deal with the recommendations that were made by Law Commissions and Law Committees pertaining to the Victim Compensation Scheme

#### **Chapter 5: Judicial trend**

It analyses the legal concerns regarding restitution, rehabilitation, and compensation to victims that are addressed by Indian courts, including the Supreme Court and High Courts. It deals with the notions and measures that Indian courts have developed in the process of dealing with problems involving victim compensation schemes, and so providing justice to victims of crime and abuse of power.

#### **Chapter 6: Conclusion and Suggestions**

The present chapter will be concluded by various factors considered in the proposed research work & will give a summary of what work has been done, findings of researcher and suggestions for effective implementation of the Victim Compensation scheme and measures to overcome its drawbacks.

## Chapter 2

### The Meaning and Evolution of the Victim Compensation

#### Concept

##### 2.1 Definition and meaning of Compensation

The word "compensation" comes from the Latin phrase "Compensatio," which means "to weigh against," and is connected to the word "Recompense."

Ubi jus, ibi remedium is a fundamental tort principle that asserts that there is no wrong without a cure and that the rule of law requires that wrongs not go unpunished. Compensation is an important remedial technique in tort law, and the principles controlling the calculation of damages and compensation are well established. The issue of payment of damages and compensation in tort law has several elements, including the amount of damages, the quantum of damages, the assessment of damages, the aim of the perpetrator, the proximity of the cause, and so on.

To be eligible for compensation under tort law, the tort must be of a kind that entitles the plaintiff to damages.

As a result, in any of the following scenarios:

- The nature of the case does not give rise to a claim for the plaintiff to recover damages or to the defendant's liability.
- if the defendant has committed no wrongdoing.
- if it is a breach of contract or a tort.
  - There is no loss or harm as a result of that violation.
  - The plaintiff has no cause of action.

- Fault of plaintiff
- The consequences are too far away.
- He has not attempted to offset his losses.

Compensation is not possible.

As a result, the plaintiff cannot recover that portion of the loss that is due to his own contributory negligence, that is not the result of the defendant's conduct, that is not within the scope of the particular contract or tort's protection, that he should have avoided or mitigated, that is too uncertain, that is past or prospective, that is, too distant.

However, in the current context, the word "compensation" refers to anything paid to make things equal, such as recompense, reimbursement, or salary. It is a symbol of civil society's responsibilities, signifying a non-criminal aim and goal.

*"Compensation means to provide something good to balance or reduce the negative effect of damage, loss, injury, etc.,"*

*according to the Oxford dictionary.*

*According to Black's Law Dictionary,*

*"compensation" denotes "payment of damages or any other act that Court orders to be done by a person who has caused injury to another and must therefore make the other whole."*

In *Saraswate Parabhai v. Grid Corp. of Orissa*<sup>4</sup>, the Honorable Orissa High Court said,

"It is true that perfect compensation is rare, and money cannot rebuild a battered and shattered physical frame,"

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<sup>4</sup> AIR 2000 Ori 13

*Lord Morris observed in West v. Shepherd*<sup>5</sup> that

It must be equal in value, but not in kind, according to justice. The goal of giving compensation is to put the claimant in as close to the same financial situation as he was before the disaster as feasible. In general, the foundation of compensation in the event of death is loss of monetary advantages to the deceased's dependents, which includes pecuniary loss, costs, and so on, as well as loss to estate. The objective is to alleviate the victim's suffering. Legal compensation should neither be insufficient nor should it be unfair, extravagant, or lacking. There can be no exact universal formula for calculating the worth of human life, and the amount recovered cannot be calculated precisely, but the amount recoverable is determined by the general facts and circumstances of each case. It should neither be punitive towards the person against whom the claim is adjudicated, nor should it be a source of profit for the person in whose favor it is granted."

The Supreme Court of India decided in the *Shantilal case* and *Smt. P. Ramadevi Versus C.B. Saikrishna*<sup>6</sup> that compensation is something provided to make things comparable, a thing given to make apologies for loss, recompense, payment, or pay. Thus, compensation is defined as a court order to pay a certain sum of money by a person whose acts or omissions have caused loss or injury to another in order for the person indemnified to receive equal value for his loss or be made whole in respect of his injury.

According to *Baker Versus Willoughby*<sup>7</sup>, "a man is not compensated for the physical injury; he is compensated for the loss he suffers as a result of that injury." incapacity to live a full life and enjoy the luxuries that rely on freedom of mobility, as well as incapacity to earn as much as one used to or might have earned.

The Court observed in *State of MP versus Pehlaraj Dwarkadas*<sup>8</sup> that the term "compensation" must be read as a synonym for "damages," and the word "compensation" is only a recompense for the pecuniary loss suffered by the victims, and that the words "compensation" and "damages" have been known and used as synonymous in tort law.

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<sup>5</sup> [1963] UKHL J0527-2

<sup>6</sup> 1993 ACJ 1072

<sup>7</sup> 3 All ER 1528

<sup>8</sup> AIR 1976 MP 208

Observations in England have shown that there may be a discrepancy between the terms "compensation" and "damages." Despite the fact that in England, both words are often used interchangeably. However, the Indian legislature has purposefully avoided using the English phrase "damages," instead opting for the term "compensation."

However, the terms reparation, restitution, and damages have been used in court to refer to recompense. Reparation is the activity of paying for wrongdoing and losses. The phrase restitution refers to the offender's obligation to the victim in restoring his or her damaged or destroyed status and rights. The term 'damages' is often used to reclaim the monetary compensation provided in restitution for loss or harm caused by an unlawful act or omission.

In the case of *Halbutt's Plasticine Ltd. v. Wayne Tank and Pump Co. Ltd.*<sup>9</sup>

"Every case is distinct and is founded on its own facts. It should be remembered that the purpose of a monetary judgment is to restore the plaintiff to his pre-loss or injury position, and that the plaintiff must behave reasonably to mitigate his loss.

If the damaged item is a popular brand of vehicle, the plaintiff cannot hold the defendant liable for the cost of restoration when a similar car on the market is less expensive. If, on the other hand, no replacement for the damaged items is available and no suitable substitute can be provided, the plaintiff should be entitled to the cost of repair under the law."

## **2.2 Interpretation of the term 'Victim'**

The word '*victim*' has varied implications in different legal, social, psychological, and criminological situations. The term 'victim' is described in the criminal legislation of the former USSR as follows.

Fattah (1966) states that "*the Victim may be specific, such as a physical or moral person (Corporation, State, and Association), or non-specific and an abstraction.*"

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<sup>9</sup> [1969] EWCA Civ J1205-1

*Quinney (1972) defines "The victim is a conception of reality as well as an object of events. All parties involved in sequence of actions construct the reality of the situation. And in the larger social contacts, we all engage in common sense construction of the crime, the criminal, and the victims".*

According to *Separovic (1975)*, "we consider a victim to be any physical or moral person who suffers either intentionally or unintentionally." As a result, we have victims of crime or wrongdoing as well as victims of accidents."

Thus, the word 'victim' refers to a person who has been victimized by another person and may seek legal redress for compensation and other benefits. Victims with connection to the criminal justice system are victims of rape, murder, deceit, criminal breach of trust, and so on, i.e. victims of crimes solely.

According to *Roy Lambron (1983-84)*, a victim is "a person who has suffered physical or mental injury or harm, mental loss or damage, or other social disadvantage as a result of conduct."

- is in violation of national criminal laws; or
  
- is a criminal under non-national laws; or
  
- erecting a violation of internationally recognized human rights, norms, and safeguards for life, liberty, and personal security; or erecting a violation of internationally recognized human rights, norms, and safeguards for life, liberty, and personal security by people who have power derived from political, economic, or social power, whether they are public officials, agents, or employees.

In 2008, a change to *Cr. P.C. s.2 (wa) defines "victim" as "any person who has suffered any loss or injury as a result of the act or omission for which the accused person has been charged," and "victim" includes the accused person's guardian or legal heir.* This definition should be expanded.

### **2.3 Victim -The Forgotten Man**

The victim is inextricably linked to the crime. As a result, the phenomena of crime cannot be fully described until the victim of crime is included. Despite being a vital aspect of crime and a significant role in the criminal justice system, the crime victim has been relegated to reporting crime and appearing in court as a witness.

*Justice Krishna Iyer in Rattan Singh Versus State of Punjab*<sup>10</sup>, the court stated, eloquently emphasizing the law's disinterest for a victim of crime:

*"It is a flaw in our criminal justice system that victims of crime and the distress of the victim's dependents do not attract the attention of the law." In truth, victim compensation remains the nadir of our criminal system. This is the systemic flaw that must be addressed by legislation."*

However, in ancient societies, the victim of a crime was the most important person in any criminal situation. The damaged or victim had a great effect in problems of compensation or retribution in our own pre-modern polity. However, when one civilization gave way to another, private revenge gave way to government-enforced public justice. Taking on the weight of justice, the perpetrator has become the prima donna, while the victim has been completely forgotten.

To determine why a crime is committed, criminologists, jurists, psychologists, sociologists, socio-psychologists, psychiatrists, criminologists, social workers, and the government work together. As a consequence, they are only concerned with crime and criminals.

The victim is totally ignored. He is subjected to interrogation, delays, postponements, court appearances, insults from people including police officers and lawyers, loss of earnings, waste of time, and frustration as he enters the criminal justice system, and the painful realization that the system does not live up to its ideals and serves only itself and its minions dawns on him.

If the victim is a woman, her condition is exacerbated significantly. Because of the decreasing number of successful investigations and even fewer convictions in the criminal justice system, the notion that punishing the perpetrator provides the victim with 'justice' is now questionable.

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<sup>10</sup> 1980 AIR 84

If the victim gets his stolen property, he is fortunate; if he is not tortured and humiliated during the investigation and court procedures, he should be grateful.

Due to the horrible wait, corruption, and complexities in evidence, many victims avoid reporting crimes and occasionally resort to private retribution. In any case, the criminal justice system suffers from its inability to prevent crimes or punish those who commit them when they occur in society. The situation's long-term ramifications for public security, human rights, and state accountability are clearly concerning.

Essentially, the objective of the criminal justice system is to defend people's and the state's rights from the intentional invasion of criminals who pollute society by violating set norms. Several governmental authorities have long tried to preserve the rights of offenders, and victims are not compensated. The notion of recompense to victims of any injustice, on the other hand, is tied to the legal system in two ways:

First, the legal system must rule the victim-perpetrator relationship;

second, the legal system must manage the victim's relationship with the administration of justice.

It is vital to understand the underlying concept of victim.

"With the passage of time, criminal jurisprudence has placed an emphasis on victimology, which is fundamentally a perception of a trial from the perspectives of both the criminal and the victim." In the eyes of society, both are valued. Certain nations value and respect the victim's point of view. It is the court's responsibility to ensure that the victims' rights are safeguarded."

## **2.4 Victim Classification:**

As long as we speak about crime, the victim will be mentioned. Previously, however, this was not the case. Prior to the 1940s, all discussion about crime was only around the offenders. However, the work of two pioneer victimologists, Mendelsohn and Hentig, shifted the focus from criminal to victim. As a result, the idea of "victim" evolved in a completely new way.



Victimology is a distinct field. Different victimologists' typologies highlighted how a victim's involvement or culpability is critical in identifying his or her victimization. However, the explanation for victim classification was first rejected by society since it shifted the guilt of the criminal occurrence onto the victims. However, it was eventually recognized since it may teach us how to avoid victimisation.

Also, criminal justice specialists may determine the sentence for the event while taking the victims' role in mind.

There are several victim categorization techniques, the most notable from a criminological and legal standpoint being that of a *well-known victimologist, Benjamin Mendelsohn*.

### **2.4.1. Mendelsohn's Crime Victim Typology**

#### **1. Innocent victim-**

Those who do not participate in the victimisation and happened to be in the wrong place at the wrong time. When we imagine regarding improvisation of victim rights, we think of this kind of victim.

#### Victims who were completely innocent

Victims in this group do not share any culpability for the crime with the offender. They are innocent persons who cannot be held responsible for the crime. They are, in fact, the perfect victims.

- physically, mentally, or emotionally challenged children.
- This group includes those who have been mentally or sexually abused and are unable to avoid future crime.

#### **2. The victim with slight guilt-**

They do not actively engage in their victimisation but do contribute to some extent, such as frequenting high-crime areas. This is someone who continues to frequent a pub renowned for nightly assault.

Victims of Minor Offences This typology covers all victims who, with any thinking, preparation, knowledge, information, or consciousness, might have anticipated danger and averted or at least minimized the injury.

- Victims of frequent domestic violence

In Indian settings, where females either accept this violent environment as usual behavior or forsake every violent day in order to keep the relationship, this typology fits wonderfully.

### 3. *The guilty victim, the guilty perpetrator* –

The victim and perpetrator may have collaborated on criminal behavior. Two individuals trying to steal a vehicle, rob a business, sell narcotics, and so forth.

Victims are just as guilty as the offender. This typology covers victims who share equal culpability for their victimisation with the attacker. They are the individuals who are attentive and aware of the situation and choose to be a part of it.

Keeping in mind that all sane adults have a common sense that helps them predict potential harm, and if they do not employ that common sense, they are considered equally liable for the act done with them.

- Visiting a prostitute and engaging in risky sexual practices, eventually obtaining a sexually transmitted illness from the prostitute.

### 4. *The guilty offender, the guiltier victim-*

Although the victim was the main aggressor, the offender won the battle.

Victims are more guilty than the perpetrator. This typology comprises victims who voluntarily engaged in an engagement where they were at risk of being injured. If the victim acts differently and responsibly, the perpetrator may be quickly removed from the situation. Unlike in the previous category, the perpetrator is less accountable for the harm in this category.

The following is an instance of this typology:

- In an abusive relationship, the husband, i.e. the abuser, is murdered by his wife.

#### 5. Guilty victim –

The victim started the fight but was slain in self-defense.

One mistreated lady murdering her boyfriend as he is abusing her is one example. Most Vulnerable Victims who are solely accountable for their victimisation are included in this typology. The victims instigated the situation and did an act that resulted in their injuries.

Rapists who are slain in self-defense by their victims are instances of this type, as are those who smoke and get lung cancer.

#### 6. Imaginary victim-

Some persons act as though they are victims when they are not. This is someone who falsifies reports. This typology comprises victims who did not experience victimisation but wrongly accuse others of it. These victims are often ignorant of the severity of their predicament.

- In a few dowry or domestic violence situations, the females voluntarily play the role of a fictitious victim in order to settle scores with the in-laws.

### 2.5 Victim Compensation: Its Origin and Evolution

Victims have historically suffered unpredictable treatment throughout centuries, civilizations, and political systems. There was a moment when victims' rights were at their pinnacle. Victims were the backbone of the whole criminal justice system under the old system. This was called the "golden age" for victims since they had a prominent position and acknowledgment in the criminal justice system.

Retribution was the sole part of punishment as considered in the early human society. The purpose of the law was to recompense the victim, not to punish the offender. The criminal rules of ancient societies were the law of Wrongs, or, to use an English technical term, the law of Torts. If the aggrieved individual prevails in his legal action against the wrongdoer, he receives recompense in the form of monetary damages. However, under ancient Hindu Law, the punishment of crimes was more significant than the recompense for wrongs.

The evolution of the need to protect, promote, and assist victims of crime may be split into three stages:

The *first stage* was the creation of monetary assistance for crime victims in the 1960s.

The *second stage* (1970s) saw the expansion of quick and direct assistance to crime victims.

The *third stage* saw the introduction of legislation aimed at enhancing the legal position and establishing the rights of crime victims.

## **2.5.1 HISTORY OF VICTIM COMPENSATION IN THE WORLD**

### **2.5.1.1 Victims' Position in the Ancient Era**

In prehistoric societies, the concept of legal existence was based on unwritten rules that were often more stringent than written law. Personal vengeance was the earliest step in the formation of law. Private conflicts were handled in a personal way in ancient cultures, i.e. retribution for personal wrongs was in the hands of the individual, since he was alone in his quest for survival. As he faced external assaults and injuries on his own, he had to take the law into his own hands and punish the aggressor in line with the prevalent ways approved by his community. He carried out the punishment as a measure of retaliation and recompense. The vengeance and recompense were all personal. A crime committed against an individual was an offence committed against his clan or tribe. Justice was administered in accordance with the intentions of the victims, and they were the only ones capable of exonerating their criminals.

However, with the advent of the adversarial system in the 16th century, their position was significantly decreased. The victim was reduced to the status of a tool in the criminal justice system.

According to some academics and experts, restorative justice ideals are rooted in justice traditions dating back to the ancient Greek and Roman civilizations.

The Code of Hammurabi<sup>11</sup>, established by the King of Ancient Babylonia, is one of the earliest legal laws and one of the most liberal in paying victims, revealing a society with a stringent judicial system. Penalties for criminal acts were harsh and varied depending on the victim's social position. This law may have been the world's first victims' rights legislation. The code's significance stemmed from its concern for victims' rights.

#### a) **The Mosaic Pattern**

Victim justice may also be seen in *Moses' teachings in Israel*. Moses' teachings were crystallized in the form of Mosaic Law, which established the groundwork for the contemporary rule of culpability. If the owner of a hazardous animal was aware that the animal was harmful, the owner must pay compensating damages to the injured person. Moses' Law demanded fourfold repayment for stolen sheep and fivefold restitution for a more useful ox.

#### b) **The Greek Civilization**

Greek civilization did not conceive or create the notion of law. It is worth mentioning that the phrase 'punishment' is derived from the Greek word 'pune,' which denotes a monetary transaction for harm done, but the term 'guilt' may be derived from the Anglo-Saxon word 'gel am,' which denotes payment.

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<sup>11</sup> Hammurabi is best remembered for its law code, a collection of 282 laws. For centuries, law had regulated people's relationships with one another in the lands of Mesopotamia. It shows rules and punishments if those rules are broken. It focuses on theft, farming (or shepherding), property damage, women's rights, marriage rights, children's rights, slave rights, murder, death, and injury. The punishment is different for different classes of offenders and victims. For a comprehensive summary, see Gordon (1957).

Homer mentions the death penalty in his famous book, the Iliad. The first written law code of Greek civilization is attributed to the statesman Draco, who is considered the first legislator of Athens, and the Draconian Code informed about legal procedures .

### ***c) The Holy Book***

Scholars think that the first five chapters of the Old Testament, which describe Moses<sup>12</sup> teachings, were written during the Jews' exile in Babylon in the fifth and sixth centuries B.C. In any case, Deuteronomy, the fifth book of the Hebrew Bible and the Jewish Torah, says that "the penalty shall be eye for eye, tooth for tooth, hand for hand, foot for foot" (Chapter 19, Verse 15).

### **2.5.1.2 Victim Compensation in the Middle Ages**

Before the Anglo-Saxon era, two races controlled England: Celts and Romans. They developed their own customary rules to resolve matters involving civil and criminal charges. Originally, the Anglo-Saxon legal system was based on tribal justice. Anglo Saxon tribes invaded and settled in England between 449 and 800 A.D.

### ***a) Laws of the Anglo-Saxons***

Prior to the Norman invasion of 1066 A.D., England's legal system was highly decentralized. Except for offences against society, there was no written law. Anglo-Saxon England<sup>13</sup> lacked a professional standing law enforcement entity comparable to contemporary police. There was a victim if a crime was committed, and it was up to the victim - or the victim's relatives - to seek justice. For the offence, compensation was given to the victim or his or her family. If the culprit fails to pay, the victim's family may pursue vengeance, culminating in a blood feud. During this time, criminal law was primarily intended to establish equality in what was deemed a private dispute.

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<sup>12</sup>Mosaic law the laws (beginning with the Ten Commandments) that God gave to the Israelites through Moses; it includes many rules of religious observance given in the first five books of the Old Testament (in Judaism, these books are called the Torah). The ancient law of the Hebrews, contained in the Pentateuch and traditionally believed to have been revealed by God to Moses. Also called Law of Moses

<sup>13</sup> Anglo-Saxon Law is a body of written rules and customs that were in place during the Anglo- Saxon period in England, before the Norman Conquest. This body of law, along with early Scandinavian law and Germanic law, descended from a family of ancient Germanic custom and legal thought (Jeffery 1956-1957).

## ***b) Feud of Blood***

Where blood feuds were tolerated, the society really removed its protection from the wrongdoer under particular conditions. It was legal permission granted, providing no more than was justly due.

This self-redressal legislation paved the way for enforcing a type of recompense, or monetary price, to be exacted in lieu of payment in blood. Even in our oldest laws, a price is put on life, and in Alfred's day, it was illegal to start a blood feud until that payment had been extracted. Even the killer himself was to be given twelve months to pay the wer (blood money) before being assaulted, and the feud was not to be pursued by harboring him: a violation of his edict was to be grounds for outlawry.

The foundation of the church resulted in several revisions to criminal legislation.

According to *V. D. Kulshethra (1950)*,

Christian influences led to a preference for emendation or 'Atonement' over punishment. The church was opposed to bloodshed, and particularly to any shortening of the time allowed to a penitent for gradual repentance. The notion of monetary restitution emerged later in the Anglo-Saxon era, rather than pursuing vengeance via violence. The term "buy off the spear or bear it" arose from the idea of paying the victims. Thus, for minor offences like as theft, robbery, or lying, just a fine was inflicted on the culprit.

The evolution of vindictive revenge to recompense was a natural historical process. As tribes settled down, the severity of the response to injury or loss decreased, and recompense to the sufferer helped to limit blood feuds, which, as tribes became more or less stable societies, merely created infinite difficulty since one injury would start a continuous vendetta.

Compensation provided an alternative that was, and still is, in many ways as satisfying to the sufferer. Compensation included both punishment and damages. As a result, it could only be applied to personal wrongs, not public offences<sup>14</sup>. This is because the concept of compensation was still in its early stages and was vulnerable to individual compromise. This reinforces the concept that throughout the Middle Ages, the criminal law of communities, in which crimes were punished by restitution, was a tort law rather than a crime law.

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<sup>14</sup> Barnes, H.E. and N.K. Teeters (1944), *New Horizons in Criminology*, NJ: Prentice Hall Pg. 401

As a result, criminal-victim connections could only be perceived via the victim's vindictive feelings and compensation demand. The aggressor offered monetary compensation or anything else of economic worth. If the victim accepted it, he was totally avenged, and the criminal process was completed. The victim or his family received the whole payment. The sum was determined by the severity and degree of the harm. As a result of the inclusion of human worth and social standing in calculating pay, a socially stratified composition arose.

Because the community has for long exerted some collective control over the degree of compensation, it is difficult to trace the beginning of the current advances in community judicial authority. Soon after the development of compensation, legislation began to elaborate the convoluted compensation system. Every form of hit or wound inflicted on every kind of person has a cost.

A full system of regulation arose from the various disparities in the amount of damages and the worth of the victim, culminating in the earlier codified law of many peoples, notably the Anglo-Saxons. If the perpetrator was unwilling or unable to pay the required price, he was labeled an outlaw, ostracized, and anybody might murder him with impunity.

A share is claimed by the community or king as a commission for its trouble and pain in bringing the parties together, or perhaps as the price payable by the malefactor for the opportunity that the community secures for him of redeeming his wrong by a monetary payment, or for the protection that it affords him, after he has satisfied the victim.

The victim's golden era came to an end with this development. It had been a time when his prospective involvement in any misconduct was not considered. During that period, it is implausible that the victim's connection with the offender could have aided in the development or precipitation of the crime.

The criminal-victim connection was carefully split into two parts:

- the active activity of the perpetrator
- the passive role of the victim.



The offender was solely to blame for the crime. The victim was only the aggrieved person; he was not considered to be engaged in any psychological complexities of crime causation, and he pressed his every advantage as the object of crime that was apparently exclusively caused by the criminal.

He had practically totalitarian influence over the criminal case's resolution; at no other period in criminal history has the victim had such a favorable position in criminal process.

### **2.5.2 The History of Victim Compensation in India**

The granting of compensation, which is commonly employed by courts in many nations and is regarded as a new contemporary phenomenon, is incorrect; yet, compensating victims has a long history.

The distinction between civil and criminal law is based on compensation. In other words, the purpose of the civil law system is to compensate for private wrongs, but the criminal law system seeks to punish those whose actions are morally accountable. Simply said, the objective of civil law is to compensate, while the purpose of the criminal justice system is to punish the perpetrator.

Now, the distinction between civil and criminal law is blurring, and compensation is being paid as a matter of right not only in criminal law, but also in constitutional law, environmental law, and for violations of human rights, among other things.

This concept's development may be followed both historically and conceptually. There is evidence that some groups of crime victims were reimbursed in the past, either by the perpetrator or his kinsmen, or by the sovereign. Previously, a wounded person or the family of a deceased person may demand a comparable blood feud from the improper order of his kin.

Later, it was understood that Blood-Money might be put in lieu of pursuing the Blood-Feud (Blood money is a monetary punishment given by a murderer (offender)) to a victim's kin.

Individuals in early cultures were responsible for defending themselves against crime and punishing criminals, reflecting the concept of private retribution. Under this system, the wrongdoer was required to compensate the victims. As societies were organized in the shape of states, the duty for punishing criminal law violators passed from private persons to political authorities.

The idea, however, remained if the wrongdoer compensated the victim or his family members. This was the stance derived from old Germanic law, including the Code of Hammurabi, the Law of Manu, ancient Hindu law, and Islamic law.

*Sir Henry Maine, a prominent judge*, corroborated this.

*"The penal law of ancient communities is not the law of crimes; it is the law of wrongs; the person injured brings an ordinary civil action against the wrongdoer and recovers compensation in the form of money damages if he succeeds."*

Historically, the notion of compensation in its most basic form was not only part of Hammurabi's, but also existed in a more evolved form in the ancient Greek city-state. The notion of compensation was also not new to India and existed in a more developed sense than it does now.

*Manu* plainly states in *Chapter III verse 287* that

*"If a limb is harmed, a wound is created, or blood runs, the attacker must pay for the treatment or the whole".*

He goes on to state in *verse 288* that

*"He who deliberately or inadvertently damages the goods of another should provide the owner a kind of five equivalents to the harm."*

Quotes on the subject may be found in *Brihaspati's writings* as well.

The Indian situation for victims of crime and compensation may be broken down into the following categories:

a) *The Vedic Period*

Retribution was a major component of criminal law throughout the early Vedic era of civilization. The legislation was intended to pay the victim rather than penalize the culprit, with the state acting as an arbitrator.

The punishment served four basic purposes:

- to satisfy the desire of the victim.
- to exact retribution or reprisal as a deterrent.
- preventative measure.
- to reform or redeem the evil doer.

According to *Dr. Sen, a well-known historian-*

*"In Hindu law, punishment for crimes was more important than punishment for wrongdoing. In addition to the punishment, the injured person was entitled to compensation. It was thought that the monarch had a responsibility to compensate the victim of a crime."*

*Brihaspathi, as cited by Jois (1984: 301-325), is a Hindu philosopher*

*"He who injures, splits, or chops off a limb must be required to pay the costs of healing it; and he who forcefully seized an object in a conflict should be forced to repay his loot. A merchant who hides the flaws of a product he is selling, or who mixes poor and excellent goods together, or who sells (old articles) after mending them shall be forced to deliver a double quantity (to the purchaser) and to pay a fine equivalent to the worth of the article."*

According to the *Vishnu Smirithi and Yajnavalakya,*

Victims of crime should be compensated for their injuries in cases of fraudulent sale of one object to another, or deliberately selling faulty goods as free of defect.

*Yajnavalakya, Narada, and Brihaspati*

They impose restitution twice on the purchaser (who paid the price) and a fine of an equivalent amount. Again, merchants or businessmen who lost their goods while going through the kingdom were reimbursed. Thus, restitution and atonement were recognized forms of punishment throughout Islamic rule.

*Narada* was possibly the first to urge that the culprit compensate the victims in order to atone for his faults.

*The Smriti* may be mentioned for giving physical punishment and monetary restitution to victims or their families of theft, assault, adultery, rape, and homicide.

When it came to punishing criminals and paying victims in ancient times, caste was a major factor. Sudras, Vaishyas, Kshatriyas, Brahmins, and upper-class people must pay a penalty specified by Gautama and Manu. Among these four categories, a severe fee was imposed on sudras for any legal infringement, even if it was a minor misdemeanor. As a result, they became victims of legal abuse. The guards of the law were, by definition, members of aristocratic groups (Brahmins).

There were well-developed standards for compensating victims of crime throughout the ancient times.

In his *famous book Arthashastra*, *Kautilya* sets forth several rules for determining compensation.

*Kautilya claims that:*

*"After taking into full consideration whether the nature of the offence is grave or simple, the circumstances that led to the preparation of the offence, the antecedent and present circumstances, the time, place, motive, consequences, and the social position and rank of a person, the magistrate shall determine the propriety of imposing the first, middlemost, or highest anercement."*

## b) Medieval India

The Muslim period represents the beginning of a new era in India's legal history. Muslims' social structure was founded on Islam, which may be defined as a reformer version of seventh-century Arabian practice. In Mohammedan Law, the payment of compensation to victims existed in a well-developed form.

The Muslim adhered to the idea of male equality and had no confidence in the caste system's grades or sanctified inequity. Due to the Quran's inherent authority, every debate revolved on its interpretation, which gave rise to Muslim law, or Shariat.

The legal system underwent significant modifications during the reign of the Sher Shah Dynasty.

*"Stability of Government depended on Justice," Sultan Sher Shah once said, "and it could be his greatest care not to violate it, either by oppressing the weak or allowing the strong to violate the laws with impunity."*

During the Mughal period, an integrated system of judicial was established. Professional legal specialists represented the litigants in court. They were often referred to as Vakils. As a result, the legal profession thrived throughout the medieval Muslim era.

During this time, Qazi was charged with administering justice to subjects on behalf of the Emperor. He used to punish violators using Islamic Laws based on the Quran. Nobody was thought to be above the law. For breaking the law, even princes were executed. The victims had the legal right to sue whomsoever he wanted.

### **c) The British Legacy in Pre-Independence India**

Queen Elizabeth I of England awarded the East India Company of London a charter on December 31, 1600, to conduct out commerce for a period of fifteen years into and from the East Indies, in the nations and portions of Asia and Africa. The stipulations in the Charter of 1600 were meant for commerce and not for the conquest of India's sovereignty. The East India Company proceeded to secure more and more rights and privileges from the British Crown throughout time. Encouraged by the British Government's consistent backing, the Company continued to extend its realms not only in the business but also in the political arena.

However, the British Crown assumed authority of Indian affairs by the Government of India Act of 1858, depriving the East India Company of the Indian Government. Queen Victoria's Proclamation of November 1, 1858 established the principles by which the Crown would rule India. British control in India lasted until 1947. The British permitted the continuance of the application of Muslim criminal law and judicial system as a general law to Muslims and non-Muslims alike. However, the continuance of Muslim criminal law and justice system as general law was with the exception of its applicability in Bombay since Bombay was not under Muslim criminal law at the time of its purchase by the British from the Portuguese.

*Illbert* describes the factors that led to the British sticking with the then-prevailing Muslim criminal law and then changing the criminal law as follows:

“The East India Company's goal was to make as little changes to the current situation as feasible. As a result, the country's courts were obligated to follow Mohammedan law while administering criminal justice. However, it quickly became clear that there were parts of the Mohameddan legislation that no civilized administration could enforce. It was unable to apply the code of vengeance for murder, stoning for sexual immorality, or mutilation for theft, or to recognize unbelievers' inability to testify in instances involving Mohammedans.”

*Warren Hastings, then Governor of Bengal from 1772 to 1785 and Governor-General from 1774 to 85, was the first to notice flaws in the old Muslim criminal law and judicial system.* However, he could not risk uprooting the Muslim criminal justice system and chose a more pragmatic way, adopting the device of experimenting with the triple policy of heritage preservation to the greatest extent feasible, reorganization where necessary, and improvements where necessary.

*Lord Cornwallis* was responsible for major improvements in Muslim criminal law and the judicial system. Lord Cornwallis devised and disseminated a new design in December 1790 to modify the then-existing CJS.

- Cruel penalties for murder were banned.
- The purpose of the parties was now to be used to determine punishment for murder.
- The notion of blood money has been abandoned.
- Non-Muslim evidence was seen as credible.
- The Indian Penal Code (IPC), which was prepared and presented to the Governor General in 1837 and then incorporated into law in 1860, completely replaced Muslim criminal law.
- The IPC replaced all criminal law Rules, Regulations, and Orders in India and established a standard criminal law for all individuals in then-British India.
- Since then, the IPC, which is a substantive law, has served as India's primary criminal code.
- Prior to 1882, India lacked a unified criminal procedural legislation.

- In 1882, a standard criminal process legislation known as the Criminal Procedure Code of 1882 was implemented across India.
- Cr.PC Section 357 provides that the Court may give compensation when passing sentence.

The British had rebuilt and changed the then-existing CJS of India in order to regulate the huge region and people of India. They amended existing laws, enacted new legislation, and established new principles. The modern criminal justice system arose mostly during the British era. The adversarial system, which was unknown in pre-British India, found its way with the adoption of the Code of Criminal Procedure in 1882. As a former British colony, India employs the adversarial system of common law for the administration of criminal justice. The adversarial system is excessively stacked in favor of the accused and is unsympathetic to the situation and rights of the victim.

*According to the Malimath Committee,*

One essential goal of the CJS is to secure victim justice. Nonetheless, the victim has been denied any major rights, including the chance to participate in criminal proceedings.

As a result, the Malimath Committee believed that the CJS should concentrate on bringing justice to victims and issued recommendations that included the victim's right to participate in cases involving significant offences as well as sufficient compensation.

In 2009, the Cr.PC was amended in response to the Malimath Committee's suggestions. This modification added a definition of victim to section 2(wa) Cr.PC, as well as a new section 357A dealing with victim compensation schemes. These were good moves towards re-emphasizing the relevance of victims in the Criminal justice system.

## CHAPTER 3

### COMPENSATION RECEIVED BY VICTIMS OF CRIME UNDER GENERAL AND SPECIAL LAWS.

In India, the legislature and judiciary have made measures to define standards for providing compensation to crime victims and their relatives. The Legislature has passed both general and special laws concerning compensation for victims. Whereas, in resolving situations where it was believed that the law was insufficient to give a remedy to the victim of crime, the judiciary proposed a set of criteria to provide recompense to the victims of crime.

The *Code of Criminal Procedure, 1973* is the *General Law* concerning Compensation to Victims of Crime, whereas the *Special Laws* dealing with this subject include *The Workmen Compensation Act, 1923, The Fatal Accidents Act, 1855, The Probation of Offenders Act, 1958, The Indian Railway Act, 1989, The Carriage by Air Act 1972, Motor Vehicles Act, 1988, The Scheduled Castes and Scheduled Tribes Atrocities (Prevention) Act, 1988, The Protection of Human Rights Act and many more.*

#### 3.1 Compensation under The Criminal Procedure Code 1973

The following sections of the Criminal Procedure Code (Cr.P.C.) apply to victims and their compensation:

- SECTION -250

##### Compensation for accusation without reasonable cause

This section empowers a Magistrate to order complainants or informants to pay compensation to anyone falsely charged by them.



- **SECTION 357**

**Order to pay compensation**

This section allows the Court imposing a sentence in criminal proceedings to award compensation to the victim and require the prosecution to pay costs.

- **SECTION-358**

**Compensation to persons groundlessly arrested**

This section authorizes the Court to compel a person to pay compensation to another person for illegally inducing a police officer to arrest such other person.

- **SECTION-359**

**Order to pay costs in non-cognizable cases**

This section allows the Court delivering a sentence in non-cognizable instances to award compensation to the victim and order payment of prosecution expenses.

- **SECTION-482**

**Saving of inherent powers of High Court**

This section enables the High Court to use its inherent authority in the interest of justice if a victim seeks compensation from a higher court.

### **3.1.1 Section 357 of the Criminal Procedure Code-**

#### **ORDER FOR PAYMENT OF COMPENSATION**

- 1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied—
  - a) in defraying the expenses properly incurred in the prosecution;
  - b) in the payment 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 such an offence, in paying 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;
  - d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.
- 2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.
- 3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

- 4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.
- 5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

While a court imposes a fine or a punishment (including a death sentence) in which fine is a component, the Court may, while giving judgment, direct that the whole or any portion of the amount recovered be applied-

- In defraying the legal fees incurred in the prosecution.
- In the payment of compensation to any person for any loss or harm caused by the crime, where such compensation is, in the Court's judgment, recoverable by such person in a Civil Court.

When a person is convicted of an offence for causing the death of another person or assisting in the commission of such an offence, the person sentenced must pay compensation to the persons who are entitled to recover damages from the person sentenced for the loss caused by such death under the Fatal Accidents Act, 1855 (13 of 1855).

When any person is convicted of any offence involving 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, the person is obligated to compensate any bona fide purchaser of such property for the loss of such property if such property is restored to the person entitled thereto.

If the fine is imposed in a case that is subject to appeal, no such payment must be paid until the term permitted for filing the appeal has expired, or, if an appeal is filed, before the judgment of the appeal.

When a court imposes a sentence in which a fine is not imposed, the court may order the accused person to pay, as compensation, such amount as may be specified in the order to the person who has suffered any loss or injury as a result of the act for which the accused person has been sentenced.

An order under this provision may also be issued by an Appellate Court, the High Court, or the Court of Session when exercising its revision powers.

Any money paid or collected as compensation under this provision will be considered by the Court when awarding compensation in any later civil litigation pertaining to the same incident.

Thus, sub-section (1) of section 357 deals with situations in which a Court imposes a fine or a punishment, which includes a fine. It gives the Court the authority to direct how the whole or any portion of the fine obtained is to be utilized.

It is a legislative duty to impose a fine and then issue subsequent instructions regarding the distribution of the said payment in the manner specified in sub-section (1) of section 357. Subsection (1) of Section 357 does not apply if no fine is issued.

Subsection (3), on the other hand, addresses the circumstance in which a fine is not part of the punishment issued by a Court. In such a circumstance, the Court, while delivering judgment, may order the accused individuals to pay compensation to the person (victim) who has incurred loss or harm as a result of the conduct for which the accused person has been convicted and punished.

The primary distinction between sub-sections (1) and (3) is that in the former, imposition of a fine is the fundamental and necessary prerequisite, but in the latter, despite the lack of a fine enables the court to order payment of compensation. When using revisional powers, an Appellate Court, the High Court, or the Court of Sessions may utilize this authority.

Subsection (5) addresses the circumstance in which the court determines compensation in a future civil litigation involving the same problem. When awarding compensation, the court must consider any money paid or recovered as compensation under section 357 of the code.

This clause does not allow a court to pay compensation to victims of crime if the offender is acquitted or discharged and no fine is imposed. Furthermore, the statutory duty to pay compensation is on the accused, and the State cannot be ordered to pay compensation under this clause.

The accused's ability to pay the reparation is also an essential consideration. Section 357 of the Cr.P.C. also requires the judge to use its discretion in every criminal case. Section 357 does not specify a compensation cap, but the court must determine what a fair amount for determining compensation is.

### **3.1.2 VICTIM COMPENSATION PLAN**

In response to the practical limitations of Section 357 that are provisions regarding compensation to victims of crime, which acted as a barrier in the minds of Judges in awarding compensation to victims of crime, the Parliament incorporated Section 357A in the Parent Act of the Code of Criminal Procedure by way of Amendment in 2008.

Section 357A is a significant step forward in addressing the predicament of victims. The Amendment Act of 2008 also includes the opportunity to challenge an order imposing insufficient compensation.

### **3.1.3 VICTIM COMPENSATION SCHEME UNDER SECTION 357A**

Every State Government, in partnership with the Central Government, would create a mechanism to monitor and give compensation to victims or their dependents who have suffered loss or suffering as a result of the crime and need rehabilitation.

When the Court issues a recommendation for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall establish the amount of compensation to be provided under the method referred to in sub-section (1).

- If the trial Court determines that the compensation provided under Section 357 is inadequate for such rehabilitation, or if the proceedings result in acquittal or discharge and the victim must be rehabilitated, the trial Court may make a recommendation for compensation.
- If the perpetrator is not apprehended or recognized, but the victim is, and no trial is undertaken, the victim or his dependents may seek compensation from the State or District Legal Services Authority.

After receiving such ideas or an application under paragraph (4), the State or District Legal Services Authority must give adequate compensation by completing the inquiry within two months.

To alleviate the victim's suffering, the State or District Legal Services Authority, as the case may be, order that immediate first-aid facilities or medical benefits should be made available free of charge on the certificate of the police 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.

Though the court's compensation authority is theoretically infinite, several practical concerns prevail. Even after the Criminal Procedure (Amendment) Act of 2008, the court tendency on this issue remains contentious, as seen by the following two case laws decided in 2009:

The Court said in *Ahmed Kutty v. Abdulla Koya*<sup>15</sup> that compensation cannot be paid to a victim of crime if the culprit was not convicted.

However, in the same year, in a case determined later that year, *Vijagan v. Sadanandan*<sup>16</sup>, the Court held that compensation might be paid to the victim even if the perpetrator was not convicted. It demonstrates that courts are allowed to give compensation even if the accused was not convicted since each case is unique.

### **3.1.4 Additional remuneration**

- **Section 357 B**

#### **Compensation in addition to the penalties imposed under sections 326 A or 376 D of the Indian Penal Code-**

The compensation provided by the State Government under section 357 A is in addition to the victim's penalties under sections 326 A or 376 D of the Indian Penal Code.

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<sup>15</sup> (2009) 6SCC 660=(2009) 3 SCC(Cri) 302

<sup>16</sup> 2009 (2) KLT 618

- **Section 357 C**

**Treatment of Victim**

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies, or any other person, must provide free first-aid or medical treatment to victims of any offence covered by Sections 326 A, 376, 376 A, 376 B, 376 C, 376 D, or 376 E of the Indian Penal Code, and must immediately notify the police of such incident."

- **Section 358**

**Compensation to persons groundlessly arrested**

If it appears to the Magistrate hearing the case that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees, to be paid by the person causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit. If more than one person is apprehended in such a case, the Magistrate may, in similar way, give to each of them such compensation, not exceeding one thousand rupees, as such Magistrate deems suitable.

All compensation granted under this section may be collected as a fine, and if it cannot be recovered, the person to whom it is due must be sentenced to simple imprisonment for a duration not exceeding thirty days, as directed by the Magistrate, unless such money is paid sooner.

*The Supreme Court has observed in a prominent case* regarding the ineffectiveness of provision of Section 357 of the Criminal Procedure Code, 1973 that provides some relief to victims as the Court is empowered to direct payment of compensation to any person for any loss or injury caused by the offence, as. However, in practice, the aforementioned clause has not shown to be very successful.

Many people who are condemned to long-term jail sentence do not pay the restitution and instead opt to remain in prison. Only when the sentencing consists only of a fine do the convicted consistently opt to waive the fine. However, in such circumstances, the victims' injuries would have been significantly less severe. As a result, the restorative and reparative theories do not translate into tangible benefits for victims.

## **3.2 PROVISIONS REGARDING COMPENSATION UNDER CONSTITUTION OF INDIA**

Under Articles 32 and 226 of the Constitution, the Courts have provided monetary compensation as a palliative in writ petitions.

### **3.2.1 Article- 32**

#### **Remedies for enforcement of rights conferred by this part.**

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

### **3.2.2 Article- 226**

#### **Power of Courts to issue writs.**

- (1) Notwithstanding anything in Article 32, every High Court shall have power throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them. For the purpose of enforcement of any of the rights conferred by Part III and for any other purpose.



(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.

The Supreme Court and the High Courts shall have the authority to issue directives, orders, or writs, including writs in the form of habeas corpus, mandamus, prohibition, quo-warranto, and certiorari, for the enforcement of any of the rights given by this Part.

Similarly, in a fresh taking on Article 21, the Supreme Court ruled that a person who is subjected to arbitrary arrest or incarceration at the hands of the government is entitled not only to prompt release, but also to monetary compensation as a palliative.

One such Supreme Court decision, in the matter of *Rudal Shah versus State of Bihar*<sup>17</sup>, depicts "a sordid and disturbing state of affairs," for which the government bears sole responsibility. The petitioner was acquitted by the Court of Session in June 1968, but he was freed from prison 14 years later, in October 1982. A petition of habeas corpus was issued on his behalf in order to release the detainee and to seek compensation for the infringement of his basic right granted by Art. 21.

*The question arose as to whether the Supreme Court has the authority to award compensation in the form of injury or otherwise in response to such deprivation in a petition under Article 32.*

After considering the shocking facts of the case, the Court concluded, as expressed by *Chandrachud CJ*, that refusing to skip an order of appropriate compensation in favour of the petitioner would be nothing more than paying lip service to the fundamental right to liberty, which the State Government has so flagrantly violated. As a consequence, the Hon'ble Court directed the government to pay Rs. 35000/- as compensation for his loss of liberty as an interim remedy.

There is a possibility that the creation of the remedy of compensation under Article 32 without legislative authorization might involve a decision on policy in the area of allocation of search resources which is ordinary in the legislative province.

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<sup>17</sup> (1983) 4 SCC 141

*The Rudal Shah Judgement* is a daring departure from the previously established legal stance and has far-reaching implications. Finally, the Court has implemented new measures only to make basic rights real and effective, emerging as the champion of the weak, impoverished, and disadvantaged.

Under Article 32, the Court is also allowed to invent any method fit for the specific aim of the case, i.e. fundamental right. The Court's authority is not only injunctive, but also remedial in nature. It has the authority to mandate the payment of compensation in suitable instances. As a consequence, Indian courts are growing more concerned about rising instances of administrative carelessness resulting in the denial of personal liberty. The use of writ jurisdiction to award compensation to the victim has made the remedy more affordable, quick, and effective.

*In D.K. Basu Versus State of West Bengal*<sup>18</sup>, the Supreme Court handed a groundbreaking judgment on the rights of detained individuals and the establishment of compensation in public law. The court recognized that practically all states have claims of numerous deaths in prison publicized in the media, and that *custodial death* is one of the most heinous crimes in a just society.

The Court demonstrated that all types of torture or cruel, inhuman, or degrading treatment would be covered by Article 21 of the Constitution. In all cases, monetary compensation is an appropriate remedy for redress of public workers' violations of basic rights to life or liberty, and the state is vicariously accountable for their tortious conduct.

To be clear, the award of compensation under public law is also without prejudice to other proceedings, such as suit for damages, that are lawfully available to the victim or heirs of the deceased in respect to tortious behavior committed by state personnel. This redressal under public law authority is therefore in addition to, rather than in substitution for, the customary remedies.

### **3.3 JUDGMENTS OF THE SUPREME COURT ON VICTIM COMPENSATION**

The Hon'ble Supreme Court of India has given down rules in a number of instances addressing the assessment of reasonable compensation to be paid to victims, and some of the major judgments of the Hon'ble Supreme Court regarding compensation are listed below:

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<sup>18</sup> AIR 1997 SC 610

- In *Kasturi Lal vs. State of U.P*<sup>19</sup>, Court held that the State is immune from liability to pay damages to injured persons if any tortuous act committed by public servants in the course of employment and in the exercise of statutory functions delegated to them by the Government. It is observed that there is a material distinction between acts committed by servants employed by the State where such acts are preferable to the exercise of sovereign powers delegated to public servants.
- In *Nilabati Behera vs. State of Orissa*<sup>20</sup> it was held that the concept of sovereign immunity is not applicable to the cases with violations of fundamental rights. In this case, a person was taken into custody by a police officer on 1-12-1987 at 8 a.m. for interrogation in connection with a crime and he was found dead the next day on a railway track near the police outpost without being released from custody. His death was unnatural and caused by multiple injuries sustained by him. In the absence of a plausible explanation by the police authorities and the State, consistent with their innocence, it was held that the obvious inference is that the fatal injuries were inflicted to him in police custody resulting in his death, for which the respondents are responsible and liable. The court accordingly directed the State to pay a sum of Rs. 1, 50,000 to the mother of the deceased and a further sum of Rs. 10,000 as costs within 3 months, by holding that it is a clear case for award of compensation to the petitioner for the custodial death of her son.
- *In Bhim Singh vs. State of J&K*<sup>21</sup>, a member of the Legislative Assembly was arrested while on his way to the Assembly, depriving him of his constitutional right to attend the assembly session and he was not produced before the Magistrate within the requisite period as well. The arrest was made with mischievous and malicious intent, resulting in a gross violation of his rights under articles 21 and 22(2) of the constitution.

This Court's lengthy series of judicial rulings recognized a paradigm change in the attitude to victims of crimes who were determined to be entitled to reparation, restitution, or recompense for loss or harm. This movement from punishment to reparation started in the mid-1960s and accelerated in the decades afterwards.

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<sup>19</sup> AIR 1965 SC 1039

<sup>20</sup> AIR 1993, SC 1960

<sup>21</sup> AIR 1986 SC 494

"Rather than being a novel approach to sentencing, restitution has long been used as a punitive sanction." Prior to the conceptual separation of civil and criminal law, it was customary policy in ancient nations to oblige an offender to recompense the victim or his family for any harm caused by the crime.

The primary purpose of such restitution was to protect the offender from violent retaliation by the victim or the community, not to compensate the victim. It was a means for the culprit to recover the peace he had broken. When the State gradually gained a monopoly on the institution of punishment and a schism between civil and criminal law arose, the victim's claim to compensation was incorporated into civil law."

The 2008 amendment to the Criminal Procedure Code focused largely on the rights of victims in criminal proceedings, notably in cases involving sexual assaults. Though the 2008 amendments did not change Section 357, they did add Section 357-A, which allows the Court to order the State to pay compensation to the victim when "the compensation awarded under Section 357 is insufficient for such rehabilitation, or where the cases end in acquittal."

Even if the accused is not convicted, but the victim needs rehabilitation, the victim may seek compensation from the State or District Legal Services Authority under this clause. This clause was enacted in response to suggestions made by the Law Commission of India in its 152nd and 154th Reports, respectively, in 1994 and 1996.

### **3.4 GOVERNMENT OF INDIA INITIATIVE**

On October 14, 2015, the Ministry of Home Affairs of the Government of India communicated to all State Governments and Union Territories its decision to establish a Central Victim Compensation Fund (CVCF) with the following objectives:

- To assist and augment the current Victim Compensation Schemes announced by state/territorial governments.
- To decrease disparities in the quantity of compensation amount announced by various states/UTs to victims of identical crimes.

- To encourage States/UTs to effectively implement Victim Compensation Schemes (VCS) notified by them under the provisions of Section 357 A of the Cr.P.C. and to continue providing financial assistance to victims of various crimes, particularly sexual offences such as rape, acid attacks, crime against children, human trafficking, and so on.
- The Government of India also published CENTRAL VICTIM COMPENSATION FUND (CVCF) GUIDELINES, which went into effect on August 21, 2015.

The following are the main guidelines:

- ▶ CVCF Size and Source: An initial capital of Rs. 200 crores was obtained from the Nirbhaya Fund.
- ▶ To manage the CVCF, an empowered committee led by the Additional Secretary (CS) of MHA and comprised of 7 additional members chosen from other ministries has been constituted.
- ▶ To get access to the CVCF, the State/UT must announce the Victim Compensation Scheme in accordance with Section 357 A of the Cr.P.C.
- ▶ The State/UT must first pay compensation and then seek repayment from the CVCF.
- ▶ The description of the harm and the minimal amount of compensation has been communicated, and the quantum of compensation shall not be less than this.
- ▶ The CCTNS citizen portal should be utilised to keep track of any compensation payments made to victim..
- ▶ Corporate and public contributions may be received via banking transactions.

The following is a description of the injury/loss and the minimum amount of compensation:

Description of injury/Loss and Minimum amount of Compensation is as follows:

S. No.	Description of injuries/ loss	Minimum amount of compensation.
1	Acid attack	Rs. 3 lakhs
2	Rape	Rs. 3 lakhs
3	Physical abuse of minor	Rs. 2 lakhs
4	Rehabilitation of victim of Human Trafficking	Rs. 1 lakh
5	Sexual assault (Excluding rape)	Rs. 50,000/-
6	Death	Rs. 2 lakhs
7	Permanent Disability (80% or more)	Rs. 2 lakhs
8	Partial Disability (40 % to 80%)	Rs. 1 lakh
9	Burns affecting greater than 25% of the body (excluding Acid Attack cases)	Rs. 2 lakhs
10	Loss of foetus	Rs. 50,000/-
11	Loss of fertility	Rs. 1.5 lakhs
12	Women victims of cross border firing: (A) Death or Permanent Disability (80% or more)  (B) Partial Disability (40% to 80%)	Rs. 2 lakhs  Rs. 1 lakh

Note: If the victim is less than 14 years of age, the compensation shall be increased by 50% over the amount specified above.

### **3.5 VICTIMS' COMPENSATION UNDER SPECIAL LEGISLATION**

#### **1. PROBATION OF OFFENDERS ACT OF 1958**

The Probation of criminals Act (Act No. 28 of 1958) offers detailed process for criminals' probation that is made applicable across the nation. The goal of the Probation of Offenders Act of 1958 is to reform amateur offenders by providing rehabilitation in society and to prevent juvenile offenders from becoming obdurate criminals under environmental influence by incarcerating them alongside hardened criminals.

Section 5 of the Probation of Offenders Act, 1958, grants the court limited discretionary power to order reasonable compensation for loss or injury caused by the offender in cases where he is let off with admonition or released on probation, and this Act states that the victim must be entitled to recover the amount ordered to be paid as a fine.

However, as with Section 357 Cr.P.C., compensation under the Probation of Offenders Act is at the discretion of the court.

#### **2. The FATAL ACCIDENTS ACT of 1985 and The MOTOR VEHICLE ACT of 1988**

As the name implies, the purpose or scope of *Fatal Accidents Act* is to offer compensation to a person who has suffered serious injuries as a result of any actionable wrong, or to the family of a person who has died in a tragic accident.

In India, the Fatal Accidents Act of 1885 was created in order to provide meaningful rights to those who were wounded or died in an accident. This Act simply established a method and the right of specified legal heirs to seek compensation from the negligent party. This enactment has functioned well in India for a long time.

The Motor Vehicles Act of 1988 came into effect on July 1, 1989. It superseded the Motor Vehicles Act of 1939, which had previously replaced the Motor Vehicles Act of 1914. The Act specifies the legislative provisions for driver/conductors' licensing, registration of motor vehicles, control of motor vehicles through permits, special provisions relating to state transportation undertakings, traffic regulation, insurance, liability, offences and penalties, and so on. The Central Motor Vehicles Rules 1989 were enacted by the Government of India to implement the Act's legislative requirements.

To facilitate compensation, provisions for mandatory third-party insurance and a claim adjudication machinery have been inserted into the Motor Vehicle Act by amending Act No.110 of 1956, by which Sections 93 to 109 refer to third-party insurance and Sections 110(A) to 110(F) refer to the establishment of a Motor Accident Claims Tribunal and claim adjudication procedure.

In 1982, by introducing Sections 92(A) through 92(E), a new concept of providing interim compensation on a 'No Fault' basis was introduced.

Chapter 10 of the new Motor Vehicle Act provides for interim awards, Chapter 11 provides for motor vehicle insurance against third-party risk, and Chapter 12 provides for the formation of a Claims Tribunal and adjudication of claims and related matters.

The Supreme Court has ruled many times that this is a welfare statute and that interpretation of the law is necessary in order to assist the victim. In this process, the Supreme Court has recently issued many judgments that have significantly limited the statutory provisions applicable to the Insurance Company, since the legislation pertaining to the burden of evidence has been completely modified. Limited provisions such as not possessing a valid driving license, using a



vehicle for hire and reward, and using a transport vehicle for a purpose not permitted by permission must be shown in such a way that insurers do not benefit from these provisions.

### 3. **INDIAN RAILWAY ACT 1989**

The Railways Act, 1989 is an Act of the Indian Parliament that governs all elements of rail transportation. The Railways Act of 1890 was repealed by the Railways Act of 1989. The Act specifies the legal provisions for railway zones, building and maintenance of works, passenger and staff services, and so on.

Section 124 of the Indian Railway Act of 1989 provides for compensation in the event of a train collision, derailment, or other accident to a train that results in the death of a passenger, as well as for personal injury and loss, destruction, damage, or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train.

### 4. **THE CARRIAGE BY AIR ACT 1972**

The Carriage by Air Act was approved by Parliament on December 19, 1972, and came into effect on March 23, 1973. The Act primarily seeks to implement the Warsaw Convention, which was signed in October 1929, for the consolidation of legislation governing international air travel. The requirements of the Convention apply to all or any transportation, such as passenger, freight, or luggage carrying performed for a fee.

The Act's goal is to be consistent with the revisions made to the Warsaw Convention by different Protocols. The Act "extends to the whole of India."

The purpose of the Act is stated in the Act's preamble, which is as follows:

"An Act to give effect to the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on the 12th day of October, 1929, and to the said Convention as amended by the Hague Protocol on the 28th day of September, 1955, and to the Montreal Convention signed on the 28th day of May, 1999, and to make provision for applying the rules contained in the said Convention in its original and amended forms subject to exceptions."

Damages are provided for under Section 346 of the Act:

"Whenever any person on board a ship suffers loss of life or personal injuries as a result of the fault of that ship and any other ship or ships, the liability of the owners of the ships concerned shall be joint and several."

## **5. WORKERS COMPENSATION ACT OF 1923**

The Workmen Compensation Act, 1923 is a legislation made by the federal government and enforced by several state governments that provides employees with social security. The legislation provides this security for those who labour.

The Act was enacted when it was discovered that the usage of innovative and complex technology was putting workers in risk. According to common law, the employer would only accept compensation obligation if it was determined that the industrial accident was caused by his carelessness. The topic of paying workers after deadly and catastrophic accidents struck the road in India in 1884. The factory and mine inspectors realized in 1885 that the Fatal Accidents Act of 1885 was insufficient to address the stated aims.

When members of the Legislative Assembly, employer representatives, employees, and professionals in medical and insurance created a committee, the report led to the passage of the Workmen's Compensation Act in 1923.

According to this Act, if a workman sustains personal injury as a result of an accident arising out of and in the course of his employment, his employer is obligated to pay compensation for any injury that result in total or partial disablement for a period exceeding 7 days, as well as death caused by an accident.

The Act also specifies the method for determining compensation payments and lists the injuries regarded to result in permanent partial disablement, occupational illnesses, and compensation payable.

## **6. THE 1988 SCHEDULED CASTES AND TRIBES ATROCITIES (PREVENTION) ACT**

The Act's preamble claims that it is:

An Act to prevent the commission of atrocities against members of the Scheduled Castes and Scheduled Tribes, to establish Special Courts for the trial of such offences, to provide relief and rehabilitation to victims of such offences, and to provide for matters connected with or incidental thereto.

The Act's objectives thus clearly emphasise the Indian state's intention to deliver justice to scheduled caste and scheduled tribe communities through affirmative action, allowing them to live in society with dignity and self-esteem and without fear, violence, or suppression from the dominant castes.<sup>22</sup>

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<sup>22</sup> NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2004, pp.14-15.

The Supreme Court of India, too, emphasised the relevance and importance of the Act in 1995 and at intervals afterwards.

The *Supreme Court panel of Chief Justice N.V. Ramana, Justice J Surya Kant, and Justice Hima Kohli* ruled on October 25, 2021, that<sup>23</sup>

“The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The Act is also recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper castes.

The Courts have to be mindful of the fact that the Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste based atrocities.

The goals of this Act are to prevent atrocity crimes against members of the Scheduled Castes and Scheduled Tribes, as well as to provide relief and rehabilitation to victims of such crimes.

The Act specifies a thorough protocol for the district administration to follow in order to conduct an inquiry and provide assistance to the victims.

The district administration will take these measures.

- The District Magistrate and the Superintendent of Police must visit the location or region where the atrocity occurred to evaluate the loss of life and property damage and to compile a list of victims, their family members, and dependents that are entitled to redress.

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<sup>23</sup> Ramawatar Vs State of Madhya Pradesh Criminal Appeal No. 1393 of 2011

- The Superintendent of Police must ensure that the First Information Report is recorded in the book of the relevant police station and that adequate steps are made to capture the accused.
- Following a spot inspection, the Superintendent of Police should promptly designate an investigative officer, deploy such police force in the area, and take any other preventative measures deemed appropriate and required.
- The District Magistrate, Sub Divisional Magistrate, or any other Executive Magistrate shall arrange for immediate relief in cash or kind, or both, to victims of atrocity, their family members, and dependents in accordance with the scale set out in the schedule annexed to these Rules. Such rapid support must also include food, drink, clothes, shelter, medical assistance, transportation, and other necessities.
- The relief provided to the victim of the atrocity or his/her dependent under sub-rule (4) in respect of death, injury to, or damage to property must be in addition to any other right to seek compensation under any other legislation in effect at the time.
- The District Magistrate, Sub-Divisional Magistrate, or any other Executive Magistrate must provide the relief and rehabilitation services outlined in sub-rule (4) above on the scales outlined in the Schedule annexed to these rules.
- The District Magistrate, Sub-Divisional Magistrate, or any other Executive Magistrate must offer the relief and rehabilitation facilities stated in sub-rule (4) above in accordance with the scales given in the Schedule appended to these rules.
- The District Magistrate, Sub-Divisional Magistrate, Executive Magistrate, or Superintendent of Police shall also forward to the Special Court a report on the relief and rehabilitation facilities provided to the victims. If the Special Court is satisfied that payment of relief was not made to the victim or his/her dependent on time, or that the

amount of relief or compensation was insufficient, or that only a portion of payment of relief or compensation was made.

## **7. HUMAN RIGHTS PROTECTION ACT OF 1993**

On January 8, 1994, the Indian Parliament approved the Protection of Human Rights Act, 1993. It established National Human Rights Commission, State Human Rights Commissions, and Human Rights Courts to defend these rights and provide prompt trials in the event of infringement. It covers the whole country of India.

Human rights are described as those connected to an individual's "life, liberty, equality, and dignity" that are provided either by the Indian Constitution or specific international conventions and are enforceable by Indian courts.

The term 'International Covenants' in the Act refers to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and any additional United Nations Convention as notified by the central government. (On December 16, 1966, the UN General Assembly approved the ICCPR and ICESCR.)

Under this Act, the National Human Rights Commission investigates abuses of human rights and carelessness in preventing such violations by the State Machinery, and the State Human Rights Commissions investigate similar violations in their respective states.

While investigating complaints under the Act, the National and State Human Rights Commissions have the powers of a Civil Court.

## 8. *PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT* *2005*

The Protection of Women from Domestic abuse Act 2005 is an Act passed by the Indian Parliament to protect women from domestic abuse. On October 26, 2006, the Indian government and the Ministry of Women and Child Development implemented it.

For the first time in Indian law, the Act includes a description of "domestic violence," which is comprehensive and includes not just physical violence, but also emotional, verbal, sexual, and psychological abuse. It is essentially a civil statute intended for protective orders rather than criminal enforcement. The Protection of Women from Domestic abuse Act, 2005 differs from the provisions of the Indian Penal Code in that it includes a larger definition of domestic abuse and protects more people.

The Act defines the aggrieved person as "any woman who is, or has been, in a domestic relationship with the respondent and alleges to have been subjected to domestic violence by the respondent. This Act was widely regarded as the first piece of legislation to grant legal recognition and protection to non-marital partnerships.

This legislation protects not just women in husband-wife partnerships, but also women who live in the same house as persons with whom they are in a domestic relationship. This protects women from violence in their marriage relationships (ex: husband-wife, daughter-in-law with father-in-law/mother-in-law/etc), blood relationships (ex: father-daughter, sister-brother), adoption relationships (ex: adopted daughter-father), and even marriage-like relationships (ex: live-in relationships, legally invalid marriages).

Domestic Violence is defined as any damage, injury to health, safety, life, limb, or well-being, or any other act of threatening or coercion by any adult member of the family.

## **CHAPTER 4**

# **RECOMMENDATIONS OF INDIA'S COMMISSIONS AND COMMITTEES ON VICTIM COMPENSATION**

### **4.1 MALIMATH COMMITTEE ON VICTIM JUSTICE**

A chapter on victim justice has been included in the report provided by the Committee on "*Reforms of the Criminal Justice System*" created by the Government of India and chaired by *Justice V.S. Malimath*, erstwhile Chief Justice.

*The following are the Committee's views and recommendations on victim justice:*

- Victims are being denied the legal rights and protection they need to play their proper part in criminal processes, which leads to disinterest in the proceedings and, as a consequence, distortions in criminal justice administration.
- Unless justice for the victim is made a priority in criminal proceedings, the system is unlikely to restore balance as a fair procedure in the pursuit of truth and cooperation of witnesses will not be forthcoming unless their status is significantly improved alongside justice for victims.
- Apart from legal help, victims of rape and domestic abuse need trauma counseling, psychiatric and rehabilitative treatments. The goal is to prevent secondary victimisation and to instill hope and faith in the legal system.
- Victim support services must be organized methodically at the police station level, with or without the aid of volunteer organizations, if the system is to regain its confidence in society.



- A victim's attorney may be permitted a limited involvement in the prosecution's conduct, but only with the court's approval. The appointed lawyer must follow the public prosecutor's instructions. The only other right a victim has is to resubmit written arguments to the court once the evidence in the trial has been exhausted. This necessitates a modification along the lines recommended above.
- Section 439 (2) of the Code of Criminal Procedure allows a victim to petition the Court for bail cancellation; nevertheless, the Court's decision is heavily influenced by the prosecution's position.
- The prosecution may withdraw at any moment throughout the trial after speaking with the victim (Section 321 Cr. P. C.).
- An official akin to a probation officer is required to protect the interests of victims throughout inquiry and trial. He may be referred to as a Victim Support Service Coordinator, and he may work closely with the police and courts to monitor, coordinate, and assure the delivery of justice while the case is pending.
- Victims must be given a significant involvement in the negotiations that lead to the resolution of criminal cases, whether via courts, Lok Adalats, or plea bargaining.
- The Criminal Justice System should take into account the principles of the Indian Constitution and appropriately legislate on the topic of Victim Compensation.
- The victim, or, if he is deceased, his legal agent, has the right to be impleaded as a party in any criminal procedure in which the charge is punished by seven years in prison or more.

- A recognized voluntary organization should also have the right to intervene in court proceedings in certain situations notified by the competent authorities and with the agreement of the court.
- The victim has the right to be represented by an advocate of his choice, provided that an advocate is given at the expense of the State if the victim cannot afford a lawyer.
- **The victim's right to participate in a criminal trial should include, among other things:**
  - i. To produce oral or documentary evidence with the Court's permission and/or to seek directives for the production of such evidence.
  - ii. To ask the witnesses questions or to recommend questions to the court for the witnesses.
  - iii. To be aware of the progress of the investigation and to request that the court provide additional instructions for inquiry on specific subjects, or to a supervisory officer to guarantee effective and appropriate investigation to aid in the search for truth.
  - iv. To be heard on whether bail should be granted or revoked.
  - v. To be heard whenever the prosecution wants to withdraw and to make an offer to continue the case.
  - vi. Following the prosecutor's submission of arguments, to forward arguments.
  - vii. Participate in talks leading to the resolution of compoundable crimes.
  - viii. The victim has the right to file an appeal against any unfavorable ruling issued by the court acquitting the accused, convicted for a lesser charge, imposing an insufficient term,

or giving insufficient compensation. Such an appeal shall lie to the court to which an appeal against such court's order of conviction typically lies.

- ix. Victims of certain crimes may have their legal services expanded to include psychological and medical assistance, interim compensation, and protection against secondary victimisation.

Victim compensation is a statutory requirement in all major crimes, regardless of whether the culprit is captured, convicted, or acquitted. Parliament will organize this in a separate piece of legislation.

The Victim Compensation Act would establish a Victim Compensation Fund, which may be managed by the Legal Services Authority. The legislation should provide a scale of compensation for various violations to guide the Court. It may indicate which crimes are not eligible for compensation and the terms under which it may be paid or withdrawn. The victim must be allowed a role in the negotiations that lead to the resolution of criminal proceedings, whether via courts, Lok Adalats, or plea bargaining.

## **4.2 RECOMMENDATIONS OF INDIA'S 154TH LAW COMMISSION REPORT**

The 154th Law Commission Report on the Criminal Procedure Code dedicated a full chapter to 'Victimology,' in which the growing focus on victim's rights in criminal cases was thoroughly examined, as follows:

Victimology, victimisation management, and victim protection have become more important to criminologists, penologists, and criminal justice reformers. Crimes often cause real hurt to people rather than just symbolic harm to the social order. As a consequence, in the overall response to crime, the needs and rights of crime victims should be prioritised.

Victim compensation is a well-known strategy of victim protection. Victims' and their families' requests are many and varied.

Ideas of victimology have their origins in Indian constitutional law. The provisions on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) serve as the basis for a new social order in which social and economic equity thrive in the national life of the country (Article 38).

Article 41 requires the state to make effective provisions for "securing the right to public assistance in cases of disablement and other cases of undeserved want," and Article 51-A declares that every Indian citizen has a fundamental duty to "have compassion for living creatures" and "develop humanism." These laws, if strictly applied and artistically expanded, might serve as the constitutional foundation for Victimology. However, in India, the criminal law only offers little compensation to victims and their family.

Section 357 of the Code of Criminal Procedure embraces this notion to some degree and authorizes Criminal Courts to award victims compensation.

The concepts of compensation to crime victims in India must be revisited and broadened to encompass all circumstances. Compensation should not be confined to fines, penalties, and forfeitures. The state should adopt the notion of assisting victims with its own cash.

The word 'victim' has varied implications in different legal, social, psychological, and criminological situations.

According to **Fattah (1966)**,

“the Victim may be specific such as physical or moral person (Corporation, State, and Association) or non-specific and an abstraction.”

**Quinney (1972) defines**

“The victim is a conception of reality as well as an object of events. All parties involved in sequence of actions construct the reality of the situation. And in the larger social contacts, we all engage in common sense construction of the crime, the criminal, and the victims”.

**Separovic (1975) states**

“We consider a victim as anything, physical or moral person who suffers either as a result of ruthless design or accidentally. Accordingly we have victim of crime or offence and victims of accidents”.

**Castro (1979) says**

“A Victim is a variable of crime or is an accident producing factor for others and for him.”

In wider perspective defined by **Roy Lamborn (1983-84)**

“a person who has suffered physical or mental injury or harm, mental loss or damage or other social disadvantage as result of conduct”.

Thus, the word 'victim' refers to a person who has been victimized by another person and may seek legal redress for compensation and other benefits. Victim with connection to criminal justice administration denotes victims of rape, murder, deceit, criminal breach of trust, and so on, i.e. victims of crimes solely.

An amendment to *Cr. P.C. s.2 (wa) in 2008 defined "victim" as "any person who has suffered any loss or injury as a result of the act or omission for which the accused person has*

*been charged," and "victim" includes his or her guardian or legal heir. This definition should be expanded.*

#### **4.3 COMPENSATION DESCRIBED AS 'ADDITIONAL PUNISHMENT'** **IN I.P.C. AND LAW COMMISSION REPORTS**

In its *42nd Report, the Fifth Law Commission* addressed compensation to crime victims in India. It pointed to and underlined the "*three patterns*" of compensating victims of crime as represented in the criminal procedure codes of France, Germany, and (Former) Russia when dealing.

The three patterns are as follows:

- (1) Compensation from the government.
- (2) Compensation from the wrongdoer, either in the form of a fine or a stipulated sum.
- (3) Obligation to repair the offender's harm.

*In France*, a victim's civil claim (action civile) might be joined with criminal actions against the perpetrator. While the *German Code* of Criminal Procedure allows a 'damaged person' (or his Heir) to assert in criminal proceedings his claim regarding property rights originating from the crime against the accused. To ease the filing of such a claim, the German Criminal Procedure Code requires that an aggrieved person be 'notified' of the initiation of a criminal case against an accused. A victim of crime (or his representative) has the right to 'participate' in the criminal trial as well. *The (then) Russian Criminal Code* puts a "duty" on the criminal to "make amends for the harm caused."

Execution of this responsibility consists of

- (i) making direct reparations for the damage committed
- (ii) compensating for material loss with one's own resources
- (iii) Making a public apology.

However, the Law Commission believed that the 'elaborate method' given by the French and German Codes would be 'unsuitable' in our nation. The establishment of a legal right for a victim of crime to participate in criminal proceedings as a third party would be 'unwise.' It also saw no significant benefit in imposing an obligation to make amends for the damage caused or pay compensation to them as an extra penalty in India. As a result, the Commission favored the payment of compensation to crime victims from penalties imposed on offenders under Section 357 of the Cr.P.C.

In order to give prominence in the I.P.C. to the payment of compensation out of fines imposed and to confer substantive powers on trial courts in this regard, it was recommended that a provision be inserted in the IPC allowing a criminal court to direct that the whole or any part of the fine realized from the offender be paid as compensation to the victim of crime. However, ***Justice R.L. Narasimham, a member of the said Commission, questioned the efficacy of the compensatory scheme provided under the (1898) Cr.P.C.*** and the circuitous procedure involved in the realization of fines and the payment of compensations to crime victims, and proposed imposing a statutory duty on offenders, as an additional punishment, to amend the harm caused by them.

In essence, these two reform suggestions advocating changes in substantive criminal law for the payment of compensation by the perpetrator for 'damage inflicted' or 'loss' sustained by his victim indicate two methods to paying victims of crime.

The first plea of compensation by a convict out of the fine imposed upon him for committing an offence against the human body, property, defamation, or aiding and abetting, or criminal conspiracy to commit these offences, provided such compensation is recoverable in a civil suit against the convict for loss or injury caused to the person.

The second, on the other hand, advocates for the introduction of a legislative requirement on offenders to pay, either financially or otherwise.

He emphasized the offender's accountability for his crime. He proposed deleting Section 545 (Cr.P.C. of 1898) and inserting Section 70-A in the I.P.C.

It is undeniable that the *second approach*, which not only expresses equal sympathy for victims of crime but also depicts true atonement for victims of crime, sounds more credible and attractive.

However, in 1997, the fourteenth Law Commission, in its 156th Report on the IPC, recalling its earlier recommendation made in 1996 in its 154th Report on the Cr.P.C. for the

State Government to frame a 'Victim Compensation Scheme,' and realizing that the payment of compensation as a 'additional punishment' not only requires an inquiry into a variety of circumstances, but also a few cases may not warrant compensation by way of punishment but also a few cases may not warrant compensation by way of punishment, opined that it would be 'not appropriate' to include order of payment of compensation in Section 53 of the I.P.C. by way of punishment.

#### **4.4 156<sup>th</sup> Report of Law Commission of India.**

Due to Custodial crimes and influenced by the Tamil Nadu 'model' of compensating victims of crime through' a well-designed 'Victim Assistance Fund', the Commission recommended a comprehensive victim compensation scheme to be administered, on the recommendations of a trial court, by the Legal Services Authorities constituted at the District and State levels under the Legal Services Authorities Act, 1987. The suggested clause recommending the payment of compensation to victims of custodial crimes, *inter alia*, mandates a criminal court to award, notwithstanding provisions of Section 357, Cr.P.C., compensation of not less than Rs 25,000 and Rs 1,00,000 respectively to the persons who sustain 'bodily injury not resulting in death' and victims of 'custodial death'. It also mandates the court to order the Government concerned, jointly and severally with the convicted public servant, to pay, as compensation, the amount specified in the order.



Inspired by the Tamil Nadu model and commanded by its zeal and deep concern for victims of crime, the Law Commission also recommended that every State Government, through a statutory provision to be inserted in the Cr.P.C. The Commission recommends including Section 357A.

#### **4.4.1 Section 357-A *Victim Compensation Scheme:***

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

Under the Scheme, the District Legal Services Authority at the district level and the State Legal Services Authority at the State Level shall decide the quantum of compensation to be awarded whenever the trial court to that effect make recommendation.

If the trial court at the conclusion of the trial, is satisfied that the compensation awarded under Section 357(3) is not adequate for such rehabilitation, it may recommend to District Legal Services Authority if the compensation in its view is less than Rs. 30,000, or to the State Legal Service Authority if the compensation is more than Rs. 30,000.

Where the criminal is not found or recognized, but the victim is, and no trial is held, it is open to victim or his dependents to make an application under sub-section(2) to the District Legal Services Authority at the district level and the State Legal Service Authority at State level for the award of compensation.

On receipt of such recommendation or application under sub-section (4), as the case may be, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall after due enquiry award adequate compensation by completing the enquiry within two months, and shall be put under a legal obligation to formulate, in collaboration

with the Central Government, a scheme for providing funds for the purpose of compensating victims of crime (or their dependents). A plan of this kind is based on trial court recommendations and is handled by Legal Services Authorities established at the District and State levels under the Legal Services Authorities Act of 1987.

Under the scheme the State Legal Authority and the District Legal Services Authority shall be authorized respectively to quantify the award compensation, on a recommendation of a trial court, to victims of crime. However, the Law Commission desires that these Authorities should have special considerations while compensating victims of crime. It further proposes that a crime victim be enabled to approach the District Legal Services Authority and the State Legal Services Authority, as the case may be, for seeking compensation even if the offender is not traced or identified, but the victim is identified, or no trial has taken place.

#### **4.5 STATE ASSISTANCE MODEL:**

Efforts have been put by independent agencies to formulate their models to compensate the victims. The **Victim Compensation Bill, 1995** prepared by the *Indian Society of Victimology*, the **NLSIU Bill** and **Professor Madhava Menon's proposal** are products of such efforts. All these models suggest establishing Victim Compensation Fund and provide compensation to the victims of crimes who do not have criminal records and need rehabilitation.

The NLSIU bill, on the other hand, endeavors to offer a comparatively better comprehensive compensatory scheme for a victim of crime, who, as a direct consequence of crime, has suffered death or injury, by conferring on him (and/or his dependent), irrespective of acquittal and/or conviction of the offender by a competent court, the right to receive compensation from the competent authority.

#### **4.6 CRITICAL APPRAISAL OF THE AMENDMENT:**

Section 357(A) has laid down the foundation stone of modern compensatory jurisprudence because the other provisions are inadequate and have failed to fulfill the demand of time. This new Section envisages the new vision. Now the State Governments with the co-operation of the Central Government shall provide the funds so that adequate compensation can be given to the victims. In another words, by this amendment the State has assumed the responsibility to give the compensation to the victims of crime. In this section, victim includes the dependents of victims and all those who injured or suffered the loss. Now, the courts have been given the role of only recommendation for compensation and it is the State or the District Legal Services Authority which will decide the quantum of compensation. New section also deals with the situations where trial results in acquittal or inadequate compensation under Section 357 have been awarded and accused is untraceable or not identifiable. State or the District Legal Services Authority will give just compensation by concluding the investigation within two months of receiving suggestions or applications. On either a certificate from a police officer not lower than SHO or from a concerned magistrate, the State or the District Legal Services Authority may also order immediate first-aid services or medical benefits at no cost, as well as any other temporary relief that the appropriate authority deems just in each case's circumstances. Therefore we can say that the provisions of said Section 357 (A) are noble and grand. It will be interesting to see that how our higher courts will interpret these provisions and how the States Governments will implement them in the real spirit and zeal. It is humbly submitted that if these provisions are truly implemented then it would be a new milestone in advancement of the cause of 'forgotten victims.'

## **CHAPTER 5**

### **JUDICIAL TREND**

#### **5.1 Compensation in accordance with Section 357A of the Cr. P. C.**

Despite the fact that Section 357 A of the Cr. P.C was added in 2009, the Supreme Court has only lately begun to interfere.

The Supreme Court declared in support of Section 357A that-

*"While the 2008 amendments left Section 357 unchanged, they added Section 357A, which empowers the Court to order the State to pay compensation to the victim if the compensation awarded under Section 357 is insufficient for such rehabilitation or if the case ends in acquittal or discharge and the victim must be rehabilitated. Under this law, even if the accused is not convicted but the victim requires rehabilitation, the victim may obtain compensation from the State or District Legal Services Authority."*<sup>24</sup>

- 1) In *Birhum rape case*<sup>25</sup>: Indian lady claims gang raped her on village court orders, published in Business and finance news on January 23, 2014

The Supreme Court, in Suo Moto Writ Petition (Criminal) No. 24 of 2014, took action based on a news story and instructed the District Judge to examine the location and report back. The victim had suffered as a result of the state's inability to protect her, according to the Court. Though her lost respect and dignity could not be regained, monetary recompense may provide some relief. The Court determined that, under Section 357A, the State Governments had a required obligation to develop victim compensation programs. The District or the State Legal Services Authority is responsible for determining the amount of compensation in each instance,

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<sup>24</sup> *Supra* note 147, p. 770

<sup>25</sup> AIR 2014 SC 2816.

while no formal formula has been developed in this respect. In this instance, the court granted Rs. 500,000/- as interim compensation under Section 357A.

It is worth noting that with the implementation of Cr. P. C. In 1973, practically all of India's states and union territories established a '*Victim Compensation Scheme*' (hence referred to as VCS) in their respective areas. The VCS of States and Union Territories have established their own qualifying requirements for compensation, method for compensation, limitation time for submitting claims for compensation, and so on. These schemes also specified the amount of compensation to be given in the event of a certain kind of damage or loss. However, there was no consistency in these plans. As a result, the Judiciary has mandated in its judgments to adopt a consistent pattern in providing compensation under these programs.

2) In *Laxmi Versus Union of India*<sup>26</sup>,

the Supreme Court held that all states and union territories must pay a uniform compensation of Rs 3,00,000/- to the victims, of which Rs. 1,00,000 should be paid immediately within 15 days and the remaining Rs. 2,00,000/- should be paid within 2 months as expeditiously as possible. The Supreme Court even said that the victim must be compensated regardless of the result of the case. In this instance, the Court granted interim compensation to the victim's father under Section 357A.

3) Furthermore, in *Tekan Alias Tekram Versus State of Madhya Pradesh (Now Chattisgarh)*<sup>27</sup>,

it was observed that a review of the VCS of various States and Union Territories reveals that no uniform practice is being followed in providing compensation to rape victims for the offence and rehabilitation. It was also suggested that the States and UTs examine and establish a universal program expressly for rape victims in light of the scheme formed in the State of Goa, which has chosen to provide compensation of up to Rs 10,00,000/-.

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<sup>26</sup> (2014) 4 SCC 427

<sup>27</sup> (2016) 4 SCC 461

4) *Suresh vs. State of Haryana*<sup>28</sup>

is a landmark case under Section 357A in which the Supreme Court granted interim compensation under Section 357A and ordered the State to pay Rs 10,00,000/- to the families of the victims who were kidnapped and killed. The Court ruled that the High Court should have given the compensation even if the dependents had not applied for it. The Supreme Court noted that, despite the passage of many years after the introduction of Section 357A, the award of compensation has not established a norm, and courts have not provided interim compensation.

The Court issued the following directives:

1. When a criminal act is charged, the court must assess whether there is tangible evidence of the crime's activity, if the victim is identifiable, and if the victim requires immediate financial aid.
2. When satisfied, either on application or suo moto, the Court should provide interim compensation, subject to a further compensation determination. This responsibility continues throughout the course of a criminal prosecution if compensation should be granted but is not, regardless of the victim's application.
3. At the final hearing, the Court must refer to the provision and record a decision on whether or not a case for compensation has been presented, and if so, who is entitled to compensation and how much.
4. Compensation may be granted on an interim basis.
5. The gravity of the crime and the victim's need, in addition to other elements relevant to the facts and circumstances of the case, are to be guiding factors.

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<sup>28</sup> 2015 Cri L J 661

6. There is also a need to examine top revisions to the pay scale. In the meanwhile, the scale announced by the State of Kerala under the plan may be used, unless a higher scale is given by another state or union territory."

The court further ordered Andhra Pradesh, Telengana, Madhya Pradesh, and Meghalaya to announce the plan within one month after receiving a copy of the ruling. The court also ordered that a copy of the judgment be sent to the National Judicial Academy so that all judicial officials in the nation may get the necessary training to make the provision effective and meaningful.

- 5) Promoting and upholding the position of victim,

the Supreme Court in *State of Himachal Pradesh Versus Ram Pal*<sup>29</sup> enhanced the amount of compensation paid to the victim from Rs. 40,000/- to Rs. 1,00,000/- and also directed the State of Himachal Pradesh to pay interim compensation of Rs.3,00,000/-. Further the Court directed that in case the respondent fails to pay any part of the compensation, that part of compensation will also be paid by the State under Section 357A from the funds available under the Victim Compensation Scheme framed under the said section so that the heirs of the victim get total sum of Rs. 4,00,000/- towards compensation.

## **5.2 COMPENSATORY JURISPRUDENCE EVOLVING THROUGH CASE LAWS**

A victim is somebody who has been the victim of a criminal act and has the right to compensation in general. From an international and general standpoint, there are many avenues for a victim to get financial compensation. He or she may be reimbursed by court ordered restitutions, a damages lawsuit, private insurance, or government compensation programs.

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<sup>29</sup> (2015) 11 SCC 584

The Hon'ble Supreme Court developed the principle of payment of compensation to victims of crime on the grounds that it is the duty of the welfare state to protect citizens' fundamental rights not only against the actions of its agencies, but also to be responsible for the hardships faced by the victims on the grounds of humanitarianism, social welfare obligation, duty to protect its subjects, and equitable justice.

1) It should be mentioned that the Hon'ble Court developed English legal doctrine:

***King can do no wrong.***

and clearly stated in the case of *Smt Nilabati Behra v. State of Orissa*<sup>30</sup> that doctrine of sovereign immunity is only applicable in the situation of tortuous act of government official and not when there is a breach of basic rights, thus stating that in criminal cases of coercion.

1) In the case of *Rattan Singh v. State of Punjab*<sup>31</sup>,

the Supreme Court of India declared in 1979 against full victim abandonment under Indian criminal law. The Court recognized that victimisation of the convict's family may be a reality and is sad. It is a flaw in our criminal justice system because the victims of crime and the suffering of the convicts' dependents are not brought to the attention of the law. Indeed, victim compensation remains the nadir of our criminal law.

This is a flaw in our system that the Legislature must address. We can only call attention to this issue. In light of our views, we hope that the Welfare State would give greater thought and action to offer justice. This remark was made by our judiciary well before the UN Declaration of 1985.

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<sup>30</sup> AIR 1993, SC 1960

<sup>31</sup> (1979) 4 SCC 719.



2) In *Dayal Singh v. State of Uttaranchal*<sup>32</sup>,

the Apex Court of India decided that the criminal trial is intended to provide justice to all parties - the accused, society, and victim. Only then can law and order be maintained. The Courts' role is not only to guarantee that no innocent man is punished, but also that no wicked man escapes.

3) The most well-known case is *Rudal Shah v. State of Bihar*<sup>33</sup>,

In which the Supreme Court ordered the state to pay Rs 35,000 in compensation to Rudal Shah, who was imprisoned for 14 years despite his acquittal on the grounds of insanity, and held that the state violated Article 21.

The Court in this case brought about pioneering improvements in human rights jurisprudence by granting monetary compensation to an unfortunate victim of State lawlessness on the part of the Bihar Government for keeping him in illegal detention for over 14 years after his acquittal of a murder charge.<sup>34</sup>

The Supreme Court in this case developing a new compensatory jurisprudence observed:

***“In the exercise of its jurisdiction under Article 32 the Supreme Court can pass an order for the payment of money in the nature of compensation consequential upon the deprivation of a fundamental right of life and personal liberty of a petitioner.”***

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<sup>32</sup> (2012) 8 SCC 263.

<sup>33</sup> (1983) AIR 1086

<sup>34</sup> MukulMudgal, “Comensation for Human Rights Violations:The Dynamic Approach of the Indian Judiciary”, The Indian Advocate, Vol. XXXIV,2006, pp. 97-115, p. 100.

*“Article 21 which guarantees the right to life and personal liberty will be denuded of its significant content if the powers of the Supreme Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can be reasonably prevented and due compliance with the mandate 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 act in the name of public interest and which present for their protection the powers of the State as a shield. Therefore, the State must repair the damage done by its officers to the petitioners rights.”<sup>35</sup>*

Following that, the judiciary has held in a series of cases that infringement of this indefeasible right guaranteed by the Constitution requires the State to protect their interests and provide relief of monetary amends under public law for the wrong done due to breach of public duty.

- 4) Giving superiority of this right over State sovereign immunity,

*The Hon’ble Andhra Pradesh High Court in C.R. Reddy v. State of Andhra Pradesh<sup>36</sup>* opined that personal liberty should be given supremacy over sovereign immunity. When a person is deprived of his life or liberty, otherwise than in accordance with the procedure established by law, it is no answer to say that the act done by the employees of the State is in due discharge of their sovereign function.

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<sup>35</sup> Supra note 17, pp.147-148.

<sup>36</sup> AIR 1989 AP 235.

The Court in later cases also opined the same view i.e. for infringement of a fundamental right the principle of 'Sovereign Immunity' does not apply and the state must be held liable for unlawful acts of its servants.<sup>37</sup>

5) The Court declared in the case of *Rameshwar Oraon v. State of Bihar*<sup>38</sup>

That anyone deprived illegally of his life or personal liberty can come before it and ask for compensation for violation of his Fundamental Right under Article 21. Oraon as an undertrial prisoner was detained in a lunatic asylum for six years after he had been certified as fit for discharge. The Court awarded him Rs. 15,000/- as compensation.<sup>39</sup> The Court observed that no amount could possibly compensate Oraon for living in a lunatic asylum for six years.

6) Another significant case is *Bhim Singh v. State of J&K*<sup>40</sup>,

In which Bhim Singh, an MLA, was arrested by the police only to prevent him from attending the Legislative Assembly. The Hon'ble Court not only heard his wife's writ petition but also awarded compensation of Rs 50,000 to be paid by the state.

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<sup>37</sup> Nilabati Beherav. State of Orissa AIR 1993 SC 1960, the Court held that, award of compensation in a proceeding under Art. 32 by the Supreme Court, or by the High Court under Art. 32 "is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort."; Dhaman Joy Sharma v. State of Haryana AIR 1995 SC 1795, the Court held that, "the right of personal liberty of a citizen is too precious and no one can be permitted to interfere with it except in accordance with the procedure established by law. The State must be held responsible for the unlawful acts of its officers and it must repair and damage to the citizen by its officers.", Consumer Education and Research Centre v. Union of India AIR 1995 SC 922, the Court held that, "the defence of sovereign immunity is inapplicable and alien to the concept of guarantee of Fundamental Rights."

<sup>38</sup> Decided on 12 Aug. 1983 AIR 1995 Pat 173

<sup>39</sup> M.P. Jain, India Constitutional Law, LexisNexis, Haryana, 2015, p. 1154.

<sup>40</sup> AIR 1986 SC 494

7) *In Ravikant Patil v. DG Police,*

the Bombay High Court found that bringing the petitioner to court while handcuffed is a clear violation of the Hon'ble Supreme Court's decision, which is law, as found in the case of Prem Shanker Shukla v. Delhi Administration.

8) Another strongly discussed subject in which courts have granted compensation to crime victims is *custodial death*.

*Mrs. Cardino v. UOI* is the most noteworthy case under this topic, in which the accused was detained on the accusation of stealing some plastic ware and utensils worth Rs1500 from the hospital but tormented like a hard core criminal and therefore succumbed to the torture. When the matter was considered by the Hon'ble High Court of Bombay, it ordered the state to pay Rs 200,000 in compensation.

9) In *Sarwan Singh v. State of Punjab*<sup>41</sup>,

The Supreme Court of India said that before granting compensation, the court must determine if the matter is acceptable for compensation. If it is, the accused's ability to pay compensation must be assessed. The Court further pointed out that the goal of ordering compensation is to collect the fine and give it to the individual who has experienced the loss.

If the accused is unable to pay the fine or compensation, the aim will not be achieved, and imposing a default sentence for non-payment of fine would not accomplish the goal. The Court further said that while awarding compensation, the Court must consider the nature of the offence, the harm incurred, the justness of the demand for compensation, the accused's ability to pay, and other relevant facts.

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<sup>41</sup> AIR 1978 SC 1525

In this case, the Supreme Court of India decided that, in addition to the sentence of 5 years rigorous imprisonment, a fine of Rs. 3,500 should be imposed on each of the accused under Section 304(1) IPC, with the fine being paid to the widow of the deceased as compensation.

10) In *Hari Kishnan and Anr Versus Sukhbir Singh & Ors*<sup>42</sup>

and others (an important case after Sarwan Singh), the Supreme Court of India remarked that the authority under Section 357(3) of the Cr.P.C. is a measure of correctly reacting to crime and reconciling the victim with the criminal. It is, in some ways, a positive response to crime. It is a significant advancement in our criminal justice system. As a result, we urge all Courts to use this authority generously in order to better serve the goals of justice.

However, the reparation payment must be appropriate. What is reasonable may vary according to the facts and circumstances of each situation.

11) In *Rajendra Kumar Seni v. State of Rajasthan*,

The Court concluded that Section 357 Cr.PC imposes an obligation on the court to consider the issue of compensation in every criminal case. As a result, in every criminal case, the court must indicate that it has considered this subject.

12) The revelation of application of mind is best evidenced in *Maya Devi v. Raj Kumari Batra*<sup>43</sup> by recording arguments in support of the order or conclusion. The Court stated:

"There is nothing like power that has no boundaries or constraints." That is true even when a court or other authority has broad discretion, since discretion must be employed solely in accordance with well-established and solid legal principles in order to promote justice, induce transparency, and help equity."

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<sup>42</sup> 1988 AIR 2127

<sup>43</sup> (2010) 9 SCC 486

13) In the case of *Dilip S. Dhanukar v. Kotak Mahindra Co. Ltd and Anr*<sup>44</sup>, the Supreme Court of India ruled that

To a large degree, the objective of imposing a fine and/or granting compensation must be examined with the relevant elements in mind. It might be compensating the individual in some manner. As a result, the amount of compensation demanded must be fair and not arbitrary. Before granting a compensation order, the accused's ability to pay must be determined. A fortiori, even a cursory investigation of this matter may be required.

Some reasons, which need not be elaborated, may also be assigned; the purpose being that, while the power to impose fines is limited and a direction to pay compensation can be made for one or more of the factors listed, sub-section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. A judge's whims and caprices cannot be used to exercise such authority.

14) In the matter of *Satya Prakash v. State*<sup>45</sup>,

According to the Delhi High Court, Section 357 of the Criminal Procedure Code, 1973 affords some solace to victims since the court has the authority to order the payment of compensation to any individual for any loss or harm caused by the act.

However, in practise, the aforementioned clause has not shown to be very successful. Many people who are condemned to long-term incarceration do not pay the fine and instead opt to remain in prison. Only when the sentencing consists only of a fine do the convicted consistently opt to waive the fine. However, in such circumstances, the victims' injuries would have been significantly less severe. As a result, restorative and reparative theories do not translate into tangible benefits for victims.

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<sup>44</sup> (2007)6 SCC 528

<sup>45</sup> Criminal Revision Petition No.338/2009

15) In *KA. Abbas H.S.A. v. Sabu Joseph & Anr*<sup>46</sup>, the Supreme Court held

For failure to pay compensation ordered under Section 357(3) of the Cr.PC, a jail term may be imposed. The provision's whole objective is to accommodate victims' interests in the criminal justice system. Sometimes the circumstances is such that having someone locked up serves no purpose. Instead, ordering the offender to make restitution to the victim or impacted party may provide complete justice. As a result, this award of compensation is occasionally made in place of or in addition to a relatively mild term of imprisonment. As a result, if this compensation is not paid, there must be a legitimate remedy. Not imposing a jail term would mean letting the accused to escape without paying the compensation, and adding another fine would be unworkable since it would involve imposing a punishment on top of another fine, which would not assure adequate enforcement of the compensation order. While passing an order under Section 357(3), the courts must consider the accused's ability and capacity to pay the same sum as set forth in the preceding situations, otherwise the aim of granting an order of compensation would be thwarted.

16) In *Manohar Singh v. State of Rajasthan*<sup>47</sup>,

the Supreme Court said that the determination of sentencing in a criminal case requires careful consideration. The Court must consider not only the nature of the crime, the prescribed penalty, and mitigating and aggravating circumstances in order to strike a fair balance between the demands of society and fairness to the accused, but also the necessity to provide justice to the victim of crime. Despite legislative amendments and Court rulings, this issue is sometimes overlooked. It is just as crucial to rehabilitate the victim as it is to punish the perpetrator. Even when a crime goes unpunished due to a lack of sufficient proof, the anguish of the victim cannot be overlooked.

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<sup>46</sup> Criminal Appeal No. 1052 of 2011(Arising out of SLP (Crl.) No. 334 of 2008).

<sup>47</sup>Criminal Appeal No. 99 of 2015 (Arising out of SLP(CRL) NO.1491 of 2012).

### 5.3 COMPENSATION AS A CONSTITUTIONAL REMEDY

1) Thankamani married Sathyan and had a son out of wedlock,

according to *Dr. Jacob George v. State of Kerala (1994)*<sup>48</sup>. Six months after the child's birth, Sathyan abandoned Thankamani, but reconnected with her after some time, around three months before Thankamani's death. Thankamani conceived for the second time after their reunion, but she was no longer interested in continuing with him.

Her pregnancies. She went to a medical facility to have an abortion procedure performed in order to terminate her pregnancy, i.e. abort the kid. Thankamani died within the facility after the procedure. The victim died because her uterus was ruptured as a result of the appellant's use of a few scientific devices, despite the fact that he was a homoeopath with no training in the use of such devices. In this case, the Apex Court changed the High Court's judgment by increasing the fine imposed by the High Court from Rs 5,000/- to Rs 1,000,000/- to be given to the deceased's son who became a juvenile and decreasing the imprisonment. The cash was deposited in a nationalised financial institution at the request of the minor son, with the expectation that the parent of the minor would take the interest on the deposit and use it for the child's development, and that when the son reached majority, he could choose how he wanted to use the cash, with the bank following suit.

2) *Inder Singh v. State of Punjab (1995)*<sup>49</sup>,

there was a case of egregious human rights violation in connection with the kidnapping and transfer of seven persons by misusing police authority to subvert private retribution given with the help of the Punjab police. A police squad commanded by Baldev Singh, D.S.P. forcefully removed seven men and women from their farm premises on suspicion of being involved in the terrorist kidnapping of Baldev Singh's brother. They were unlawfully incarcerated at several

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<sup>48</sup> (1994) 3SCC 430

<sup>49</sup> (1995) 3SCC 702



Punjab police stations after being kidnapped using a police birthday celebration, and it was eventually established that they would not be discovered again. It was logical to suppose they were slain at every chance by the captors. As a result of their inability to preserve peace and order, the Supreme Court ordered a compensation of Rs. 1,50,000 to be paid by the state to all seven victims within a few weeks.

Even though India's adversarial criminal justice delivery system has carved out a minimal role for victims, concerns about crime victims have been voiced again and again by the court, different commissions and committees. Judicial activism has aided in the development of compensation jurisprudence for crime victims.

Section 357 of the Criminal Procedure Code empowered the Court delivering a sentence in a criminal action to award compensation to the victim and compel the payment of prosecution expenses. However, this is at the discretion of the sentencing court and will be deducted from the amount collected.

The Criminal Law Amendment Act of 2008 improved the situation of victims by recognising and granting them rights. This Amendment reflected the 1985 UN Declaration. The Malimath Committee Report from 2003 aided in the passage of this amendment. The word "victim" was defined for the first time in CrPC section 2 (wa).

The term "victim" refers to a person who has suffered any loss or harm as a result of the conduct or omission for which the accused person has been charged, and the term "victim" includes the accused's guardian or legal heir. This definition falls short of the criterion set by the United Nations Declaration of 1985. In situations when the offender is not recognised, captured, prosecuted, or convicted, this definition of victim is silent. It fails to recognise those who suffer while attempting to aid victims in distress or to avoid victimisation.

The amendment also added section 357A to the CrPC, which states that the State Government, in collaboration with the Central Government, must devise a plan to provide funds for

compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

The 2013 Criminal Law Amendment Act enhanced the situation of crime victims. Section 357C of the CrPC, which was recently adopted, specifies that all hospitals, public or private, whether controlled by the Central Government, the State Government, local governments, or any other person, must provide free first-aid or medical care to victims as soon as possible. It is vital to offer victims with assistance.

However, in terms of support services, India lags behind other countries. According to the Handbook, 1999, India lacks a robust victim support services program. Section 357A, however, says that the State or DLSA may require an emergency first-aid facility or medical benefits to ease the victim's suffering. Section 357C of the CrPC provides for the treatment of victims.

In India, however, the criminal law provides little recompense to victims and their families. Section 357 of the Code of Criminal Procedure acknowledges this concept to some extent and authorises Criminal Courts to give compensation to victims.

In India, the principles of compensation for crime victims must be examined and expanded to include all conditions. Fines, penalties, and forfeitures should not be the exclusive forms of restitution. The government should adopt the idea of providing assistance to victims using its own funds."

## **CHAPTER 6**

### **Conclusion and Suggestions**

#### **6.1 Conclusion**

Victims and offenders are two sides of the same coin in the criminal justice system, and the system cannot function without either of them. Taking this method, there was a revolutionary breakthrough on a global and regional scale to improve the status of victims, who were a marginalized group in the legal system. As a result, various countries, including India, in their modern criminal justice systems gave them (victims) a chance to become a part of the justice system and also provided state compensation to them so that they could at least take various recourses to repair themselves as a result of crime. It is worth noting that the word 'victim compensation' is not defined, but it is clear that it is distinct from restitution to victim, which refers to financial help supplied by the perpetrator of crime to the victim.

Thus, it is discovered that it is a payment made by the government to those people who suffer loss or injury, whether mental or physical, as a result of crime by analyzing both the terms 'victim' and 'compensation' separately defined in various legislations of various countries as well as Indian judicial decisions, the meaning contained in various dictionaries, and also the UN Declaration of Basic Principles of Justice of Victims of Crime and Abuse of Power, 1985.

As a result, the idea of victim compensation that existed throughout the ancient and medieval times was essentially restitution since the help was obtained from the criminals. The notion of governmental compensation, which is a contemporary approach, evolved from this system, which demonstrated sympathy towards the sufferer.

As a signatory to the United Nations, India adopted some elements in its criminal justice law, such as the Cr.P.C. 1973 and the Probation of Offenders Act, 1958. But it is notable that the provisions which are containing these legislations, except section 357A of the Cr.P.C., 1973 which was incorporated vide Cr.P.C. (Amendment) Act, 2008 w.e.f. 31-12- 2009, all actually provide restitution, which have certain defects either in their language i.e. by using the word 'may' it equips the court with discretionary power to provide compensation or in the system of providing assistance. As a result, different Indian Commissions and Committees have recommended either deleting or inserting specific sections to reinforce the notion of compensating justice in India.

Furthermore, the Victim Compensation Schemes established by all Indian states and union territories under Section 357A of the Cr.P.C. 1973, which introduced, for the first time in India, the notion of State recompense to victims of crime. There are certain parallels and differences in their compensation methods, establishment of victim compensation funds, eligibility for giving compensation, definition of the word victim, and the amount of compensation indicated in their schedules.

Furthermore, certain states have some unique and additional provisions in their different plans, which is a serious infringement of the Indian Constitution's guarantee of equality. Hence, as a result, it is advised that Victim Compensation Schemes in all States/UTs adopt a standard pattern to offer compensation, since it is illogical for victims of the same crime to get different compensation in various States, with a significant variance in the amount. Furthermore, the method for providing compensation should be easy and consistent, so that all victims go through a comparable process to get compensation.

Furthermore, despite some flaws in the provisions of the Indian Criminal System, the judiciary should follow its own judgment in *Ankush Shivaji Gaikwad v. State of Maharashtra*<sup>50</sup> for section 357 (3) of the Cr.P.C., 1973, that while granting or refusing compensation under section 357 (3) of the Cr.P.C., 1973, it should apply its judicial mind and should record the reasons for its decision.

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<sup>50</sup> (2013) 6 SCC 770

## **6.2 SUGGESTIONS**

In accordance with the research issue outlined at the commencement of this study, it has been determined that the following proposals are made in order to make victims' compensation laws more real and significant in delivering justice for victims is another vital step:

**a) Changing the victim's orientation:**

The impact of crime on the victim is long-lasting, and for many, it also affects their presence. As a result, protecting victims against C.J.S. requires a deeper understanding of abuse. It must be recognized that the victims are handled with decency, respect, and compassion. As an effective method to protect themselves from future exploitation, the police and other program officials' attitudes towards victims should be adjusted. Victims should be held more responsible and encouraged to engage in C.J.S. so that they may freely cooperate in the getting the criminals captured and feel safe and secure with the assistance of government authorities. Victims, particularly female victims, must be made to feel secure so that they may report sexual offences without feeling guilty or tormented by police or other agencies such as hospitals, court workers, advocates, and society as a whole.

**b) The State's obligation to protect victims to become the norm of the day:**

More and more legislative rules must be put in place to ensure protection and restoration of victims' dignity and awareness. Many of our legal norms are too focused with defending and protecting the defendant's rights while neglecting the victims. In addition to the rehabilitation, this is an injustice to the victims.

c) **To enable the victim's involvement in proceedings by taking necessary precautions:**

To prevent the rehabilitation of young victims, particularly sexual abuse victims, processes must be carried out in such a manner that the victim is not subjected to shame or the danger of rehabilitation. This can be accomplished through transmission; the victim must give evidence outside of Court so that the victim is not taken in the manner of the accused, the recorded evidence is recorded on video of the victim, allowing the victim's partner to testify considering the victim's age and sovereignty of mind at certain intervals, and an interrogation letter.

d) **Bail bonds will no longer be deemed conventional, but must include a condition of victim protection:**

Recognizing that when a suspect is given bond, he or she is no longer exchanging words with the victim or his or her family members immediately or indirectly. This may be accomplished by enforcing varied bail terms.

e) **Those in need want to create a Compensation Board:**

Compensation for victims of crime should be the duty of the government, and an adequate framework should be incorporated in the implementation of these social initiatives. There is a pressing need in India to create a "Compensation Board" for short disposal. When the trial is postponed and the case is eventually paid in full for 'recompense' in the form of increasing, diminishing, or reimbursing the impoverished, the victim must be supplied with some recompense for the benefit of the case. Compensation for the victim or their dependents should be offered as soon as possible. The numerous administrative courts or boards shall be referred to as the 'Criminal Compensation Tribunal / Board' by the social workers as donors and should only be granted administrative authority to assess the terms of compensation for victims.

f) **The state must balance the obligation:**

If the responder is unable to pay Compensation, the State must assume responsibility for compensating the victims of the crime. As a result, the sufferer should not be neglected in any way. Compensation must be supplied via the offender, either directly or through the respondent's sharing with the State.

g) **Criminal justice system should be fully integrated to include internal rehabilitation measures themselves:**

Changes related to victims need to be made under C. For example: the victim's verification process can be made more difficult, Bail should be granted to keep the victims' safety safe, victims are allowed to publish statements of the victim's results during sentencing, provide the victim with better information and alert the legal authorities about the victim's wish

h) **The state must balance the obligation:**

If the respondent is unable to pay compensation it means that the State should take the responsibility of the payment of Compensation to the victims of the crime. Therefore the victim should not face any form of neglect. Compensation must be provided through the offender either through the State or on the basis of the respondent's sharing with the State.

i) **Complete Legal Code Must Be Established**

A full Prison Code should be enacted to provide adequate remedy, assistance and adequate Compensation for victims of crime.

j) **Help and post-crime support:**

In addition, all parties should be commended for providing assistance and assisting in the search for victims of crime. It has been respectfully stated that, if the above suggestions are applied in the right way, it will help in a better way towards the purpose of protecting victims and ensuring that 'Compensation' is adequate

k) **Information and communication technology:**

Through ICT, victims must have easy access to timely and accurate records of perpetrators and related criminal proceedings. This will increase the number of victims and witnesses accessible and, at the same time, minimise the time spent in Court, so enhancing the punishment for operating on the black market.



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